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Agenda Item: 10:00 A.M.#2 -B

Date: 6/26/14

CITY CLERK, FRESNO, CA

FRESNO CITY COUNCIL



Supplemental Information Packet

Agenda Related Items – 10:00 A.M. #2 - B

Supplemental Packet Date: June 24, 2014

Item(s)

Successor Agency to the Redevelopment Agency consider adopting and approving:

1. Adopt finding of Categorical Exemption pursuant to Section 15301/Class 1 of the CEQA Guidelines (no change in existing use) **(Successor Agency and FRC action)**
2. Purchase and sale agreement between the Successor Agency to the Redevelopment Agency of the City of Fresno and Bitwise Industries LLC for the sale of a certain former Redevelopment Agency parcel located at 730 & 738 Van Ness (APN's 468-253-11T & -15T) within the City of Fresno **(Successor Agency and FRC action)**

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.

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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.



**REPORT TO THE SUCCESSOR
AGENCY TO THE REDEVELOPMENT
AGENCY OF THE CITY OF FRESNO
AND THE FRESNO
REVITALIZATION CORPORATION**

MEETING: 06/26/14
AGENDA ITEM:
APPROVED BY
EXECUTIVE DIRECTOR <i>[Signature]</i>

DATE: June 26, 2014
FROM: MARLENE MURPHEY, Executive Director
BY: Enrique Mendez, Project Manager

SUBJECT: Successor Agency to the Redevelopment Agency consider adopting and approving:

1. Adopt finding of Categorical Exemption pursuant to Section 15301/Class 1 of the CEQA Guidelines (no change in existing use) (Successor Agency Action)
2. PURCHASE AND SALE AGREEMENT between the Successor Agency to the Redevelopment Agency of the City of Fresno and Bitwise Industries LLC for the Sale of a Certain Former Redevelopment Agency Parcel located at 730 & 738 Van Ness (apns 468-253-11T & -15T) within the City of Fresno (Successor Agency Action)

EXECUTIVE SUMMARY

The Agency staff recommends approval of a purchase and sale agreement with Bitwise Industries for the sale of two (2) parcels consisting of approximately 0.51 acres on Van Ness Avenue between Inyo and Mono Streets located at 730 & 738 Van Ness (apns 468-253-11T & -15T).

BACKGROUND

The Successor Agency issued a Request For Proposals to buy Agency-owned parcels apns 468-253-11T & 468-253-15T. Together these adjoining parcels form a rectangular, non-corner property totaling approximately 0.51 acres. It is improved with a parking lot and striped for approximately 58 parking spaces. Prior to the RFP deadline, the Agency received one (1) proposal to purchase from Bitwise Industries LLC.

Bitwise Industries LLC, a technology and education company was founded in 2007 and is headquartered at San Joaquin and L Street in downtown Fresno. To support the demand for expansion Bitwise has purchased property at 700 Van Ness Avenue directly adjacent to the Agency's property. Once open, this new location is anticipated to bring 200 new jobs to downtown Fresno and generate \$100 million in annual revenue.

A third party certified MAI appraiser valued the Agency's 22,500 sq ft property at \$8.00/sq ft. or \$180,000.00. Bitwise has offered to pay the full appraised value. The Agency will incur its legal fees, and the customary closing costs and escrow fees. The Purchase and Sale Agreement

(PSA) is subject to California Health and Safety Code section(s) relating to redevelopment and property disposition.

ENVIRONMENTAL FINDING

The Project has been environmentally assessed and has been determined to be eligible for a Categorical Exemption under Section 15301 Class 1 of the California Environmental Quality Act (CEQA) because there will be no change in the existing use of the property. Further, none of the exceptions to categorical exemptions set forth in CEQA Guidelines section 15300.2 apply to this project.

Attachments:

Purchase and Sales Agreement

**REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body, corporate and politic (“Seller” or “Successor Agency”), and Bitwise Industries LLC, a California Limited Liability Company, (“Buyer”), enter into this Real Property Purchase and Sale Agreement and Joint Escrow Instructions (the “Agreement”), effective as of the date that the Buyer has executed it and the Agency Board has approved it.

RECITALS

- A. The former Redevelopment Agency was responsible for implementing the redevelopment plan (the “Plan”) governing the land area identified as the Convention Center Redevelopment Plan Area (the “Project Area”), in accordance with the California Community Redevelopment Law (Health and Safety Code Sections 33000, *et. seq.*; hereafter the “CRL”). The Plan and the CRL authorize the Agency to purchase property for redevelopment purposes.
- B. On January 26, 2012, the City Council adopted Resolution No. 2012-12 electing to serve as the Successor Agency to the Redevelopment Agency of the City of Fresno (“Successor Agency”). Pursuant to Health & Safety Code Section 34181(a) the Oversight Board (“Oversight Board”) shall direct the Successor Agency to dispose of certain Property purchased by the former redevelopment agency with tax increment funds expeditiously and in a manner aimed at maximizing value.
- C. The Seller owns certain real property within the Project Area, and the City of Fresno commonly known as 730 & 738 Van Ness Avenue, APNs 468-253-11T & 468-253-15T, Fresno, California, and more particularly described in Exhibit A, attached, (the “Property”).
- D. Buyer operates an adjacent business in need of parking. The Property will provide the business with desired parking. The Buyer has agreed to purchase the property for fair market value at the purchase price set forth herein.
- E. The sale of the Property is contingent upon the approval of the Property Management Plan by the Successor Agency, Oversight Board and Department of Finance.
- F. The Buyer desires to purchase the Property on the terms and conditions set forth in this Agreement.

AGREEMENT

1. **Purchase and Sale.** Seller will sell the Property to Buyer, and Buyer will purchase the Property from Seller on the terms and conditions set forth in this Agreement. Sale of these Property is subject to compliance with Community Redevelopment Law of the State (California Health and Safety code Sections 33000 *et seq*),
2. **Conditions Precedent.** Closing shall be conditioned upon performance of all of obligations in this Agreement and satisfaction of the conditions listed in Sections 2.1, 2.2, and 2.3, provided that Seller may, in Seller's sole discretion, elect to waive any such condition of Closing.
 - 2.1 **Compliance with CEQA.** The applicable lead agency shall have complied with the California Environmental Quality Act with respect to this Agreement, as applicable. The Project has been environmentally assessed and has been determined to be eligible for a Categorical Exemption under Section 15332 Class 32 of the California Environmental Quality Act (CEQA).
 - 2.2 **Environmental Assessment.** The Property is being sold in an "As is" condition. The Buyer may perform a Phase 1 Environmental Site Assessment at Buyer's cost. Seller shall provide Buyer with any copies of environmental reports pertaining to the Property in Seller's possession without any warranty as to their accuracy.
 - 2.3 Approval of this Agreement and the Property Management Plan by Successor Agency, Oversight Board, and Department of Finance.
3. **Purchase Price.** The purchase price for the Property is ONE HUNDRED AND EIGHTY THOUSAND DOLLARS (\$180,000.00) ("Purchase Price"). The Purchase Price, subject to adjustments provided in this Agreement (if any), will be paid by Buyer in cash or by wire transfer of immediately available funds at the Closing.
4. **Seller's Warranties.** Seller represents and warrants that: (a) Seller owns the Property, free and clear of all liens, licenses, claims, encumbrances, easements, leases, encroachments on the Property from adjacent Property, encroachments from the Property onto adjacent Property, and any rights of way, other than those disclosed by the public record; (b) Seller has no knowledge of any pending litigation involving the Property; (c) Seller has no knowledge of any violations of, or notices concerning defects or noncompliance with any code, statute, regulation, ordinance, judicial order, judicial holding, or other applicable law concerning the Property; (d) Seller has no knowledge of any hazardous materials or substances (as now or hereafter defined in any law, regulation, or rule) stored, discharged, or otherwise present in, on, or affecting the

Property; (e) Seller has no knowledge of any material defects in the Property; (f) the Property is currently vacant.

Seller's authority to sell the property may be subject to approval of the Oversight Board of the Successor Agency and/or the California State Department of Finance and subject to the timelines set forth in California Health and Safety Code section(s) 34170-34191.

The continued accuracy in all respects of Seller's representations and warranties shall be a condition precedent to Buyer's obligation to close. All representations and warranties contained in this Agreement shall be deemed remade as of the date of Closing and shall survive the Closing. If any of the representations and warranties are not correct at the time made or as of the Closing, Buyer may terminate this Agreement and there shall be no further liability on the part of Buyer to Seller.

5. Opening Escrow/Escrow Deposit. Within ten (10) business days after the execution of this Agreement by both parties, the parties will open an escrow ("Escrow") with Fidelity National Title Company at 8050 N. Palm Avenue Suite 110, Fresno California ("Title Company"), Attention: Bernadette Watson, and Buyer shall deposit into Escrow the sum of EIGHTEEN THOUSAND DOLLARS (\$18,000.00) ("Deposit") to be placed in an interest bearing account.

5.1 Agreement as Joint Escrow Instructions. This Agreement, when signed by Buyer and Seller and deposited into escrow with the Title Company, will be the parties' joint escrow instructions. Buyer and Seller will sign and deliver any other form instructions the Title Company may require that are consistent with this Agreement.

5.2 Deposits into Escrow. Buyer and Seller will deposit all instruments, documents, money, and other items into escrow with the Title Company that (i) this Agreement identifies or (ii) the Title Company may require that are consistent with the terms and purposes of this Agreement, and necessary to Closing. Within thirty (30) days after the Oversight Board and the Successor Agency Board approve this Agreement, Seller will deposit into the escrow with Title Company, or will conditionally deliver to Buyer, a recordable grant deed duly executed and acknowledged before a notary public, and accompanied by documentation reasonably necessary to establish the authority of any signatory executing such deed on behalf of Seller.

5.3 Title. Seller will convey title of the Property to Buyer free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, leases or agreements, except those agreed to in writing by Buyer.

5.4 Title and Closing Costs. Seller will pay any costs of clearing and conveying title

in the condition described in Section 5.3. Buyer will pay the cost of a CLTA or ALTA owner's title policy insuring Buyer's title in the condition described in Section 5.3. Escrow fees, costs to record the grant deed, etc., shall be split equally between Buyer and Seller.

- 5.5 **Closing.** The escrow will be considered closed ("Closing" or "Close" or the "Closing Date") on the date that the Title Company records the grant deed. The escrow will be in condition to Close when all conditions to Close are satisfied or waived, the Title Company is prepared to issue the title policy described herein, and the Title Company is otherwise able to record the grant deed. Unless extended by the mutual consent of the parties, the escrow and this Agreement shall terminate if Closing does not occur within one hundred and eighty (180) days following final execution of this Agreement (including attestation by the Clerk) (the "Outside Closing Date"). Seller's Executive Director is authorized to agree to administratively extend this Agreement as necessary to accommodate satisfaction of conditions precedent. Upon termination of the escrow, the Title Company will return all funds, including the Deposit, and documents to the respective depositor, less any termination fee if applicable, and this Agreement will be of no further effect except as herein provided. Notwithstanding the foregoing, Buyer shall have the right to extend the Outside Closing Date for up to two (2) extension periods of forty-five days each by providing written notice to the Seller along with making an additional deposit of \$2,500.00 for each extension, such additional deposits to be applicable to the Purchase Price but refundable only in the event of a Seller Default.
- 5.6 **Recordation.** At Closing, Title Company shall date the grant deed, and all other undated documents in escrow, with the date of Closing, and the Title Company shall record the grant deed, performance deed of trust and all other documents necessary to the Closing.
- 5.7 **Disbursements.** At Closing, Title Company shall disburse the Purchase Price, less Seller's costs to clear title (placing it in the condition set forth in Section 5.3), prorations, and other costs, if any, to Seller, when Title Company is committed to issue a standard CLTA or ALTA owner's title insurance policy to Buyer insuring its fee title in the condition set forth in Section 5.3, above, for the Purchase Price or such lesser amount as Buyer may designate.
- 5.8 **Risk of loss.** Any loss or damage, to the Property or any improvements on it, before Closing is at Seller's risk.
- 5.9 **Broker.** Neither party engaged a broker for this transaction.

- 6 **Delivery of Possession.** Seller shall deliver exclusive possession of the Property at Closing.
- 7 **Buyer's Right to Enter and Inspect the Property.** Buyer shall have the right to enter, inspect, and conduct any due diligence tests on the property that Buyer deems advisable. Seller grants Buyer, and/or Buyer's agents, the right, upon 24 hours notice, to enter onto the Property to conduct tests and investigations, if all the following occur: (a) Buyer conducts tests and investigations at its sole cost and expense; (b) the tests and investigations do not unreasonably interfere with Seller's possession.
- 8 **Damage, Destruction, Condemnation.** If the improvements on the Property are destroyed or materially damaged or if condemnation proceedings are commenced against the Property between the date of this Agreement and the Closing, Buyer may terminate this Agreement. If Buyer, however, elects to accept the Property, all proceeds of insurance or condemnation awards payable to Seller by reason of the destruction, damage, or condemnation shall be paid or assigned to Buyer; Seller shall also pay to Buyer the amount of any deductible and coinsurance under any policy. In the event of nonmaterial damage to the Property, which damage Seller is unwilling to repair prior to Closing, Buyer shall have the right either to terminate this Agreement or accept the Property in its then existing condition, in which case Buyer shall be entitled to a reduction in the Purchase Price to the extent of the cost of repairing the damage. If Buyer elects to terminate this Agreement pursuant to this Section, escrow shall terminate and neither party shall have any further duties or responsibilities under this Agreement.
- 9 **Miscellaneous Provisions.**
- 9.1 **Further Assurances.** Each party will sign and deliver further documents, or take any further actions required to complete the purchase and sale described herein.
- 9.2 **Notices.** All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed delivered: (a) on the date of service if served personally on the person to receive the notice, (b) on the date deposited in the U.S. mail, if delivered by depositing the notice or communication in the U. S. mail, postage prepaid, and addressed to the relevant party at the address set forth below, (c) on the date of transmission if delivered by facsimile, to the number provided below, that provides a transmission confirmation showing the date and time transmitted, or (d) on the date of transmission if delivered electronically via email and showing the date and time transmitted.

To Seller:
SUCCESSOR AGENCY TO THE REDEVELOPMENT
AGENCY OF THE CITY OF FRESNO, a public body
corporate and politic

Attention: Executive Director
2344 Tulare Street, Suite 200
Fresno, CA 93721
Phone No.: 559.621-7600
Fax No.: 559.498.1870

To Buyer:
Bitwise Industries LLC
Attn: Jake A. Soberal, CEO
2210 San Joaquin Street
Fresno, CA 93721
Phone No.:559.618.1279

- 9.3 **Entire Agreement.** Each Exhibit referred to in this Agreement is by that reference incorporated into and made a part of this Agreement. This Agreement is the entire agreement between the parties regarding the purchase and sale of the Property, and supersedes all prior discussions, negotiations, commitments or understanding, written or oral.
- 9.4 **Amendment or Cancellation.** Buyer and Seller may amend or cancel this Agreement only by mutual written consent of the parties, unless otherwise expressly provided herein.
- 9.5 **Successors and Assigns.** This Agreement is binding upon and shall inure to the benefit of each party, and each party's heirs, successors, assigns, transferees, agents, employees or representatives. The Buyer may assign this agreement and its rights hereunder without the consent of Seller.
- 9.6 **Time of the Essence.** Time is of the essence of each term in this Agreement.
- 9.7 **Attorneys' Fees.** If any party to this Agreement or the Title Company begins any action, proceeding, or arbitration arising out of this Agreement, then as between Buyer and Seller, the prevailing party shall be entitled to receive from the other party, besides any other relief that may be granted, its reasonable attorneys' fees, costs, and expenses incurred in the action, proceeding, or arbitration.

- 9.8 **Governing Law.** This Agreement and the legal relations between the parties shall be governed by and construed according to California law. Venue for the filing of any action to enforce or interpret this Agreement or any rights and duties hereunder shall be in Fresno, California.
- 9.9 **Headings.** The section headings in this Agreement are for convenience only. The headings are not part of this Agreement and shall not be used to construe it.
- 9.10 **Waiver.** If Buyer or Seller waives a breach of any provision herein, the waiver will not be a continuing waiver. The waiver will not constitute a waiver of any subsequent breach, or a waiver of a breach of any other provision hereof.
- 9.11 **Severability.** The provisions of this Agreement are severable. The invalidity or unenforceability of any provision in this Agreement will not affect the other provisions.
- 9.12 **Interpretation.** This Agreement is the result of the combined efforts of the parties. If any provision of this Agreement is found ambiguous, the ambiguity will not be resolved by construing this Agreement in favor or against any party, but by construing the terms according to their generally accepted meaning.
- 9.13 **Precedence of documents.** If any conflict exists between the body of this Agreement and any Exhibit or Attachment to it, the provisions of the body of this Agreement will control and take precedence over the Exhibit or Attachment.
- 9.14 **Counterparts.** This Agreement may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument. Facsimile or electronic copy signatures shall be deemed as valid and binding as original signatures.
- 9.15 **Survival.** All representations and warranties, indemnifications, and other provisions which, by their nature are intended to continue, shall survive Closing and delivery of the grant deed.
- 9.16 **Seller's Default and Buyer's Remedies.** If the sale of the Property is not consummated due to Seller's material default hereunder that is not cured within five (5) business days of Notice from Buyer of Default, then Buyer shall have the right, to elect, as its sole and exclusive remedy, to either (a) terminate this Agreement by written notice to Seller, promptly after which the Deposit shall be returned to Buyer, (b) waive the default and proceed to close the transaction contemplated herein. Notwithstanding anything to the contrary contained herein, Seller shall not be deemed in default unless and until Buyer provides Seller with written notice of such default and Seller fails to cure such default within five (5)

business days of its receipt of such written notice.

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

BUYER:

Bitwise Industries LLC, a California
Limited Liability Company

By: _____
Jake A. Soberal, CEO

Dated: _____, 2014

SELLER:

SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE CITY
OF FRESNO, a public body corporate and politic

By: _____
Marlene Murphey, Executive Director

Dated: _____, 2014

The Successor Agency to the Redevelopment Agency of the City of Fresno has signed this Agreement pursuant to authority granted on _____, 2014

ATTEST:
YVONNE SPENCE, CMC
Ex-officio Clerk

By _____
Deputy

Dated: _____, 2014

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
Ex-officio Attorney

By _____
Deputy

Dated: _____, 2014

Attachments:

Exhibit A: Legal Description

EXHIBIT "A"

LEGAL DESCRIPTION