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Agenda Item: ID#19-11676 (3-J)

Date: 12/10/2019



Late Submission Information Packet

Contents: Updated Agreement

Item(s)

Actions pertaining to Darling Ingredients relocation to Wastewater Treatment Facility (District 3):

1. Approve Jensen Road Transfer Agreement between the City and County of Fresno related to the transfer of ownership and maintenance of Jensen Avenue right of way to the City between South Chateau Fresno and approximately 660 feet west of Sough Fig Avenue, and payment of certain property taxes to City.

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.

1 with the City of Fresno for that project, by which to the County would pay a proportionate share from
2 SB 1 funds; and

3 WHEREAS, the County has been awarded multiple Federal grants to reconstruct portions of
4 Jensen Avenue, including but not limited to between Fruit Avenue and Fig Avenue, and the County
5 expects assign its competitive Federal grant funds for that project to the City through the Fresno
6 Council of Governments process.

7 NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which
8 is hereby acknowledged, the County and the City agree as follows:

9 **TRANSFER OF JENSEN AVENUE CORRIDOR**

10 1. "Transfer" as used in this Agreement shall mean the completed annexation by the City
11 of portions of the Jensen Avenue Corridor lying within the City's current sphere of influence, as more
12 completely described in Exhibit A attached to this Agreement, and conveyance to the City by quitclaim
13 deed of all the County's title, right and interest in the remaining portion of the Jensen Avenue Corridor,
14 as more completely described in Exhibit B attached to this Agreement, all as described in Sections 2
15 through 7 of this Agreement. The date of the Transfer, for purposes of this Agreement, is the date and
16 time that the County's quitclaim deed under section 7 of this Agreement, for that portion of the Jensen
17 Avenue Corridor that lies within the Jensen Avenue Corridor but outside the City's current sphere of
18 influence, is recorded in the Office of the Fresno County Recorder; except that if there are multiple
19 such quitclaim deeds, the date of Transfer is the date and time that the final such quitclaim deed is
20 recorded.

21 2. Each party acknowledges that, at the time of their initial execution of this Agreement,
22 Exhibit A and Exhibit B do not yet contain detailed descriptions of the lands within the Jensen Avenue
23 Corridor to be annexed or quitclaimed, respectively. The parties agree, however, that Exhibit A and
24 Exhibit B shall be established by the procedure defined in this section 2.

25 a. Within 60 days after both parties have executed this Agreement, the City shall
26 deliver its proposed Exhibit A to the County, and the County shall deliver its proposed Exhibit B to the
27 City. The duly authorized representatives of the parties shall confer regarding each of their proposed
28 exhibits, and shall work together in good faith to finalize both exhibits.

1 b. Upon written approval of the proposed Exhibit A by the County's Director of the
2 Department of Public Works and Planning and by County Counsel, the proposed Exhibit A as
3 approved shall become Exhibit A to this Agreement, as though the Agreement were amended as
4 provided in section 29 below.

5 c. Upon written approval of the proposed Exhibit B by the City's Director of Public
6 Works and by the City Attorney, the proposed Exhibit B as approved shall become Exhibit B to this
7 Agreement, as though the Agreement were amended as provided in section 29 below.

8 3. County agrees (a) to make best efforts to assign its competitive Federal grant funds
9 received for the Jensen Avenue reconstruction project to the City through the Fresno Council of
10 Governments process; (b) to pay its proportionate share for the Jensen Avenue reconstruction project
11 between Chateau Fresno and Cornelia Avenues from SB 1 funds; and (c) to make best efforts to
12 assign its competitive Federal grant funds received to reconstruct Jensen Avenue between Fruit
13 Avenue and Fig Avenue through the Fresno Council of Governments process.

14 4. Both parties' performance under this Agreement is expressly conditioned upon close of
15 escrow under the Disposition Agreement and Development Agreement between the City and Darling
16 ("Condition Precedent"), which is expected to take place on or before January 31, 2020. As soon as
17 possible after both parties have executed this Agreement and following satisfaction of the Condition
18 Precedent, the City shall commence an annexation application with the Fresno Local Agency
19 Formation Commission ("LAFCO") to annex to the City's jurisdiction those portions of the Jensen
20 Avenue Corridor lying within the City's current sphere of influence as described in Exhibit A to this
21 Agreement. The City shall take all actions reasonable and necessary to complete the annexation of
22 said portions of the Jensen Avenue Corridor by June 30, 2022.

23 5. The County shall not oppose and shall take all actions reasonable and necessary to
24 support the City's application to LAFCO for the annexation of the portions of the Jensen Avenue
25 Corridor lying within the City's current sphere of influence as described in Exhibit A. The County shall
26 pay to the City an amount equal to half of any LAFCO fees charged to the City for this process of
27 annexation. The County shall not be responsible for payment of any other costs incurred by the City
28 for any land use, survey, planning, regulatory compliance (including but not limited to compliance with

1 the California Environmental Quality Act), municipal service review or other work required to
2 accomplish any extension of a sphere of influence or other annexation, except as expressly provided
3 herein.

4 6. The City and County agree that the annexation of portions of the Jensen Avenue
5 Corridor to the City's jurisdiction may legally require the annexation to the City of additional areas of
6 the County to effectuate the annexation of the Jensen Avenue Corridor. If annexation of such
7 additional areas of the County is legally required, the County shall not oppose and shall take all
8 actions reasonable and necessary to support the City's application to LAFCO for the annexation of
9 such additional areas so long as such annexation is limited to the minimum area legally required to
10 effectuate the annexation of said portions of the Jensen Avenue Corridor.

11 7. After the City obtains final approval of the annexation of those portions of the Jensen
12 Avenue Corridor within the City's current sphere of influence as described in Exhibit A, the County
13 agrees to convey by quitclaim deed to the City, and the City agrees to accept, all of the County's
14 rights, title, interest in and legal responsibility for the Jensen Avenue right of way whether in fee or in
15 easement that lies within the Jensen Avenue Corridor but outside the City's current sphere of influence
16 as described in Exhibit B. The County shall deliver to the City a quitclaim deed or deeds as soon as
17 possible after the final approval of the annexation but in no event later than 60 days after the
18 completion of the annexation by the City of those portions of the Jensen Avenue Corridor lying within
19 the City's current sphere of influence as described in Exhibit A. Annexation of any particular property
20 pursuant to this Agreement shall be considered final and complete on the date that the Fresno Local
21 Agency Formation Commission adopts its resolution approving the annexation.

22 8. If, at any time before the County makes the last of its annual payments required by this
23 Agreement, the City seeks to annex any portion of the Jensen Avenue Corridor that is not part of the
24 initial annexation property described in Exhibit A, the County agrees that it shall not oppose and shall
25 take all actions reasonable and necessary to support the City's application to LAFCO for the
26 annexation of the these additional portions of the Jensen Avenue Corridor subject to the same terms
27 and conditions as the initial annexation, including, without limitation, the provisions of Sections 4 and
28 5, above.

1 9. Regardless of the manner in which the Transfer is accomplished, it is the parties'
2 express intent that following the final effective date of such annexation, conveyance or grant, the City
3 shall assume all construction, maintenance and legal liability for the right of way in the Jensen Avenue
4 Corridor and shall defend and hold harmless the County from all claims arising after such final
5 effective date as more specifically set forth in this Agreement below.

6 10. The City and County agree that regardless of the manner in which the Transfer is
7 accomplished, the City takes any jurisdiction, ownership and/or responsibility of the Jensen Avenue
8 Corridor in an as-is condition, subject to all existing encroachments, utility easements, other
9 easements, or other condition. The City acknowledges that the County's conveyance of those portions
10 of the Jensen Avenue Corridor lying outside of the City's current sphere of influence as described in
11 Exhibit B will be made by quitclaim deed without warranty and the County shall have no obligation to
12 defend or indemnify the City with respect to any claim or challenge to the title conveyed thereby to the
13 City. The County is not currently aware of any existing title defects, but expressly makes no warranty
14 or representation regarding its efforts to determine whether any such defects exist. The County shall,
15 however, reasonably cooperate with the City in response to any such claim or challenge to title. The
16 City and the County acknowledge that there may be encroachments by third parties within the right of
17 way contained in the Jensen Avenue Corridor. The City agrees that it will not commence any code
18 enforcement action to force removal of such encroachments that exist at the time of the Transfer
19 unless necessary to remedy a situation presenting an immediate or unreasonable risk of harm to the
20 public.

21 11. The City and the County acknowledge that portions of privately-owned parcels in the
22 County may be annexed to the City to the extent they extend into the right of way contained in the
23 Jensen Avenue Corridor. As to such privately owned parcels in the County that have only a portion
24 lying within the right of way in the Jensen Avenue Corridor annexed by the City, the City agrees and
25 warrants that any City parcel tax shall not apply to the portion of the parcel underlying the right of way
26 in the area annexed by the City.

27 12. The City and the County acknowledge that portions of privately-owned parcels in the
28 County may be annexed by the City to the extent they extend into the right of way contained in the

1 Jensen Avenue Corridor. As to such privately owned parcels in the County that have only a portion
2 lying within the right of way in the Jensen Avenue Corridor annexed by the City, the City agrees and
3 warrants that it will apply construction standards and provide permitting processes for construction of
4 any necessary driveway or other improvements on such portions of parcels in the right of way annexed
5 by the City that are consistent with current County construction standards and processes.

6 13. The City and County agree that if the Transfer is not finalized before June 30, 2022, this
7 Agreement shall become null and void, and of no effect and the parties shall have no further
8 responsibility toward each other concerning either the Transfer or the payment of any amount
9 hereunder by the County. The parties may, in writing approved by duly authorized representatives,
10 extend the deadline contained in this section 13 by mutual agreement to amend this Agreement as
11 provided below.

12 14. After the final effective date of the Transfer under this Agreement, regardless of the
13 manner of transfer, the City shall be solely responsible for all construction, repair, maintenance,
14 operation and legal liability for the road within the Jensen Avenue Corridor and the County shall have
15 no legal, financial or other obligation or liability with respect to the road within the Jensen Avenue
16 Corridor.

17 15. The City and County agree to cooperate and take any additional reasonable actions to
18 fulfill the purposes of this Agreement and the Transfer, including but not limited to any action to clarify
19 or correct any boundary or description of the property included in the Transfer as may be needed to
20 effectuate the purposes of this Agreement.

21 **PAYMENT BY COUNTY TO CITY**

22 16. In consideration of the City's undertakings provided in this Agreement, the County shall
23 pay to the City on an annual basis for a period of ten (10) years an amount equal to the County's share
24 of ad valorem real and personal property taxes paid by Darling or any successor owner or taxpayer for
25 the Darling Parcel. The ten-year period shall commence with the first full tax year after the date the
26 certificate of occupancy is issued by the City for the new Darling plant or the date the final Transfer is
27 completed as provided in this Agreement, whichever occurs later.

28 17. The Darling Parcel shall include the real property described in Exhibit C attached to this

1 Agreement consisting generally of the southwest corner of Jensen Avenue and Cornelia Avenue
2 comprising a portion of Assessor's Parcel No. 327-030-41T; or any successor parcel number assigned
3 by the County Assessor following conveyance of the real property from the City to Darling.

4 18. The City and the County agree that the County's share of such ad valorem real and
5 personal property taxes paid on the Darling Parcel shall be calculated according to California State law
6 by the Fresno County Auditor-Controller/Treasurer-Tax Collector's Office. The City and the County
7 agree that the City is not a "party affected" for purposes of Revenue and Taxation Code section 1603.
8 Nothing in this agreement is intended to, or shall be deemed to have the effect of, binding the County
9 Assessor in carrying out its duties.

10 19. The County shall make such payments once annually after receipt of the full payment of
11 both installments and any supplemental assessment of ad valorem taxes by the owner or responsible
12 tax payer for the Darling Parcel and the determination of local agency shares of ad valorem property
13 taxes by the Fresno County Auditor-Controller/Treasurer-Tax Collector. The County shall make such
14 payment by June 1st for all ad valorem property taxes paid during that County fiscal year.

15 20. The County's obligation to make payments under this Agreement is contingent upon:
16 (1) the completion of the Transfer; and (2) the full payment of all taxes due on the Darling Parcel by
17 the property owner or tax payer responsible for payment of ad valorem taxes on the Darling Parcel.

18 21. The County's obligation to make payments under this Agreement is limited to the
19 County's share of ad valorem taxes actually paid on the Darling Parcel by the property owner or tax
20 payer responsible for payment of ad valorem taxes on the Darling Parcel and does not include any
21 special district taxes or assessments or any other taxes.

22 22. In the event of any successful appeal or application for reduction by the property owner
23 or tax payer responsible for payment of ad valorem taxes on the Darling Parcel during the payment
24 period, or any audit under Revenue and Taxation Code section 469, or any negative supplemental
25 assessment under Revenue and Taxation Code section 75.43, or any other cancellation or correction
26 under Part 9 of Division 1 (beginning with section 4801) of the Revenue and Taxation Code, that
27 results in a refund of ad valorem property taxes to the property owner or responsible tax payer, the
28 County shall offset a proportionate share of any such refund constituting the County's share of ad

1 valorem property taxes against the next payment due to the City under this Agreement. If the property
2 owner of or responsible tax payer for the Darling Parcel brings a successful appeal or application for
3 reduction for ad valorem property taxes, or there is any audit under Revenue and Taxation Code
4 section 469, or any negative supplemental assessment under Revenue and Taxation Code section
5 75.43, or any other cancellation or correction under Part 9 of Division 1 (beginning with section 4801)
6 of the Revenue and Taxation Code, that results in a refund occurring after the County's payment
7 period but applicable to a tax year covered by payment made by the County to the City under this
8 Agreement, the County shall bill the City and the City shall pay the County an amount equal to the
9 County's proportionate share of any such refund.

10 **INDEMNIFICATION**

11 23. Upon completion of any portion of the Transfer, whether by annexation or by deed, the
12 City agrees to defend, hold harmless and indemnify the County, its officers, employees, agents and
13 contractors, from any claim or litigation arising from damage or injury occurring on or after the date of
14 that portion of the Transfer and related to the design, construction, maintenance or condition of the
15 road within that portion of the Jensen Avenue Corridor.

16 24. The County agrees to defend, hold harmless and indemnify the City, its officers,
17 employees, agents and contractors from any claim or litigation arising from damage or injury occurring
18 before the date of each portion of the Transfer, whether by annexation or by deed, and related to the
19 design, construction, maintenance or condition of the road within that portion of the Jensen Avenue
20 Corridor as it existed prior to the effective date of that portion of the Transfer.

21 **GENERAL PROVISIONS**

22 25. This Agreement is made between the City and the County, for the benefit only of those
23 two parties and no provision of this Agreement is made for the benefit of Darling or any other third
24 party. No person or entity other than the City or the County shall have any right to enforce the terms of
25 this Agreement under a theory of third-party beneficiary or otherwise.

26 26. The parties to this Agreement may not assign any of the obligations, payments or
27 benefits under this Agreement to any other person, entity or party. This section 26 shall not prevent the
28 City from retaining contractors to perform work on the road in the Jensen Avenue Corridor in

1 furtherance of the City's obligations under this Agreement.

2 27. Notices or communications under this Agreement shall be sent to:

3 City: City of Fresno
4 2600 Fresno Street
5 Fresno, CA 93721
6 Attention: City Manager

7 With Copy to: City of Fresno
8 2600 Fresno Street
9 Fresno, CA 93721
10 Attention: City Attorney

11 And City of Fresno Dept. of Public Works
12 2600 Fresno Street, Room 4016
13 Fresno, CA 93721
14 Attention: Public Works Director

15 For the County: County Administrator, County of Fresno
16 Hall of Records, Room 304
17 2281 Tulare Street
18 Fresno, CA 93721

19 With copy to: County Counsel, County of Fresno
20 2220 Tulare Street, Suite 500
21 Fresno, CA 93721

22 And Director of Public Works and Planning
23 County of Fresno
24 2220 Tulare Street, Suite 800
25 Fresno, CA 93721

26 28. The City and the County agree that all agreements and understandings between the
27 parties are incorporated in this Agreement and the parties intend this Agreement as a final, complete
28 and exclusive expression of their Agreement with respect to its subject matter. The parties further
agree that this written Agreement supersedes and replaces all prior or contemporaneous discussions,
negotiations, letters, memoranda or other communications, oral or written with respect to the subject
matter of this Agreement. The parties further agree that this written Agreement cannot be contradicted
by evidence of any prior agreement either written or oral.

29 29. The City and County agree that this Agreement may be amended in writing signed by
30 duly authorized representatives of both parties and that no oral agreement, discussion or waiver of the
31 terms of this Agreement by any person shall be effective to alter the terms of this Agreement.

1 30. No waiver of any provision of this Agreement shall be effective unless made in writing
2 and signed by a duly authorized representative of the party against whom enforcement of a waiver is
3 sought. No waiver of any right or remedy with respect to any occurrence or event shall be deemed a
4 waiver of any other occurrence or event.

5
6 EXECUTED AND EFFECTIVE as of the date finally executed by the parties below.

7
8 **CITY OF FRESNO,**
9 A California municipal corporation

COUNTY OF FRESNO

10 _____
11 Wilma Quan, City Manager

Nathan Magsig, Chairman of the Board
of Supervisors of the County of Fresno

12
13 **APPROVED AS TO FORM:**
14 Douglas T. Sloan
City Attorney

15 By: _____
16 Laurie Avedisian-Favini Date
 Assistant City Attorney

17
18 **ATTEST:**
19 Yvonne Spence, MMC CRM
20 City Clerk

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

21 By: _____
22 Deputy

By:

23
24
25 FOR ACCOUNTING USE ONLY:

26 Fund:
27 Subclass:
28 ORG:
Account: