

RECEIVED

Agenda Date: 3/11/2021
Special Council Meeting

2021 MAR 11 P 2:05

CITY OF FRESNO
CITY CLERK'S OFFICE

FRESNO CITY COUNCIL



Information Packet

ITEM(S)

File ID 21-400 (A)

Approve Settlement Agreement with South Fresno Community Alliance

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.

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims ("Agreement") is entered into by and between South Fresno Community Alliance, an unincorporated association, including all of its affiliated members (collectively, "SFCA"), Leadership Counsel for Justice and Accountability ("LC"), a 501-c-3 non-profit organization, and the City of Fresno ("City"), a municipal services corporation (collectively referred to as "Parties" or singularly "Party"), to terminate fully and finally all disputes concerning the matters set forth below.

RECITALS

WHEREAS, G4 Enterprises ("Developer") has applied to the City for land use entitlements and had received authorization from the City to build a project located in the City at 3611 South Northpointe Drive (APN 33002182S) ("Project Site"); and

WHEREAS, the Developer's project is defined as Development Permit Revised Exhibit Application No. P20-03406, and its related Environmental Assessment No. P20-03406, which is an Addendum to the Mitigated Negative Declaration Environmental Assessment for Vesting Tentative Parcel Map No. 2012-06, as they existed on December 7, 2020, all herein collectively referred to as the "Initial Project"; and

WHEREAS, SFCA, acting through LC, has appealed the Initial Project, and has requested that new mitigation measures be required for the Initial Project and has threatened litigation over the Initial Project; and

WHEREAS, the Parties hereto wish to resolve fully and finally all disputes which may exist by and between the Parties concerning the Initial Project.

NOW, THEREFORE, based upon the foregoing recitals and the terms, conditions, covenants, and agreements contained above and incorporated in full below, the Parties agree as follows:

AGREEMENT

For good and valuable consideration, the receipt of which is acknowledged by each Party hereto, the Parties promise and agree as follows:

1. **Abandonment of Appeal of P20-03406.** Within 24 hours of the Effective Date of this Agreement, SFCA and LC shall issue and deliver to the City a letter withdrawing and forever abandoning the appeal of the Initial Project and forever abandoning all objections thereto. LC agrees to not represent any other client in any objection, appeal and/or legal challenge to the Initial Project. During the City's implementation of the mitigation measures described in this Agreement, SFCA and LC agree not to file a lawsuit against the City and/or Developer to challenge the Initial Project, except to enforce the mitigation measures described in this Agreement. This section shall not limit SFCA's or LC's right to challenge, oppose, contest or object to the Initial Project's impacts or to challenge, oppose, contest or object to a request for or issuance of new entitlements for additional modifications to the Initial Project.

2. **City Creation, Operation, and Administration of a Community Benefit Fund.**

The purpose of the Community Benefit Fund (“CBF”) will be to fund qualified mitigation improvements to address impacts resulting from development activities on qualified sensitive receptors located on properties within, and immediately adjacent to, the South Central Specific Plan (“SCSP”) Area boundaries. Impacts subject to mitigation are limited to light spill, traffic, noise, and air quality. The boundaries of SCSP Area are as set forth under Exhibit 1 hereto.

- a. **Establishment of Community Benefits Fund (“CBF”) and CBF Expenditure Plan.** Within fifteen (15) business days of the Effective Date of this Agreement, City staff will schedule a series of meetings with representatives from SFCA, LC, and other sensitive receptors in and adjacent to the South Central Specific Plan (“SCSP”) Area to establish the qualification criteria, application process, funding allocation method, contracting process, and general administration and management procedures for the CBF. The City will work with representatives from SFCA, LC, and other sensitive receptors the South Central Specific Plan (“SCSP”) Area to mutually develop the CBF and CBF Expenditure Plan. The City shall make the recommended CBF and CBF Expenditure Plan available for public review and comment and shall present recommendations to City Council for consideration within sixty (60) business days of the first meeting with representatives from SFCA, LC, and other sensitive receptors in the South Central Specific Plan (“SCSP”), or as soon thereafter as practicable. Should the City be unable to develop the terms of a CBF and CBF expenditure plan within ninety (90) business days of the first meeting noted above, despite good faith efforts, then the Parties may mutually agree in writing to an extension beyond ninety days from the first meeting. The City will translate the CBF and CBF Expenditure Plan into English and Spanish and post the documents to the City’s website. One-hundred percent of funds deposited into the CBF shall be used for CBF purposes as set forth herein.
- b. **Special Provisions for Tenant Occupied Properties.** For tenant-occupied properties, the City will explore the legal basis to include a requirement that, as a condition of receiving CBF funding to mitigate for light spill, traffic, noise, and air quality impacts on rental properties, the property owner will agree to rent-control measures to protect tenants against rent increases after mitigation improvements are constructed.
- c. **City Administration of CBF and CBF Expenditure Plan.** Subject to funds being deposited into the CBF, the City will manage and administer the CBF to pay local, pre-approved licensed and bonded contractors to install pre-approved and qualified improvements to mitigate light spill, traffic, air, and noise impacts on sensitive receptors. Subject to funding availability, the CBF Expenditure Plan may authorize (a) additional improvements required for the proper and safe installation of the qualified mitigation improvement, and (b) payments for pre-approved replacement items such as portable air filtration units and filters. Long-term operations and maintenance costs for the installed qualified improvements shall be the responsibility of the property owner. For liability and risk purposes, the City shall not perform or oversee mitigation improvement work performed on private

property and all such work shall be subject to the property owner/tenant holding the City harmless from liability.

- d. **Facilitation and Acceptance of Payment to CBF.** The CBF shall be funded with monies deposited by third-parties, and no City funds will be deposited into the CBF, unless authorized by the City. The City will facilitate and accept an initial deposit to the CBF in the amount of \$300,000 provided by Developer pursuant to a separate agreement between Developer and SFCA. Subject to any limitations established by law, the City shall accept other payments to the CBF by developers or other individuals or entities that may be offered to or required by the City in the future. The City shall use one-hundred percent of the funds in the CBF for improvements and installations to sensitive receptors and items to mitigate light spill, traffic, air, and noise impacts on sensitive receptors in accordance with the provisions of this section.

Notwithstanding the above, the City Manager or their designee may authorize the deposit of any incentive funds provided to the City by Developer into the CBF.

3. **Water and Sewer Service Extensions.** The City will as soon as practicable submit technical assistance, planning and construction applications to appropriate state and/or federal agencies, including but not limited to Proposition 1, State Revolving Fund, Proposition 68 (2018), and SB 200 (Safe and Affordable Drinking Water Fund), as well as other eligible funding sources, to pay one-hundred percent of the costs for the extension and connection of City water and sewer services to residential properties depicted on Exhibit B to this Agreement. The subject properties are located on East Britten Avenue; East Central Avenue between South Orange Avenue and South Cedar Avenue; South Orange Avenue with Assessors' Parcel Numbers 33013019 and 33013020; East Daleville Avenue, South Mary Street, and East Central Avenue between and South Cherry Avenue and South Mary Street; and South Cherry Avenue between East Central Avenue and East North Avenue in Fresno County. The City will take all steps necessary to achieve the extension of water and wastewater services to the residences described in this section, including but not limited to serving as the lead agency for applications to the aforementioned funding sources and for any environmental review required under state or federal law and coordinating with local and state agencies. The City will utilize existing nexus studies and continue to conduct future nexus studies to set water and wastewater rates, fees, and charges, which shall be published in the City's Master Fee Schedule. Upon completion of construction, the City will offer water and wastewater infrastructure and service extension to the residential properties described in this section. The City will apply the same rates and fees for water and wastewater service as are presented in the Master Fee Schedule, and which may be amended from time to time by the City Council. The foregoing terms shall be subject to approval by the Local Agency Formation Commission ("LAFCO"), if required by law. If LAFCO deems that an Extraterritorial Services Agreement ("ESA") or other approval is required by LAFCO, the City shall pursue the ESA or other approval(s) in good faith. The City will cooperate with SFCA and LC in their efforts to engage community residents in the water and wastewater extension process.

4. **Pedestrian Safety Improvements.**

a. **East Central Avenue Pedestrian Safety Improvements.** Subject to regulatory requirements and funding availability, the City will pursue, by taking all steps legally available to it, the installation of (a) a crosswalk and pedestrian signage and push buttons at the intersection of East Central Avenue and South Orange Avenue, and (b) the installation of a High-Intensity Activated Crosswalk (“HAWK”), consistent with California Manual on Uniform Traffic Control Device and/or National Association of City Transportation Official standards, with push and kick buttons to promote accessibility, at the intersection of East Central Avenue and South Cherry Avenue (collectively, “East Central Avenue Pedestrian Safety Improvements”). The HAWK installation will include signage in advance of the intersection advising traffic of the upcoming stop. The City Manager will issue a written request to the Fresno County (“the County”) Chief Administrative Officer to cooperate on the attainment of East Central Avenue Pedestrian Safety Improvements, and the City will make best efforts to work proactively with the County to complete the East Central Avenue Pedestrian Safety Improvements.

b. **Pedestrian and Cyclist Safety Plan.** By July 2022, the City will initiate a public process and work proactively with the County for the development and adoption of a plan to determine pedestrian and bicycle safety needs and priorities in the area bounded by Highways 41, 99 and to the Southern border of the City’s Sphere of Influence. The City will take all steps necessary for the completion of the plan without undue delay. The plan will include an implementation schedule with cost estimates and potential funding sources, which may include funding from a voter-approved Community Facilities District, Mello-Roos, state and federal grants, and other available funding as necessary to allow for project implementation. The City shall implement the projects described in the plan at the earliest time that the City has legal authority and available funding to implement such projects. The City will ensure that any updates to its Active Transportation Plan include consideration of and identify implementation measures and projects to address active transportation needs in the SCSP area.

c. **County Cooperation.** To the extent that the requirements of this section depend upon approval or agreement from the County of Fresno, the City shall not be held responsible for a failure to complete those requirements as a result of the County’s withholding of such approval or agreement or other actions or inactions of the County that impede the City’s ability to complete the requirements of this section, notwithstanding the City’s good faith efforts to seek the County’s cooperation in accordance with this section.

5. **Mitigating Traffic Impacts on Local Homes.** By December 31, 2021, the City will initiate preparation and take all steps necessary for completion of the necessary financial studies to determine the property assessment amount required to fund the installation and maintenance of traffic and roadway improvements to address traffic impacts associated with development in the SCSP Area as well as safety improvements to protect pedestrians and bicyclists. The studies will evaluate the costs for improvements and ongoing maintenance needs within the defined boundary of the property tax assessment area. Improvements and maintenance needs to be considered by the voters may include roadway repair, traffic calming measures, lane reductions, and landscaping.

The City will provide opportunities for and consider community input during the development of the financial studies and the adoption of a voter-approved property assessment, and the creation of the CFD. The process for establishing the CFD shall include the required proceedings set forth in California Government Code Section 53321 and all applicable law, including, without limitation, voter approval requirements, the outcome of which is not within the control of the City.

6. **Proactive Traffic Checks and Monitoring.** No later than the initiation of Project operations, the City will assign a traffic officer to monitor the area surrounding the North Pointe business park. The traffic officer will enforce traffic rules, vehicle and truck parking restrictions on local streets, and truck idling restrictions and will respond promptly to resident complaints. No later than the initiation of Project operations, the City will install traffic monitors on East Central Avenue between Highways 41 and South Orange Avenue to monitor and enforce compliance with traffic regulations in the area.

7. **Phone Number to Report Traffic Violations.** The City will train 311 Call Center staff to receive calls from the public to report complaints about traffic violations in the SCSP Area.

8. **Acquiring portions of E. Central and S. Cherry Avenues.** The City shall take all steps legally available to it to pursue (i) funding to pay for upgrades to the portions of East Central Avenue between Highways 41 and 99 and South Cherry Avenue between East Central Ave and North Ave which are currently owned by the County so that those roadways meet City standards and (ii) the acquisition of said roadways following the identification and obtainment of funding sources. The City Manager, or his or her designee, will submit a written request to the County to acquire said roadways and transfer ownership of the roadway to the City. The transfer of said roadways cannot be completed until a source of funds is identified and made available to the City to upgrade the County portions of the roadways to meet City standards. The City shall expeditiously identify and pursue sources of funds at the City's discretion to pay for the upgrades to meet City standards, including but not limited to, as applicable, Fresno County Measure C funds, CalTrans Local Partnership Formulaic Program (SB 1), and the California Transportation Commission's Local Streets and Roads Program (SB 1), and other relevant state and federal funding sources. The City shall make best efforts to seek the County's cooperation in the acquisition of the portions of East Central Avenue described in this section pursuant to the terms of this section. To the extent that the requirements of this section depend upon approval or agreement from the County of Fresno, the City shall not be held responsible for failure to complete the terms of this Section as a result of the County's withholding of such approval or agreement or other actions or inactions of the County that impede the City's ability to complete the requirements of this section.

9. **Installation of Signs to Direct Truck Traffic to Roadways with Fewer Sensitive Uses.** Subject to public review and comment, coordination with the County, and Council approval, the City shall provide for the installation of traffic control signs on East Central Avenue, East North Avenue, and South Cherry Avenue directing truck traffic to preferred truck routes on East North Avenue and South Orange Avenue and away from East Central Avenue and South Orange Avenue. City staff shall take all steps necessary to facilitate the installation of said traffic control signs by December 31, 2021.

10. **Truck Re-Routing Study.** Upon completion of the San Joaquin Valley Air Pollution Control District's San Joaquin Fresno Truck Routing Study, the City shall engage proactively to mitigate the impact of existing truck routes on sensitive receptors, including in the SCSP Area and adjacent properties, and identify alternative truck routes that avoid and minimize impacts on sensitive receptors, including using routes with fewer sensitive receptors and adequate roadway infrastructure to accommodate additional traffic. The City shall use reasonable efforts to create opportunities for and consider community input in the development of the study. Among other roadways, the City will specifically examine the current and anticipated usage of East Central Avenue between Highways 99 and 41 by truck traffic and will consider alternate truck routes with adequate roadway infrastructure to accommodate additional traffic, including considering redirecting truck routes away from East Central Avenue. The City will diligently pursue the adoption, implementation and enforcement of the recommendations of the truck routing study, including but not limited to new traffic routes that minimize the exposure of sensitive receptors adjoining roadways to truck traffic routes, after it is complete.

11. **Evaluate City Policy to Support Local Hire.** By December 31, 2021, the City shall evaluate its development impact fee waiver programs and other existing and potential policies, programs, requirements, and incentives for new development to identify policy changes that would promote, incentivize or require the employment of residents who live within, and immediately adjacent to, the South Central Specific Plan Area boundaries. The City will consider public input on the proposed policy changes. The City will make diligent efforts to solicit input by residents who live within or adjacent to the SCSP Area boundaries.

12. **Electrification and Grid Capacity to Support Heavy and Medium Duty Trucks, Onsite Equipment and Electric Vehicles.** The City shall work with the Fresno Council of Governments, the San Joaquin Valley Air Pollution Control District, the County of Fresno, Investor Owner Utilities, California Public Utilities Commission, California Energy Commission, California Air Resources Board and other public and private electrification stakeholders to develop requisite charging stations and ensure sufficient grid capacity and reliability, subject to all requirements imposed by law.

13. **Modification of Air District Rule 9510 (Indirect Source Rule).** As soon as practicable, but no later than sixty (60) business days after approval of this Agreement, the City shall consider approval of a resolution for the incorporation of emission reduction measures into development projects to reduce emissions occurring during construction and operational phases of the project to meet or exceed compliance with the emission reduction requirements of District Rule 9510 (Indirect Source Review) and that are specifically designed to reduce impacts in the location of proposed development projects.

14. **Air Monitor Installation and Maintenance.** The City shall make available to the San Joaquin Valley Air Pollution Control District and/or California Air Resources Board (CARB) a City-owned public water supply well site (APN No. 330-021-75ST) near the Project Site for placement of SJVAPCD and/or CARB owned and operated air monitoring equipment.

15. **Enforcement of Fresno Municipal Code Standards for Project Construction and Operation Impacts.** The City will train 311 Call Center staff to receive calls from the public to report complaints relating to Project construction and/or operation compliance with Fresno

Municipal Code standards, permit conditions, or CEQA mitigation measures relating to noise, vibration, light, air pollution or other impact categories. In response to such complaints, the City takes all actions necessary to promptly assess and record the alleged violation and to secure compliance with those standards, including through enforcement actions if warranted. If a dispute arises as to whether construction or operational practice is creating impacts that violate any such standards, conditions, or mitigation measures, the City will perform measurements using generally accepted practices to obtain quantitative data, to the extent available, to determine if a violation has occurred or is occurring.

16. **General Release.** For good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, SFCA and LC, and their respective members, do hereby fully and irrevocably release and forever discharge the City, including the City's current and former employees, officials, agents, or representatives, attorneys, or any of the them ("Releasees"), of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, loss, costs or expenses, of any nature whatsoever, known or unknown, fixed or contingent ("Claims"), which the SFCA and LC, and their respective members, may have prior to execution of this Agreement by reason of any matter, cause, or thing whatsoever concerning the Initial Project including, without limiting the generality of the foregoing, as well as any matters, causes, or things whatsoever that were, or have been, or could in any way be alleged against Development Permit Application No. P20-03406. This section shall not limit SFCA's or LC's, or its members' rights, to challenge, oppose, contest or object to the Project's impacts, but only as against the City to the extent permitted by law, or to challenge, oppose, contest or object to a request for or issuance of entitlements other than the Initial Project as against the City only.

17. **Release of Unknown Claims.** The Release set forth above in Paragraph 16 of this Agreement is a release of ALL claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever that are described in the Release and is intended to encompass all known and unknown, foreseen and unforeseen claims that SFCA and LC, and their respective members, may have as a result of the matters set forth in Paragraph 16, but subject to the exceptions provided therein.

18. **Waiver of Civil Code Section 1542.** Further, SFCA and LC acknowledge that they have been informed of the provisions of the California Civil Code section 1542, and expressly agree to waive and relinquish all rights and benefits they and their respective members may have under California Civil Code section 1542 with respect to the matters set forth in Paragraph 16 of this Agreement, subject to the exceptions therein. That section reads as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

19. **Discovery of Different or Additional Facts.** The City is prepared to commission an Environmental Impact Analysis (EIA) for the SCSCP Area to assess the environmental impacts of future development in the SCSCP Area. The findings of the EIA will be presented in the form of an Environmental Impact Report. SFCA and LC acknowledge that they may discover facts

different from or in addition to those that they now know or believe to be true during the course of the EIA process. The Parties agree that this Agreement, and mitigation measures referenced in this Agreement may be deemed suitable to mitigate for light spill, traffic, noise, and air quality impacts identified during the EIA process if those measures comply with applicable law.

20. **No Pending Actions.** SFCA and LC represent that they have not filed any complaint(s) or lawsuit(s) against the City and/or Releasees, arising out of or relating to the allegations relating to the Initial Project with any local, state, or federal agency or court; and that if such agency or court assumes jurisdiction of any complaint or charge against the City and/or the Releasees, whenever filed, SFCA and LC will take all necessary and further steps to withdraw and dismiss the matter forthwith. Should a lawsuit be filed over the Initial Project by any person or entity, or filed concerning a matter subject to the Release in Paragraph 16 of this Agreement, then the City's obligations under this Agreement shall be null and void.

21. **Non-Admission of Liability.** The Parties acknowledge and agree that this Agreement is a settlement of disputed claims. Neither the fact that the Parties have settled not the terms of this Agreement shall be construed in any manner as an admission of any liability by the City and/or the Releasees, all of whom have consistently taken the position that they have no liability whatsoever.

22. **No Assignment of Claims.** The City, SFCA and LC, and their respective members, warrant that they have made no assignment, and will make no assignment, of any claim, cause of action, right of action or any right of any kind whatsoever, embodied in any of the claims and allegations referred to herein. SFCA's members are intended to benefit from this Agreement and shall be deemed third-party beneficiaries to this Agreement with authority to enforce the Agreement's provisions against the City only.

23. **Attorney's Fees.** Each Party hereto agrees to bear his/her/its own attorney's fees and costs in connection with the resolution of the dispute concerning the Initial Project and the preparation of this Agreement.

24. **Knowing and Voluntary.** This Agreement is an important legal document and in all respects has been voluntarily and knowingly executed by the Parties hereto. The Parties specifically represent that prior to signing this Agreement they have been provided a reasonable period of time within which to consider whether to accept this Agreement. The Parties further represent that they have each carefully read and fully understand all the provisions of this Agreement, and that they are voluntarily, knowingly, and without coercion entering into this Agreement based upon their own judgment.

25. **Assistance of Counsel.** The Parties each specifically represent that they have consulted to their satisfaction with and received independent advice from their respective counsel prior to executing this Agreement concerning the terms and conditions of this Agreement.

26. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original but all of which shall constitute on agreement.

27. **Severability.** Should any portion, word, clause, phrase, sentence or paragraph of this Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

28. **Ambiguity.** The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel. This Agreement shall be construed according to its fair meaning as prepared by both parties, and any uncertainty or ambiguity existing herein shall not be interpreted against either of the Parties.

29. **Waiver.** Failure to insist on compliance with any term, covenant or condition contained in this Agreement shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

30. **Governing Law and Venue.** This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced and governed under the laws of said State without giving effect to conflicts of laws principles. Any action to enforce, invalidate, or interpret any provision of this Agreement shall be brought in Fresno Superior Court.

31. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties who have executed it and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied between the Parties to this Agreement. The Parties to this Agreement each acknowledge that no representations, inducements, promises, agreements, or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this Agreement, that they have not executed this Agreement in reliance on any such representation, inducement, promise, agreement or warranty. No representation, inducement, promise, agreement or warranty not contained in this Agreement, including, but not limited to, any purported supplements, modifications, waivers, or terminations of this Agreement shall be valid or binding, unless executed in writing by all of the Parties to this Agreement. Each Party warrants and represents to each other that the person(s) whose signature appears below their respective name is duly authorized and has full authority to execute this Agreement on behalf of the entity appearing above such signatures.

32. **Future Environmental Impact Analysis.** The City is prepared to commission an Environmental Impact Analysis (EIA) for the SCSCP Area to assess the environmental impacts of future development in the SCSCP Area. The findings of the EIA will be presented in the form of an Environmental Impact Report. The Parties agree that this Agreement, and mitigation measures referenced in this Agreement may be deemed suitable to mitigate for light spill, traffic, noise, and air quality impacts identified during the EIA process if those measures comply with applicable law.

33. **Remedies.** Any party that claims any other party has breached this Agreement shall transmit a written notice to cure the alleged breach to the defaulting signatory at least twenty (20) days prior to filing any action to enforce this Agreement in the Fresno Superior Court. No action may be filed if the defaulting signatory has fully cured the alleged breach within the cure period. The Parties and signatories agree that monetary damages are not available as a remedy in any

action to enforce this Agreement, and that the sole remedy to enforce this Agreement shall be specific performance, injunction or other equitable relief with all such remedies being against the City only. Nothing in this Agreement shall provide a greater legal remedy to any Party, person and/or entity as against the Developer, including any successor or assignee of the Developer, related to the Initial Project and the Project Site, than is permitted by law or as permitted by any of the Developer's separate contractual obligations that are not part of this Agreement.

34. **Effective Date.** This Agreement shall be effective and binding upon the Parties only after the execution of both (i) this Agreement by SFCA, LC, and the City, and (ii) the execution of a separate agreement between SFCA and Developer relating to the Initial Project ("Effective Date").

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned execute this Settlement Agreement and Release of All Claims, consisting of a total of 11 pages, and hereby agree to all terms and conditions herein, on the dates set forth below.

Date: _____, 2021

South Fresno Community Alliance

By: _____

Date: _____, 2021

Leadership Counsel for Justice and Accountability

By: _____

Date: _____, 2021

City of Fresno

By: _____

APPROVED AS TO FORM:

Date: _____, 2021

By: _____

Ashley Werner
Attorney for SFCA

Date: _____, 2021

By: _____

Douglas Sloan
City Attorney

1348384.1

Exhibit 1

South Industrial Priority Area

