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Agenda Date: 11/19/2020
Council Meeting

2020 NOV 16 P 4: 51

CITY OF FRESNO
CITY CLERK'S OFFICE

FRESNO CITY COUNCIL



Information Packet

ITEM(S)

File ID 20-001470 (1-AA)

Actions pertaining to the acquisition of 1625 G Street (APN 465-084-30).

Contents of Supplement: 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.

**AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY
AND ESCROW INSTRUCTIONS**

APN: 465-084-30

1625 G St

This Agreement for Purchase and Sale of Real Property (Agreement), dated for reference purposes as November __, 2020, is entered into by and between the 1626 Fresno MRP, LLC, a California limited liability company (Seller) and the CITY OF FRESNO, a municipal corporation (City).

RECITALS

- A. Seller is the owner of an approximately 14.8 acre parcel of property located in the City of Fresno known as Assessor's Parcel Number (APN) 465-084-30.
- B. City desires to purchase Seller's property more particularly defined in Section 1 below (the Subject Property) for the development of an operations building and municipal corporation yard for the Department of Public Utilities (Water, Solid Waste and Administration/Engineering Divisions).
- C. On September 4, 2020, City provided Seller with a Letter of Intent to purchase the Subject Property and the parties have been engaged in active negotiations for the purchase and sale of the Subject Property.
- D. City now wishes to purchase from Seller and Seller now wishes to sell to City the Subject Property subject to the terms and conditions contained herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

- 1. **Subject Property.** The Subject Property known as APN 465-084-30 is situated at 1625 G Street in the City of Fresno, County of Fresno, State of California (the Land), being approximately 14.8 acres in size, which includes all of Seller's interest in all fixtures and improvements located on the property and all of Seller's rights, privileges, and appurtenances related to the Land including any permits and easements. A legal description of the Land is set forth in Exhibit "A" and depicted on Exhibit "B", attached hereto and incorporated herein by reference.
- 2. **Fee Title.** Except as may have been approved by the City, Seller shall grant the Subject Property to City in fee, free and clear of all liens, encumbrances, and restrictions of record.
- 3. **Purchase Price.** City shall pay Seller Five Million, Seven Hundred and Fifty Thousand Dollars (\$5,750,000) (the Purchase Price) for the Subject Property.
- 4. **Effective Date.** The Effective date of this Agreement shall be the date that this Agreement is signed by the City and Seller.
- 5. **Right to Sell.** Seller represents and warrants that it holds fee title to the Subject Property and that it has the authority to enter into this Agreement.

6. **Escrow Instructions.** The sale shall be completed through an External Escrow to be opened at Fidelity National Title Company, located at 7475 N. Palm Avenue, Suite 107, Fresno, California 93711 (Attn: Bernadette Watson, Escrow Officer) (Title Company and Escrow Holder). Said escrow shall be opened upon the following terms and conditions, and the Seller and City by their signature to this Agreement make this paragraph their escrow instructions:

a. **Deposits.** The City shall deposit the sums specified in Paragraph 3 of this Agreement and the closing costs in escrow upon receipt of a demand and statement from said title company as follows:

i. **Initial Deposit.** Within five days of the Effective Date, City shall deposit with Escrow Holder the sum of One Hundred Thousand Dollars (\$100,000) (the Initial Deposit). The Initial Deposit shall be applied to the Purchase Price at Close of Escrow. The amount of One Hundred Dollars (\$100.00) of the Initial Deposit shall be in consideration for Seller affording to Buyer the right to review and inspect the Property and the Feasibility Package. Such amount shall be non-refundable in any event, shall be paid directly to Seller upon receipt of the Initial Deposit, but shall be applicable to the Purchase Price

ii. **Balance of Purchase Price.** City shall pay the balance of the Purchase Price, less the Initial Deposit to Seller, in good funds through Escrow, not later than the close of business on the day before the Close of Escrow. Escrow Holder will forward to both City and Seller a separate accounting of all funds received and disbursed for each party, and copies of all signed and recorded documents deposited into Escrow, with the recording and filing date and information endorsed thereon.

Payment of said sums by Escrow Holder to Seller (less Seller's cost to remove the Monetary Encumbrances as set forth in Paragraph 6.b.iii.2. below, if any) may be made to Seller only when Escrow Holder possesses and is in a position to record the deed to the Subject Property transferring title to the Land to the City.

b. **Feasibility Period.** City shall have the right to examine the feasibility of the Subject Property for a period of 90 days after the parties have executed this Agreement (the Feasibility Period).

i. **Access.** City shall have the right to access the Subject Property, at all times during normal business hours, following execution of this Agreement by the parties, for the purpose of conducting all non-invasive studies, inspections, evaluations, tests or surveys of the Subject Property that City elects to have performed, upon reasonable notice to Seller. Notwithstanding the foregoing to the contrary, the City shall have the right to perform the following investigations without Seller's consent (but with prior notice to Seller): boundary and topographic surveys; soil, groundwater and

engineering tests; environmental assessments; and commercial building inspection (including roofing, structural integrity, electrical, plumbing, and HVAC) (collectively, the Permitted Inspections). If any of the foregoing Permitted Inspections indicate that further inspection is necessary, the City may conduct such further inspections. City shall repair all damage caused by any such inspections and restore the portions of the Property so inspected to the same condition or better than existing immediately prior to such inspection. City agrees to indemnify, defend 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 City during the Feasibility Period; provided, however, that City shall not be responsible for indemnifying Seller with respect to (A) any pre-existing conditions which City merely discovers through Buyer's investigation of the Subject Property (including, but not limited to, any environmental contamination or matters), and (B) any claims, damages or liability resulting from an act or omission of Seller or Seller's agent, contractors, subcontractors, employees or consultants.

ii. **Feasibility Package.** Seller shall deliver to City a feasibility package within five days of execution of this Agreement. The following shall be included as due diligence in the package to the extent in Seller's possession:

1. Any documents relating to special assessment or bonds;
2. All known current litigation affecting the Subject Property;
3. All environmental reports;
4. Copy of all fees paid; and
5. All Plans and any history on repairs/maintenance

iii. **Title.**

1. Following the Effective Date, City shall order a preliminary title report on the Subject Property from Title Company and shall within five (5) days after the Effective Date, establish escrow with Escrow Holder.
2. City shall have thirty (30) calendar days after the Effective Date within which to notify Seller in writing, of City's disapproval of any exceptions shown in said title report (City's Title Notice). In the event of such disapproval, Seller shall have until ten (10) calendar days after receipt of City's Title Notice to provide notice to City of which items disapproved by City, Seller will cause to be removed prior to the Close of Escrow from the policy of title insurance to be issued to City. Failure of Seller to timely provide notice to City of its

agreement to remove any exceptions shall be deemed to be Seller's disagreement to cause such removal. Failure of City to disapprove any such exception(s) within the aforementioned time limit shall be deemed to be an approval of said preliminary title report and all of its exceptions. Notwithstanding anything to the contrary contained herein, City hereby disapproves of and Seller agrees to remove from title on or before the close of escrow, any monetary lien, encumbrance or deed of trust, other than the lien of taxes not yet due or payable (collectively, the Monetary Encumbrances). The policy of title insurance shall be a California Land Title Association Standard Coverage Policy (CLTA) with liability equal to the total Purchase Price. The cost of such CLTA policy shall be paid by Seller. The cost of any other title insurance requested by City and in excess of such CLTA policy cost shall be paid by City.

- iv. **Expiration of Feasibility Period.** If City has not given notice of termination and cancellation on or before the expiration of the Feasibility Period, the Initial Deposit shall be non-refundable and released and paid to Seller by Escrow Holder on the next business day immediately following the expiration of the Feasibility Period without need for further instructions, notice, or demand from either party. If the City discovers issues with the physical condition of the Property that impact the current deal terms and provides written notice to Seller of such issues, the Feasibility Period shall automatically be extended for fifteen (15) days during which time Seller and City shall meet and confer in an attempt to reach agreement with respect to such issues, which may include, a reduction in the Purchase Price and/or extension of the Feasibility Period for further inspection. Notwithstanding the foregoing to the contrary, nothing herein is intended to obligate Seller or City to agree to a resolution of such issues and upon the expiration of such fifteen (15) day period, unless Seller and City have reached a written agreement resolving such issues, either Seller or City may terminate this Agreement by providing written notice to the other party within five (5) days after the expiration of such fifteen (15) day period. Failure by the Seller or City to provide written notice of termination of this Agreement within such period shall cause the Initial Deposit to become non-refundable and furthermore shall be deemed a waiver by the Seller and City to terminate this Agreement pursuant to this Paragraph and to proceed to the closing of the transaction as contemplated herein.
- v. **Termination and Cancellation of Agreement.** If City, in its sole and absolute discretion, decides to terminate and cancel this Agreement by timely delivery of a written termination and cancellation notice on or before expiration of the Feasibility Period,

then the entire Initial Deposit, and any accrued interest thereon, shall be immediately refunded to City by Escrow Holder without the need for further instruction, notice, or demand from either party.

- c. **Costs.** The parties shall each pay one half of the escrow fee. As set forth above, Seller shall be responsible for the payment of the premium for the CLTA policy of title insurance; recording fees (if any) shall be as customary in Fresno County; all other closing costs shall be paid by the City; Seller will pay any County transfer taxes.
- d. **Prorations.** Real property taxes, bonds and assessments assumed by City, rentals, premiums on insurance accepted by City, interest on encumbrances, and operating expenses, if any, shall be prorated as of the Closing Date. Any supplemental real estate tax bill issued after Closing Date, but applicable to periods prior to the Closing Date shall be paid by Seller to the extent they apply to the periods prior to Closing Date. Such payment shall be made within thirty (30) days of delivery of invoice to Seller and shall be handled directly between Seller and City.
- e. **Disbursement.** Disbursements of the Purchase Price shall be in the amounts, at the times, and in all respects in accordance with the terms and conditions and subject to the limitations of this Agreement, but in any event, delivery of the Purchase Price to Seller shall be a condition to the transfer of the Property to City.
- f. **Close of Escrow.** Close of Escrow for the purchase and sale of the Subject Property shall occur no later than 20 days from the expiration of the Feasibility Period (the Closing Date). Unless otherwise waived by City, the following Conditions of Sale must be met prior to Close of Escrow:
 - i. No pending litigation against Subject Property and no notices of violation of law shall have occurred after the expiration of the Feasibility Period;
 - ii. Escrow Holder is in possession of a good and sufficient grant deed, duly executed by Seller, in the form attached hereto as Exhibit C.

Unless otherwise waived by Seller, the following Conditions of Sale must be met prior to Close of Escrow:

- i. The Close of Escrow shall have occurred on or before the Closing Date.
- ii. As of the Close of Escrow, City shall have timely performed all of the obligations required by the terms of this Agreement to be performed by City.

In the event any of the conditions set forth herein are not timely satisfied or waived by the appropriate benefited party, for a reason other than the default of City or Seller (the consequences of a failure of Close of Escrow as a result of a default by Seller or City are addressed in Section 9 of this Agreement), this Agreement shall terminate, and the portion of the Initial Deposit previously made by City shall

be returned to City, and, except as otherwise provided herein, the parties shall have no further obligations hereunder (excepting those obligations that are expressly intended to survive termination of this Agreement, including, without limitation, the parties' indemnification, defense and hold harmless obligations under this Agreement).

7. **Commission.** Seller represents that it has not engaged any person entitled to any brokerage commission or finder's fee in connection with this transaction except for CBRE, Inc. (Seller's Broker). Buyer represents that it has not engaged any person entitled to any brokerage commission or finder's fee in connection with this transaction except for Cushman & Wakefield and Pacific Commercial Realty Advisors (Buyer's Broker and collectively with Seller's Broker, Broker). Buyer hereby agrees to indemnify, hold harmless and defend Seller against any claims asserted against or adjudged against Seller if such claims shall be based upon any statement, representation or agreement made by Buyer, and Seller hereby agrees to indemnify, hold harmless and defend Buyer if such claims shall be based upon any statement, representation or agreement made by Seller. This real estate commission shall be earned upon, and only upon, the Close of Escrow pursuant to the terms of this Agreement. At the Close of Escrow, and through escrow, Seller shall pay a brokerage commission to Seller's Broker and Buyer's Broker pursuant to a separate agreement. Buyer shall not incur or be responsible for any commission fees involving Buyer or Seller's Broker earned upon close of escrow.
8. **Condition and Inspection of Subject Property.** Notwithstanding any other provision of this Agreement to the contrary, neither Seller nor any employee or agent of Seller has made or will make, either expressly or impliedly, any representations, guaranties, promises, statements, assurances or warranties of any kind concerning the Subject Property including, without limitation, the following matters (collectively referred to herein as the Subject Property Conditions): (i) the suitability or condition of the Subject Property for any purpose or its fitness for any particular use, (ii) the profitability and/or feasibility of owning, developing, operating and/or improving the Subject Property, (iii) the physical or environmental condition of the Subject Property, including, without limitation, the current or former presence or absence of environmental hazards or hazardous materials, asbestos, radon gas, underground storage tanks, electromagnetic fields, or other substances or conditions which may affect the Subject Property or its current or future uses, habitability, value or desirability, (iv) the rentals, income, costs or expenses thereof, (v) the net or gross acreage, usable or unusable, contained therein, (vi) the zoning of the Subject Property, (vii) the condition of title, (viii) the compliance by the Subject Property with applicable zoning or building laws, codes or ordinances, or other laws, rules and regulations, including, without limitation, environmental and similar laws governing or relating to environmental hazards or hazardous materials, asbestos, radon gas, underground storage tanks, electromagnetic fields, or other substances or conditions which may affect the Subject Property or its current or future uses, habitability, value or desirability, (ix) water or utility availability or use restrictions, (x) geologic/seismic conditions, soil and terrain stability, or drainage, (xi) sewer, septic, and well systems and components, (xii) other neighborhood or Subject Property conditions, including,

schools, proximity and adequacy of law enforcement and fire protection, crime statistics, noise or odor from any sources, landfills, proposed future developments, or other conditions or influences which may be significant to certain cultures or religions, or (xiii) any other past, present or future matter relating to the Subject Property which may affect the Subject Property or its current or future use, habitability, value or desirability. Seller has not conducted any investigation regarding the condition of the Subject Property, and the Subject Property is sold AS-IS, WHERE-IS, WITH ALL FAULTS, AND THERE IS NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE CONDITION OF THE SUBJECT PROPERTY. City hereby represents and warrants that City is relying solely upon, and as of the expiration of the Feasibility Period will have conducted its own independent inspection, investigation, and analysis of the Subject Property as it deems necessary or appropriate in so acquiring the Subject Property from Seller, including, without limitation, any and all of the Subject Property Conditions. Seller would not sell the Subject Property to City without the foregoing provision and the waiver and release contained herein.

9. **Default and Remedies.**

- a. **City's Default.** IF CLOSE OF ESCROW SHALL FAIL TO OCCUR BECAUSE OF THE BUYER'S DEFAULT UNDER THIS AGREEMENT, SELLER'S SOLE AND EXCLUSIVE REMEDY SHALL BE TO RETAIN THE BUYER'S INITIAL DEPOSIT TOGETHER WITH ALL ACCRUED INTEREST THEREON.
- b. **Seller's Default.** IF THE CLOSE OF ESCROW SHALL FAIL TO OCCUR BECAUSE OF SELLER'S DEFAULT UNDER THIS AGREEMENT, CITY'S SOLE AND EXCLUSIVE REMEDY, AND IN SUBSTITUTION FOR ANY OTHER REMEDIES THAT MAY EXIST AT LAW OR IN EQUITY (INCLUDING, WITHOUT LIMITATION, AN ACTION FOR DAMAGES), SHALL BE TO EITHER (1) TERMINATE THIS AGREEMENT, IN WHICH EVENT THE ENTIRE DEPOSIT PREVIOUSLY MADE BY CITY AND ALL OTHER FUNDS DEPOSITED BY CITY SHALL BE RETURNED TO CITY AND THE PARTIES SHALL THEREAFTER HAVE NO OBLIGATIONS UNDER THIS AGREEMENT OR ADDITIONAL LIABILITY TO ONE ANOTHER; OR (2) MAINTAIN THIS AGREEMENT IN EFFECT AND PURSUE AN ACTION FOR SPECIFIC PERFORMANCE.

SELLER: 

CITY: _____

- c. **Post-Closing Damages Limitation.** If, following the Close of Escrow, Seller is found to be in default of its obligations hereunder, then notwithstanding any contrary provision of this Agreement, the maximum amount that City shall be entitled to collect from Seller in connection with all suits, litigation or administrative proceedings resulting from all breaches by Seller of any representation or warranty of Seller or any covenants or agreements of Seller, shall in no event exceed Fifty Thousand and No/100ths Dollars (\$50,000.00) in the aggregate. City's damages following the Close of Escrow shall be limited to City's actual, verifiable damages (and

specifically excluding consequential, punitive, special and exemplary damages). The provisions of this Section 9.c. shall survive the Close of Escrow.

10. **Condemnation and Destruction.**

- a. **Eminent Domain or Taking.** If, prior to the Close of Escrow, any material portion of the Subject Property is taken by eminent domain or otherwise, Seller shall immediately notify City of such fact. If such taking is "material," City shall have the option, in its reasonable discretion, to terminate this Agreement upon written notice to Seller given not later than ten (10) days after receipt of Seller's notice. If this Agreement is terminated pursuant to this Section, the provisions of Section 6.f, shall govern. If City does not exercise this option to terminate this Agreement, or if there has not been a material taking by eminent domain or otherwise to give rise to such option, neither party shall have the right to terminate this Agreement, but the Seller shall assign and turn over, and the City shall be entitled to receive and keep, all awards for the taking by eminent domain which accrue to Seller and the parties shall proceed to the Close of Escrow pursuant to the terms hereof, without modification of the terms of this Agreement and without any reduction in the Purchase Price.
- b. **Fire or Casualty.** Prior to the Close of Escrow, the entire risk of loss or damage by earthquake, flood, landslide, fire or other casualty shall be borne and assumed by Seller, except as otherwise provided in this Section. If, prior to the Close of Escrow, any part of the Subject Property is damaged or destroyed by earthquake, flood, landslide, fire or other casualty, Seller shall promptly notify City of such fact. If such damage or destruction is "material", either Seller or City shall have the option to terminate this Agreement.
- c. **Material.** For purposes of Paragraphs 10.a. and 10.b., "material" shall be deemed to be any damage which exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00). If the damage is not material, this Agreement shall remain in full force and effect, and Seller may extend the Close of Escrow for up to ninety (90) days in order to repair such damage. In the event that Seller and City are unable to agree as to the monetary amount of such damages, the amount of such damages will be determined by an independent appraiser agreed to by both parties.

11. **Notices.** All notices, demands, consents, requests or other communications required to or permitted to be given pursuant to this Agreement shall be in writing, shall be given only in accordance with the provisions of this Section, shall be addressed to the parties in the manner set forth below, and shall be conclusively deemed to have been properly delivered: (a) upon receipt when hand delivered during normal business hours (provided that, notices which are hand delivered shall not be effective unless the sending party obtains a signature of a person at such address that the notice has been received); (b) upon receipt when sent by facsimile if sent before 5:00 p.m. on a business day to the number set forth below

with written confirmation of a successful transmission by the sender's facsimile machine; (c) upon the day of delivery if the notice has been deposited in an authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested (provided that, the sender has in its possession the return receipt to prove actual delivery); or (d) one (1) business day after the notice has been deposited with either Golden State Overnight, FedEx or United Parcel Service to be delivered by overnight delivery (provided that, the sending party receives a confirmation of actual delivery from the courier). The addresses of the parties to receive notices are as follows:

TO SELLER:	1626 Fresno MRP, LLC c/o WhiteStar Advisors, LLC 902 Clint Moore Road, Suite 104 Boca Raton, Florida 33487 Attention: James E. Bishop Telephone: (561) 999-9949 Facsimile: (561) 999-9948
TO CITY:	CITY OF FRESNO Attention: City Manager 2600 Fresno Street Fresno, CA 93721 Telephone: 559-621-8000
TO ESCROW HOLDER:	Fidelity National Title Company 7475 N. Palm Avenue, Suite 107 Fresno, California 93711 Attention: Bernadette Watson Telephone: (559) 261-8929 Facsimile: (559) 451-0701

Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this Section, and that any person to be given notice actually receives such notice. If any notice is refused, the notice shall be deemed to have been delivered upon such refusal. Any notice delivered after 5:00 p.m. (recipient's time) or on a non-business day shall be deemed delivered on the next business day. A party may change or supplement the addresses given above, or designate additional addressees, for purposes of this Section by delivering to the other party written notice in the manner set forth above.

12. Miscellaneous Provisions:

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

- b. **Governing Law and Venue.** This Agreement 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 Agreement any rights and duties hereunder shall be Fresno, California.
- c. **Headings.** The section headings in this Agreement 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 Agreement.
- d. **Severability.** The provisions of this Agreement are severable. The invalidity, or unenforceability or any one provision in this Agreement shall not affect the other provisions.
- e. **Interpretation.** The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but rather by construing the terms in accordance with their generally accepted meaning.
- f. **Attorney's Fees.** If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.
- g. **Precedence of Documents.** In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment.
- h. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- i. **Exhibits and Attachments.** Each Exhibit and Attachment referenced herein is by such reference incorporated into and made a part of this Agreement for all purposes.
- j. **Non-Material Changes.** The City Manager of the City, or designee, may execute any supplemental escrow instructions and may make minor modifications to this Agreement, the exhibits, and the documents referenced herein, provided such modifications do not constitute a material change to this Agreement.
- k. **Extent of Agreement.** Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may

be modified only by written instrument duly authorized and executed by both the City and the Seller.

- i. **Time of Essence.** Seller and City hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform. The failure of City to timely deposit or release any portion of the Initial Deposit or to timely deposit the balance of the Purchase Price with the Escrow Holder shall be deemed to be a breach allowing Seller to immediately terminate this Agreement; provided, that Seller terminates this Agreement prior to the making of such payment by City.
- m. **Exchange.** The parties to this Agreement acknowledge that Seller may desire to structure the sale of the Subject Property as an exchange for like-kind property pursuant to Section 1031 of the Internal Revenue Code of 1986 ("IRC"), as amended, in order to defer recognition of income on the disposition of the Subject Property and/or other properties. City agrees to reasonably cooperate with Seller to accomplish such exchange(s) and each party hereby agrees that any and all costs associated with said exchange shall be borne solely by the Seller and shall in no way be attributable to City. In no event shall City be required to take title to the exchanged property(ies) to effectuate the tax deferred exchange contemplated by this Section.
- n. **Assignment.** City may not assign its interest in this Agreement to any person without Seller's prior written consent.
- o. **Confidentiality.** To the extent allowed under California law, City and its representatives shall hold in strictest confidence all data and information obtained with respect to the Property or Seller or its business, whether obtained before or after the execution and delivery of this Agreement, and shall not use such data or information or disclose the same to others. In the event this Agreement is terminated or City fails to perform hereunder, City shall promptly return to Seller any statements, documents, schedules, exhibits or other written information obtained from Seller in connection with this Agreement or the transaction contemplated herein.
- p. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Signatures transmitted via facsimile, e-mail and/or by any electronic signature format as defined under the US Federal E-SIGN Act (ex. DocuSign, HelloSign, Adobe Sign, and the like) shall be considered original, authentic and binding.
- q. **Days of Week.** A "business day" as used herein, shall mean any day other than a Saturday, Sunday or holiday, as defined in Section 6700 of the California Government Code. If any date (whether calculated based on business days or calendar days) for performance herein falls on a day other

than a business day, the time for such performance shall be extended to 5:00 p.m. on the next business day. The time in which any act is to be done hereunder is computed by excluding the first day and including the last.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the Effective date of this Agreement as defined above.

CITY OF FRESNO,
a California municipal corporation

1626 Fresno MRP, LLC, a California
limited liability company

By: _____
Wilma Quan Date
City Manager

By: WhiteStar Advisors, LLC, a Florida
limited liability company, as its Non-
Member Manager

By: Joseph Arnoldt
Name: JOSEPH ARNDT
Title: SVP
Date: 11/16/20

RECOMMENDED FOR APPROVAL:

By: _____
Colleen Karby Date
Senior Real Estate Agent

By: _____
R. Scott Beyelia Date
Supervising Real Estate Agent

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: Tracy N. Parvanian
Tracy N. Parvanian Date
Senior Deputy City Attorney 11-16-20

ATTEST:
YVONNE SPENCE, MMC CRM
City Clerk

By: _____
Deputy Date

- Attachments:
- 1. Exhibit A – Legal Description
 - 2. Exhibit B – Exhibit Map
 - 3. Exhibit C – Grant Deed

Exhibit A

Legal Description

Parcel "B" of Parcel Map No. 74-37, recorded in Book 13 of Parcel Maps, at Page 90, Fresno County Records, in the City of Fresno, County of Fresno, State of California.

Exhibit C

Form of Grant Deed

Grant Deed

RECORDING REQUESTED BY:

Public Works Department
City of Fresno
No Fee-Gov't. Code Sections
6103 and 27383

WHEN RECORDED MAIL TO:

Public Works Department
City of Fresno
2600 Fresno Street
Fresno, California 93721-3623
Attention: ROW

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

FOR VALUE RECEIVED, 1626 Fresno MRP, LLC, a California limited liability company ("**Grantor**") grants to the City of Fresno, a municipal corporation ("**Grantee**"), all that certain real property (the "**Property**") situated in the County of Fresno, California, commonly known as _____, and described in Exhibit A attached hereto and by this reference incorporated herein.

THIS CONVEYANCE IS SUBJECT TO ALL MATTERS OF RECORD, RIGHTS OF TENANTS IN POSSESSION, AND ALL MATTERS THAT WOULD BE DISCLOSED BY A PHYSICAL INSPECTION AND/OR SURVEY OF THE PROPERTY.

IN WITNESS WHEREOF, the undersigned has executed this Grant Deed as of _____, 2020.

1626 Fresno MRP, LLC, a California limited liability company

By: WhiteStar Advisors, LLC, a Florida limited liability company, as its Non-Member Manager

By: _____
Name: _____
Title: _____
Date: _____

[NOTARIAL ACKNOWLEDGMENT ATTACHED]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(SIGNATURE OF NOTARY)

OPTIONAL SECTION

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT: _____ TITLE OR TYPE OF DOCUMENT _____
_____ NUMBER OF PAGES _____ DATE OF DOCUMENT _____

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form

EXHIBIT "A"

APN 465-084-30
Grant Deed

Parcel "B" of Parcel Map No. 74-37, recorded in Book 13 of Parcel Maps, at Page 90, Fresno County Records, in the City of Fresno, County of Fresno, State of California.