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October 3, 2016

RECEIVED
2016 OCT 17 PM 1 16
CITY CLERK, FRESNO CA

Via email to Laurie.Avadisian@fresno.gov
Ms. Laurie Avadisian, Deputy City Attorney
City Attorneys Office
Fresno City Hall
2600 Fresno Street
Fresno, CA 93721

Re: City of Fresno Successor Agency

Dear Ms. Avadisian:

I understand you are currently assigned as lead counsel for the Successor Agency to the Redevelopment Agency of the City of Fresno. I am writing to you concerning a pending proposal for the sale of an asset of the Successor Agency commonly referred to as Parking Lot #2. This asset is listed on the Successor Agency's Revised Long Range Property Management Plan as item 39, and comprises property with APNs 468-206-50T and 466-206-51T.

The Successor Agency has noticed the sale of the property for an auction to be conducted on November 16, 2016. Details about that auction and the terms sale arrangements are available at the following linked website: http://www.loopnet.com/Listing/19854518/1900-Tuolumne-1911-Merced-Fresno-CA/. I am also enclosing for your convenience of reference a copy of the proposed purchase agreement concerning that sale.

The intended disposition of Parking Lot #2 was previously the subject of correspondence from my client, Tutelian & Co., Inc. to the prior Chair of the Oversight Board dated July 12, 2016, a copy of which is enclosed. Tutelian & Co., Inc., is the general partner of The Grand 1401, LLC, which owns the historic former PG&E building across the street from Parking Lot # 2.

As noted in the above referenced correspondence and its enclosures, the City of Fresno (which was previously managing Parking Lot #2 on behalf of the former Redevelopment Agency) made commitments to my client and one of its tenants, concerning certain ongoing rights to occupy Parking Lot #2. Those commitments were made by Craig Scharton, the then Director of Fresno's Downtown and Community Revitalization Department, on behalf of the City of Fresno (and in its capacity as agent of the former Redevelopment Agency) at a meeting convened on June 26, 2013.

That meeting was convened to induce Tutor Perini/Zachry/Parsons to lease facilities in Downtown Fresno to conduct its work in support of the High Speed Rail Project. The specific commitment was that my client would receive the benefit of one hundred reserved parking stalls in Parking Lot #2, without charge, **so long as be Tutor Perini/Zachry/ Parsons maintains its tenancy in the Grand 1401**. Since that meeting, the City has followed a course of conduct consistent with those commitments and has been providing Tutor Perini/Zachry/Parsons one hundred annual passes for reserved parking stalls in Parking Lot #2. This practice has continued through September 2016. Based on these City commitments and its subsequent acts to implement that arrangement, my client confirmed in its lease agreement with Tutor Perini/Zachry/Parsons that those one hundred reserved parking stalls in Parking Lot #2 would be made available without charge during the lease. Tutor

Perini/Zachry/Parsons has recently requested further assurances of the continuation of those arrangements as a condition of a pending exercise of an option to extend the lease term.

These circumstances were previously raised to the attention of the Successor Agency, and we sought assurances that any marketing for the sale of Parking Lot #2 would disclose the existence of these arrangements as existing lease arrangements. Unfortunately, these arrangements are not being disclosed to potential buyers of Parking Lot #2. In fact, as detailed in Section 4 of the enclosed form of proposed Purchase Agreement, the Successor Agency is proposing a warranty to any Buyer that the Parking Lot #2 is being sold free and clear of all licenses, claims, encumbrances or leases. Such a warranty is inconsistent with the facts and circumstances known by the Successor Agency.

We therefore urge any sale of Lot # 2 (whether by auction or otherwise) preserve the arrangements that the City established with Tutor Perini/Zachry/Parsons. Preexisting lease arrangements are often accommodated in an auction process. They simply need to be made part of the disclosure materials to interested bidders.

Please provide written assurances that the existence of the arrangements with The Grand 1401, LLC, in support of the tenancy of Tutor Perini/Zachry/Parsons, will be disclosed to all potential buyers for the entire period of notice required under the Disposition Guidelines, by supplementing the marketing materials presently being distributed to the public. Please also modify the terms of the proposed Purchase Agreement being distributed with those marketing materials so that the warranties stated in Section 4 specifically disclose the arrangements with The Grand 1401, LLC, in support of the tenancy of Tutor Perini/ Zachry/Parsons, and the fact that any sale will be subject to the obligation to continue the maintenance of the obligation that my client receive the benefit of one hundred reserved parking stalls in Parking Lot #2, without charge, **so long as be Tutor Perini/Zachry/Parsons maintains its tenancy in the Grand 1401**.

Because of the pendency of the auction and the advertising materials already circulated, this matter requires your urgent attention. Please provide response to the requested assurances within five business days from the date of this letter.

Sincerely,
McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

Jeffrey M. Reid

cc: Jerome Behrens, Esq.
enc. Letter dated July 12, 2016 w/ enc.
Proposed Purchase Agreement

TUTELIAN

July 12, 2016

Mr. Terry Bradley, Chair
Oversight Board for the Successor Agency to the
Redevelopment Agency of the
City of Fresno
2344 Tulare Street, Suite 200
Fresno, CA 93721

Re: 1911 Merced (Lot #2) APN 466-206-50T -51T (LRPMP #39)

Dear Mr. Bradley:

I am submitting this letter is to reaffirm my offer to purchase the above referenced Lot #2 from the Successor Agency. A further copy of my prior written offer to purchase Lot #2 is enclosed. Assuring the availability of Lot #2 as a parking facility is essential to significant projects that are adjacent to Lot #2, that I previously developed and am currently developing.

1. Request for Consideration of the Special Added Value of Lot #2 to Important Adjacent Existing Development Projects. I request that my offer to acquire Lot #2 be considered under Section IV-B of your Property Disposition Guidelines, which governs a Request For Offer To Purchase Including Proposed Development (a copy of which is enclosed for your convenience of reference). I further request that my offer be provided the special considerations that apply to your agency's disposition of lands that can add special values to adjacent redevelopment projects.

2. The Grand 1401 - An Existing Adjacent Development Project. I have made significant rehabilitation to The Grand 1401, which is a property on the Federal Registry of Historic Structures. It is a $12 Million investment in downtown Fresno, which includes a privately funded $7 Million rehabilitation of the property, all conducted consistent with the Federal Historic Registry standards. The project has 20,000 square feet unleased, which represents 20% of its overall square footage. The facility also houses a special events venue, which supports activities that draw 500-600 people to Downtown Fresno during weekends and evenings. The Property is immediately across the street from Lot #2.

3. The Parker Nash Building – A Current Adjacent Development Project. I am also currently redeveloping the Parker Nash Building, at 1462 Broadway. This property is on the Local Historic Registry. My redevelopment of the site will result in an $8.6 million new asset in Downtown Fresno. The facility will house 420 students, and generate significant new patronage to the Downtown community. The Parker Nash Building is less than a block away

1401 FULTON STREET, SUITE 210 | FRESNO, CALIFORNIA | (559) 266-8000 *PHONE* | (559) 266-8005 *FAX* TUTELIAN.COM

from Lot #2. Given the fact that Lot #2 will be used to provide parking resources, it is clearly within environs that can reasonably be considered as "adjacent" to Lot #2.

4. The Important Added Value of Lot #2 to The Grand 1401 and the Parker Nash Building Projects. Available parking is essential if The Grand 1401 is to continue to be successful in drawing quality tenants and special event activities to Downtown Fresno. This is illustrated by a current solicitation for new office space in Fresno being conducted by the Federal Government. Its requirements include the availability of 74 dedicated parking stalls.

The importance of available parking is also illustrated by a current circumstance that is affecting an existing tenant of the Grand 1401. The matter directly involves the pending proposal of your Agency to sell Lot #2, and is detailed in the enclosed letter I received from Mr. Jim Laing, on behalf of Tutor Perini/Zachry/Parsons.

Mr. Laing's letter concerns the importance of the City of Fresno fulfilling existing commitments it made to them concerning existing parking rights on Lot #2. As his letter details, those parking arrangements were coordinated directly by City representatives to help assure a significant beneficial tenancy in an important downtown historic site. The fact that the City helped to attract this tenant to Downtown Fresno, through a commitment to provide parking, illustrates the importance of the adjacent parking to The Grand 1401 facility. If my offer is accepted, I can best assure that those prior City commitments are preserved (though I believe any other potential buyer should be required to provide the assurances sought by Mr. Laing's letter).

I want to emphasize that the importance of preserving and enhancing Lot #2 as a parking resource is not compelled solely by City arrangements committed to Tutor Perini/Zachry/ Parsons. As previously detailed, further parking capacity is needed to help complete the tenancy of other quality tenants in The Grand 1401, and serve patrons of the rehabilitated Parker Nash Building.

These new demands on parking resources are also being affected by a reduced supply. That reduced supply is the result of the development of the Parker Nash Building project, which is redeveloping underutilized land and facilities that were previously available to serve approximately 100 parking stalls.

5. Further Submittal Requirements of Section IV-B of the Property Disposition Guidelines. For the reasons detailed above, I believe my proposal to acquire Lot #2 should be considered as an offer to be evaluated pursuant to Section IV-B of your Property Disposition Guidelines. I also believe the evaluation of my offer should consider the value that Lot #2 provides o my existing development projects, as detailed in the final paragraph of Section IV-B. Acquisition of Lot #2 and its maintenance as a parking facility (including further development into a parking structure) adds significant value to both The Grand 1401 and the Parker Nash Building projects.

To further assure that consideration I want to also address some of the other requirements of Section IV-B of your Property Disposition Guidelines. These items require a description of the proposed rehabilitation and reuse projects, the estimated added value and economic benefit to the property and area, funding sources, time tables, and types of financing.

In this instance there are two project facets that these requirements may apply to. The first is the benefits of the rehabilitation projects that have been and that are being further conducted, which the Lot #2 parking site is needed to support. The value and economic benefit of those rehabilitation projects is stated above. Their funding sources have already been obtained. Regarding development timetables, one is completed and the other is under construction, with a completion date of less than 12 months.

The other aspect of a potential project proposal is the intended reuse of the Lot #2. I intend to initially hold and manage Lot #2 consistent with its current use. That is because no significant redevelopment of that site can be undertaken while the existing parking requirements of Tutor Perini/Zachry/Parsons are being assured. When their tenancy ends in December 2019, I intend to develop the site with a parking structure, to serve the parking demands of my redeveloped sites and the demands of other users in the vicinity, when the development is financially feasible. Such a parking structure will also help facilitate the further development of many vacant and underutilized properties in the vicinity of Lot #2.

While not specifically required as part of a submittal, I want to also emphasize my proven success in similar type projects. I was previously the principal of an entity that successfully and privately developed one of Downtown Fresno's most recent parking structures, a 480 stall garage with 15,000 square feet of retail on Tulare Street. My prior and pending rehabilitation projects that are adjacent to Lot #2 rely on private financing sources. These circumstances demonstrate my ability to qualify for, and to successfully deliver, required financings, even in difficult financing markets. I intend to rely on private financing sources for the parking structure development that I propose for Lot #2.

6. Prior Similar Considerations Provided by the Oversight Board. In prior instances your Board has taken into account the benefits of a sale parcel to a pending development, even when it was not formally considering offers made under Section IV-B of your Property Disposition Guidelines. Specifically, at the February 25, 2016 meeting, your Board approved the sale of 1.36 acres at the northwest corner of Fresno and H Streets (APN 466-214-I7T) to APEC International, LLC (LRPMP #38). Board Member Westerlund specifically advocated for this negotiated sale at its appraised value (under Section IV-A of your Property Disposition Guidelines) because of the value the property provided as a parking lot to benefit the Hotel Fresno project. At that same meeting your Board approved the sale of a .61 acre parcel at Fulton and Inyo (Lot #6) (APN 46-282-23T), to the City of Fresno at its appraised value pursuant to Section IV-A of your Property Disposition Guidelines. The stated intention was that the City of Fresno would resell the parcel to a development project being coordinated with Mr. Terrance Frazier. Board Member Westerlund specifically advocated for this negotiated sale because of the value it added to Mr. Frazier's proposed development in the environs of Lot #6.

Therefore, if the Board declines sell Lot #2 under Property Disposition Guidelines Section IV-B, there is precedent that you consider the benefits this parcel acquisition will provide to my development projects, even if conducting a negotiated sale under Guidelines Section IV-A. My benefitted projects are, of course, a greater reality than pending plans for projects that do not yet have financing commitments. That fact should be a positive circumstance in your evaluation of my request.

7. Conclusion. In the near term, maintenance of Lot #2 as a surface lot to support the requirements of Tutor Perini/Zachry/Parsons (as previously committed to by the City of Fresno), is of significant importance. In addition, the longer term development of Lot #2 into a parking structure is critical to the long term success of current, pending, and future redevelopment and reuse projects in its vicinity. My privately funded redevelopment of The Grand 1401 and the Parker Nash Building are two of the current most important such projects. I have successfully demonstrated private financing capacity for Downtown Fresno projects. I have also successfully demonstrated development of privately financed parking garages (with ground floor retail) in Downtown Fresno. Please let me know if you need any additional information to consider my offer to purchase Lot #2.

Sincerely,

Tutelian & Co., Inc.

By: Cliff Tutelian, Its President

Enc. Proposed Purchase Agreement
Property Disposition Guidelines
Tutor Perini/Zachry/Parsons Letter

cc: Oversight Board Members
Ms. Marlene Murphey, Executive Director
Councilman Oliver Baines

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 TUTELIAN & COMPANY INC., a corporation ("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 Seller owns certain real property within the Project Area, and the City of Fresno commonly known as APNs 466-206-50T & -51T, Fresno, California, and more particularly described in Exhibit A, attached, (the "Property").

B. The former Redevelopment Agency was responsible for implementing the redevelopment plan (the "Plan") governing the land area identified as the Central Business District 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.

C. 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.

D. The Buyer has agreed to purchase the entire parcel as-is.

E. The sale of the Property is contingent upon the approval of the Property Management Plan and approval by the Oversight Board and Department of Finance.

F. The Buyer desires to purchase the Property on the terms and conditions set forth in this Agreement.

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

AGREEMENT

1. **Purchase and Sale.** Seller will sell the Property to Buyer, and Buyer will purchase the Property from Seller on the terms and conditions set forth in this Agreement. 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 15301 Class 1 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 FIVE HUNDRED TWENTY ONE THOUSAND DOLLARS ($521,000.00) ("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 7485 N. Palm Avenue, Suite 106, Fresno California ("Title Company"), Attention: Bernadette Watson, and Buyer shall deposit into Escrow the sum of TWENTY-FIVE THOUSAND FIVE HUNDRED DOLLARS ($25,500.00) ("Deposit") to be placed in an interest bearing account. Such deposit is refundable if this agreement is not approved by the Oversight Board or the State Department of Finance.

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 (45) 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:
TUTELIAN & COMPANY INC., a corporation
Attn: Clifford Tutelian, President
1401 Fulton Street Suite 210
Fresno, CA 93721
Phone No.:559.266.8000

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:

TUTELIAN & COMPANY, Inc., a California corporation

By: _____
Clifford Tutelian, President

Dated: Feb 24, 2016

SELLER:

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

By: _____
Marlene Murphey, Executive Director

Dated: _____, 2016

The Successor Agency to the Redevelopment Agency of the City of Fresno has signed this Agreement pursuant to authority granted on _____, 201____.

ATTEST:
YVONNE SPENCE, CMC
Ex-officio Clerk

By: _____
Deputy

Dated: _____, 2016

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

By: _____
Deputy

Dated: _____, 2016

Attachments:

Exhibit A: Legal Description

EXHIBIT "A"
Legal Description

Tutor Perini | ZACHRY | PARSONS, A Joint Venture
1401 Fulton Street, Fresno, California 93721 • phone • (559) 385-7025 • Fax: (559) 353-2764

July 12, 2016

Mr. Cliff Tutelian
Tutelian & Company
1401 Fulton Street, Suite 210
Fresno, CA 93721

RE: Renegotiate Lease for 1401 Fulton Street, Fresno, CA

Dear Cliff:

Tutor Perini/Zachry/Parsons has executed a change order with the California High Speed Rail Authority to extend the completion deadline by 17 months. As per our original lease agreement, we negotiated a term length of 54 months (August 19, 2013 – February 19, 2018) with 2 each 6 month options which would potentially extend the lease thru February 19, 2019. I would like to negotiate an additional time extension to ensure our continued office space at 1401 Fulton Street. As part of our lease is the inclusion of 100 reserved parking stalls in the City owned lot on the south side of Tuolumne Street. Those commitments were made by Craig Scharton, on behalf of the City of Fresno, at a meeting held on June 26, 2013. That meeting was convened to address matters that were impediments to our firm locating in Downtown Fresno to conduct its work in support of the High Speed Rail Project. Mr. Scharton followed through and as a result we have been receiving no charge parking passes for use of that City owned lot. Based on his commitment and the City's subsequent acts to implement that arrangement, we confirmed those requirements in our lease agreement with you.

We have recently learned that the parking lot that was committed to our needs is up for sale. We learned of this when a For Sale sign was posted at the site. We now understand that this parcel is being sold as part of the wind down of the City's redevelopment program. Regardless of the abolition of the redevelopment program, our need for the use of these dedicated parking stalls remains.

Our arrangements to lease your facilities, and indeed our commitment to locate our operations in Downtown Fresno, were predicated on commitments made by authorized representatives of the City. We now need assurances that our continued rights to the no-cost use of this parking facility will continue for the duration of our Downtown Fresno occupancy, regardless of any transfers or sales that the City may be considering for this parking lot.

Because you helped coordinate these arrangements, we ask that you promptly pursue this matter with appropriate City authorities.

Sincerely,

Jim Laing
Project Director

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 _____ ("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 both the Agency and Oversight Board have approved it.

RECITALS

A. The Seller owns certain real property within the Project Area, and the City of Fresno commonly known as _____, Fresno, California, and more particularly described in Exhibit A, attached, (the "Property").

B. The former Redevelopment Agency was responsible for implementing the redevelopment plan (the "Plan") governing the land area identified as the _____ 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.

C. 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.

D. The Buyer has agreed to purchase the entire parcel as-is.

E. The Buyer desires to purchase the Property on the terms and conditions set forth in this Agreement.

F. The Buyer shall execute the Agreement when submitting an offer to purchase. The Agreement shall become a contract for sale and purchase of the property binding on the Buyer following the Successor Agency and Oversight Board approval. Nothing shall obligate the Oversight Board to select or approve the subject offer.

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

AGREEMENT

1. **Purchase and Sale.** Seller will sell the Property to Buyer, and Buyer will purchase the Property from Seller on the terms and conditions set forth in this Agreement. 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 by Successor Agency and Oversight Board.

3. **Purchase Price.** The purchase price for the Property is _____("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 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 _____ ("Title Company"), Attention: _____.

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. Buyer has provided a deposit of 5% of the Reserve Price in the amount of _____. (The Reserve Price shall be fair market value as established by an appraisal obtained by the Successor Agency). Within fifteen (15) days after the agreement is executed, Buyer will deposit the balance of the Purchase Price and Seller will deposit, or will conditionally deliver to Buyer, a recordable grant deed duly executed and acknowledged before a notary public, and accompanied by documentation reasonably necessary to establish the authority of any signatory executing such deed on behalf of Seller.

5.3 **Title.** Seller will convey title of the Property to Buyer AS IS, without regard to all title defects, liens, encumbrances, conditions, covenants, restrictions, leases or agreements, and other adverse interests of record or known to Seller.

5.4 **Title and Closing Costs.** Buyer will pay any costs of clearing and conveying title. Buyer will pay the cost of a CLTA or ALTA owner's title policy insuring Buyer's title in the condition described in Section 5.3. 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 sixty (60) 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 and documents to the respective depositor, including deposit if Seller defaults under section 8.16, and this Agreement will be of no further effect except as herein provided. If Buyer defaults under section 8.17 deposit is nonrefundable, and this Agreement will be of no further effect except as herein provided.

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. **Miscellaneous Provisions.**

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

8.2 **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:

_____

_____

Attention: _____

_____

_____

Phone No.: _____

8.3 **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.

8.4 **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.

8.5 **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.

8.6 **Time of the Essence.** Time is of the essence of each term in this Agreement.

8.7 **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.

8.8 **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.

8.9 **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.

8.10 **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.

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

8.12 **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.

8.13 **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.

8.14 **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.

8.15 **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.

8.16 **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.

8.17 **Buyer's Default and Seller's Remedies**. If the sale of the Property is not consummated due to Buyer's material default, then Seller shall have the right, to elect, as its sole and exclusive remedy, to terminate this Agreement by written notice to Buyer, after which the Deposit shall be forfeited.

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

BUYER:

_____

By: _____

Dated: _____, 20___

SELLER:

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

By: _____
Marlene Murphey, Executive Director

Dated: _____, 20___

The Successor Agency to the Redevelopment Agency of the City of Fresno has signed this Agreement pursuant to authority granted on_____, 20___

ATTEST:
YVONNE SPENCE, CMC
Ex-officio Clerk

By_____
Deputy

Dated: _____, 20___

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

By_____
Deputy

Dated: _____, 20___

Attachments:

Exhibit A: Legal Description

EXHIBIT "A"

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

APN: _____