

**CITY COUNCIL MEETING
OF THE
CITY OF PARLIER**

“SPECIAL MEETING AGENDA”

DATE: Wednesday, November 16, 2016
TIME: 6:30 P.M.
PLACE: Parlier City Council Chambers
1100 E. Parlier Avenue
Parlier, CA. 93648

I. CALL TO ORDER/WELCOME:

Roll Call: Mayor Alma M. Beltran, Mayor Pro-Tem Raul Villanueva, Councilwoman Diane Maldonado, Councilwoman Yolanda Padilla, Councilman Juan Montaño, City Clerk Dorothy Garza.

Flag Salute: Mayor Alma M. Beltran

Invocation:

II. DEPARTMENT REPORTS:

A. ADMINISTRATION DEPARTMENT:

- 1. SUBJECT:** Consideration of the Fresno County Fire Protection District Agreement for Purchase of Real Property.

RECOMMENDATION: It is recommended that the Council Approve Attached Agreement For Purchase of Real Property Between the City of Parlier and the Fresno County Fire Protection District. Also attached is the Grant Deed transferring title to the property pursuant to that Agreement. These documents are in accordance with the Mutual Release and Compromise Agreement entered into between the City and the Fire District which was executed by the City on October 10, 2016. The transfer of the real property satisfies the City's debt to the Fire District. The transfer must be completed before November 30, 2016 to comply with the Settlement Agreement. Once the agreement and Grant Deed are approved, the mayor should execute both on behalf of the City.

III. ADJOURNMENT:

ADA Notice: In compliance with the American with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk at (559) 646-3545 ext. 227. Notification 48 hours prior to the meeting will enable the City to make arrangements to ensure accessibility to this meeting.

Documents: Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the front counter at City Hall located at 1100 E. Parlier Avenue, Parlier, CA. during normal business hours. In addition, most documents are posted on the City's website at parlier.ca.us

STATEMENT ON RULES OF DECORUM AND ENFORCEMENT

The Brown Act provides that members of the public have a right to attend public meetings, to provide public comment on action items and under the public forum section of the agenda, and to criticize the policies, procedures, or services of the city or of the acts or omissions of the city council. The Brown Act also provides that the City Council has the right to exclude all persons who willfully cause a disruption of a meeting so that it cannot be conducted in an orderly fashion.

During a meeting of the Parlier City Council, there is a need for civility and expedition in the carrying out of public business in order to ensure that the public has a full opportunity to be heard and that the Council has an opportunity to conduct business in an orderly manner. The following is provided to place everyone on notice of the rules of decorum and enforcement.

GENERAL RULES OF DECORUM

While any meeting of the City Council is in session, the following rules of decorum shall be observed:

1. All remarks shall be addressed to the City Council as a whole and not to any single member, unless in response to a question from a member of the City Council.
2. A person who addresses the City Council under public comment for a specific agenda item or under the Public Forum section of the agenda may not engage in speech or conduct (i) which is likely to provoke others to violent or riotous behavior, (ii) which disturbs the peace of the meeting by loud and unreasonable noise, (iii) which is irrelevant or repetitive, or (iv) which disrupts, disturbs, or otherwise impedes the orderly conduct of any City Council meeting.
3. A person, other than members of the Council and the person, who has the floor, shall not be permitted to enter into the discussion unless requested by the Mayor to speak.
4. Members of the City Council may not interrupt a person who has the floor and is making public comments. Members of the City Council shall wait until a person completes his or her public comments before asking questions or commenting. The Mayor shall then ask Council members if they have comments or questions.
5. No person in the audience at a Council meeting shall engage in disorderly or boisterous conduct, including the utterance of loud, threatening or abusive language, whistling, stamping of feet or other acts which disturb, disrupt or otherwise impeded the orderly conduct of any Council meeting.



AGENDA ITEM: _____
MEETING DATE: 11/16/2016
DEPARTMENT: Administration

REPORT TO CITY COUNCIL

SUBJECT:

Fresno County Fire Protection District Agreement for Purchase of Real Property.

RECOMMENDATION:

Honorable Mayor and Councilmembers:

Attached please find the Agreement For Purchase of Real Property Between the City of Parlier and the Fresno County Fire Protection District. Also attached is the Grant Deed transferring title to the property pursuant to that Agreement. These documents are in accordance with the Mutual Release and Compromise Agreement entered into between the City and the Fire District which was executed by the City on October 10, 2016. The transfer of the real property satisfies the City's debt to the Fire District. The transfer must be completed before November 30, 2016 to comply with the Settlement Agreement. Once the agreement and Grant Deed are approved, the mayor should execute both on behalf of the City.

Prepared by:

Israel Lara Jr.
City manager

No Fee Required (Gov't Code § 6103)

**AGREEMENT FOR PURCHASE OF REAL PROPERTY BETWEEN THE CITY OF
PARLIER AND THE FRESNO COUNTY FIRE PROTECTION DISTRICT**

This Agreement for Purchase of Real Property (“Agreement”) located in the City of Parlier, California, APN No. 355-412-01 ST, by and between THE CITY OF PARLIER, a California _____ (“Seller”) and THE FRESNO COUNTY FIRE PROTECTION DISTRICT, a California Special District (“Buyer”) is made as of this ____ day of _____, 2016 (the “Effective Date”).

RECITALS

WHEREAS, Buyer is a California Special District organized, existing and governed by the Fire Protection District Law of 1987 (Cal. Health & Safety Code 13800 *et seq.*, the “Act”); and,

WHEREAS, Seller is the fee owner of approximately .84 acres of real property (or 36,590 square feet) together with improvements thereon which includes an existing fire station containing approximately 2,864 square feet, located at 1300 E. Parlier Avenue in the City of Parlier, California, Fresno County, legally described in Exhibit “A” which is attached and incorporated herein by this reference (the “Property”); and

WHEREAS, Buyer desires to purchase, consistent with provisions of the Act, and Seller desires to sell the Property.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement relating to the purchase and sale of the Property and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

Section 1. Property.

The Property is the site of a Fire Station, and is located in the City of Parlier, Fresno County, as more particularly described in Exhibit “A” including (i) all privileges, rights and interests which are appurtenant to the Property; (ii) all air rights and water rights appurtenant to the Property; and (iii) any easements that are appurtenant to the Property (collectively, the “Land”); and all improvements located on the Land, including but not limited to, the fire station, all roadways, sewers, utility lines, pipes, conduits, fixtures, structures and fences (collectively, the “Improvements”). Buyer hereby agrees to purchase, and Seller hereby agrees to sell, the Property and Improvements upon the terms and conditions set forth in this Agreement.

Section 2. Timing of Transaction and Purchase Price.

2.1 Closing Date; Deadline for Transaction. The deadline to complete the transfer of the Property and Improvements is November 30, 2016 as set forth in Agreement Section 8. Completion of the transfer of the Property and Improvements includes the requirements set forth in Section 8 including recordation of the Grant Deed in the form of Exhibit "B" which is attached and incorporated by this reference, evidencing the change of ownership.

2.2 Purchase Price. Consistent with Section D.4 of the Mutual Release and Compromise Agreement between the parties, which is attached as Exhibit "C" and incorporated herein by this reference, Seller agrees to transfer to Buyer, and Buyer agrees to accept from Seller, all of Seller's right, title and interest in and to the Property and Improvements pursuant to the terms and conditions set forth in this Agreement. Seller shall transfer the Property and Improvements as settlement for past-due amounts owed by Seller to Buyer up to the time period ending June 30, 2016, for services provided to Seller by Buyer in the amount of Six Hundred Eighty Five Thousand, Six Hundred Fourteen Dollars and Ninety-Five Cents (\$685,614.95) (the "Purchase Price"). In exchange for the transfer of the Property and Improvements by Seller, Buyer shall forgive the balance due by Seller ending June 30, 2016.

Section 3. Condition of Title and Title Insurance.

3.1 Permitted Exceptions. Seller shall convey the Property to Buyer subject only to the following (the "Permitted Exceptions"):

3.1.1 The exceptions affecting the Property set forth in the body of the ALTA Policy of Title Insurance which is attached and incorporated by this reference as Exhibit "D."

3.2 Title Insurance Policy. As a condition to purchasing the Property and Improvements, waivable only by Buyer, a Title Company shall issue to Buyer an ALTA Extended Coverage Owner's Policy of title insurance in an amount equal to the Purchase Price, showing title to the Property vested in Buyer subject to the Permitted Exceptions ("Title Policy").

Section 4. Contingencies Applicable to Sale of Property.

4.1 Buyer's Conditions. The following are conditions precedent to the transfer of the Property and Improvements for the benefit of Buyer, which may be waived only by a written waiver executed by Buyer:

4.1.1 Grant Deed. The delivery to Buyer and the recording at the Close of Escrow of a Grant Deed executed and acknowledged by Seller conveying the Property to Buyer in good and marketable fee simple title in the form of Exhibit "B", duly executed and acknowledged by Seller subject only to the Permitted Exceptions.

4.1.2 Title Insurance Policy. Furnishing to Buyer an ALTA Policy of Title Insurance in the full amount of the Purchase Price issued by a Title Company, insuring

that title to the Property is vested in Buyer subject only to the Permitted Exceptions in the Title Policy. Such policy will include a survey of the Property.

4.1.3 Representations and Warranties. All of Seller's representations and warranties as set forth in this Agreement shall be true in all material respects as of the Closing Date.

4.1.4 No Default. Seller shall not be in default hereunder or under any other document delivered pursuant to this Agreement.

4.1.5 Seller's Performance. Seller's satisfactory performance of all obligations under this Agreement.

4.1.6 Property Taxes. As of the Closing Date, there shall be no delinquent real property taxes applicable to the Property.

4.2 Seller's Conditions. The following shall constitute conditions precedent to the recordation of the Grant Deed for the benefit of Seller, which conditions may be waived only by written waiver executed by Seller.

4.2.1 Representations and Warranties. All of Buyer's representations and warranties as set forth in this Agreement shall be true in all material respects as of the recording of the Grant Deed.

4.2.2 No Default. Buyer shall not be in default hereunder or under any other document delivered pursuant to this Agreement.

4.2.3 Satisfaction of Conditions. Unless Seller gives Buyer written notice that the conditions set forth in Agreement section 4.2.1 and section 4.2.2 have not been satisfied, for purposes of this section 4.2.3 only, such conditions shall be deemed to have been satisfied, and the parties may proceed with Closing, including recordation of the Grant Deed as though such conditions were satisfied. Seller's failure to give such notice to Buyer shall not excuse performance by Buyer of any obligation hereunder.

4.2.4 Purchase Price. The Purchase Price is Buyer's forgiveness of Seller of the amount of Six Hundred Eighty Five Thousand, Six Hundred Fourteen Dollars and Ninety-Five Cents (\$685,614.95) for services provided to Seller by Buyer in exchange for the transfer of the Property and Improvements by Seller.

Section 5. Seller's Covenants, Representations and Warranties.

5.1 Authority.

5.1.1 Seller warrants that this Agreement and all other documents delivered to buyer under this Agreement: (i) have been authorized, executed, and delivered by Seller; (ii) are binding obligations of Seller; (iii) are collectively sufficient to transfer all of Seller's rights to the Property; and (iv) do not violate the provisions of any agreement to which

Seller is a party or which affects the Property. Seller further warrants that Seller is a municipal corporation.

5.1.2 As a material inducement to Buyer to enter into this Agreement, Seller covenants, represents and warrants to Buyer as of the date hereof, that Seller has the right, power and authority to enter into the Agreement and to perform its obligations hereunder, and the persons executing this Agreement on behalf of Seller have the right, power and authority to do so.

5.2 **Personal Property.** Any personal property owned by Seller located within or used in connection with operation of the Property and Improvements shall be sold to Buyer with the Property and Improvements.

5.3 **Seller Warranties.** Seller warrants to Buyer that as of the date of this Agreement and as of the Closing Date:

5.3.1 **Hazardous Substances.** (i) Seller has not buried or partially buried storage tanks located on the Property; (ii) Seller has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property are or have been in violation of any Environmental Law, or informing Seller that the Property is subject to investigation or inquiry regarding Hazardous Substances on the Property or the potential violation of any Environmental Law; (iii) To Seller's knowledge there is no monitoring program required by the Environmental Protection Agency ("EPA") or any similar state agency concerning the Property; and (iv) Seller has disclosed to Buyer all information, records, and studies maintained by Seller in connection with the Property concerning Hazardous Substances.

5.3.2 **Violation of Law.** To Seller's knowledge no condition on the Property violates any health, safety, fire, environmental sewage, building, or other federal, state, or local law, code, ordinance, or regulation.

5.3.3 **Leases.** No leases, licenses, or other agreements allowing any third party rights to use the Property are or will be in force.

5.3.4 **Litigation.** To Seller's knowledge there is no pending or threatened litigation, administrative proceeding, or other legal or governmental action with respect to the Property.

5.3.5 **Condition of Property.** To Seller's knowledge there are no natural or artificial conditions upon the Property or any part of the Property that could result in a material and adverse change in the condition of the Property.

5.3.6 **Disclosure.** Any information that Seller has delivered to Buyer, either directly or through Seller's agents, is accurate to Seller's knowledge and Seller has disclosed all material facts with respect to the Property. Seller shall notify Buyer of any facts that would cause any of the representations contained in this Agreement to be untrue. If Buyer reasonably concludes that a fact materially and adversely affects the Property, Buyer shall have the option to terminate this Agreement by delivering written notice to Seller.

5.4 Indemnification. Seller agrees to indemnify and hold harmless Buyer, its elected and appointed officials, officers, directors, employees, attorneys, agents, and volunteers and agrees to defend Buyer from and against any and all liability, claims, demands, costs and fees, including but not limited to attorneys' fees, arising out of or in any way attributable, in whole or in part, to the performance of this Agreement, to the fullest extent not prohibited by applicable law. Seller shall not be required to indemnify and hold harmless Buyer for liability attributable to the sole negligence or willful acts of Buyer. This obligation to indemnify and defend Buyer is binding on the successors, assigns, or heirs of Seller and shall survive termination of this Agreement.

5.5 Seller Covenants. Commencing with the full execution of this Agreement by both parties and until the Closing Date:

5.5.1 Seller shall not permit any liens, encumbrances, or easements to be placed on the Property, other than the Approved Exceptions, nor shall Seller enter into any agreement regarding the sale, rental, management, repair, improvement, or any other matter affecting the Property that would be binding on Buyer or the Property after the Closing Date without the prior written consent of Buyer.

5.5.2 Seller shall not permit any act of waste or act that would tend to diminish the value of the Property for any reason, except that caused by ordinary wear and tear.

5.6 Survival of Representations and Warranties. The covenants, representations and warranties of Seller pursuant to this Agreement shall survive the Closing contemplated in Agreement section 8 and the termination of this Agreement by Seller or Buyer.

Section 6. Buyer's Representations and Warranties.

As a material inducement to Seller to enter into this Agreement, Buyer covenants, represents and warrants to Seller as of the date hereof and as of the Closing Date, as follows:

6.1 Authority and Qualification. Buyer is a duly organized, validly existing independent California Special District formed under Act. Buyer has the full right, power, authority and ability to enter into and carry out the transactions contemplated by this Agreement. The entering into of the Agreement and the carrying out of the transactions contemplated does not and will not constitute a violation of any provisions (or an event which, with giving of notice or the passage of time, would constitute a default) under any agreement to which Buyer is a party subject, however, to applicable bankruptcy, insolvency, and other similar laws affecting for enforcement of creditors' rights and to principles of equitable remedies against special districts such as the Buyer.

6.2 Survival of Representations and Warranties. The covenants, representations and warranties of Buyer pursuant to this Agreement shall survive the Closing contemplated hereunder and the termination of this Agreement by Seller or Buyer.

Section 7. Title.

7.1 Seller shall cause a preliminary report for an ALTA Owner's Policy for the Property to be issued to Buyer, setting forth all liens, encumbrances, easements, restrictions, conditions, pending litigation, judgments, administrative proceedings, and other matters affecting Seller's title to the Property ("Preliminary Report"), together with copies of all documents relating to title exceptions referred to in a Preliminary Report. Any costs associated with the Policy shall be borne by Seller.

7.1.1 A survey of the Property shall be prepared by a registered surveyor or professional engineer ("Survey"). Any costs associated with the survey shall be borne by Seller. Seller has delivered, and agrees to deliver any other survey documents to Buyer, promptly following the full execution and delivery of this Agreement, copies of any survey of the Property in the possession of Seller, if such exist.

7.1.2 Buyer has approved or disapproved each exception shown on the Preliminary Report and each encroachment, overlap, or boundary line dispute, or any other matter that materially and adversely affects title to the Property or that violates any law, rule, or regulation reflected on the Survey (each an "Exception") within seven (7) days following the receipt of the Preliminary Report or the Survey, whichever is later. Buyer's failure to object within seven (7) day period shall be deemed to be a disapproval of the Exceptions.

7.1.3 If any Exception is disapproved or deemed disapproved (each a "Disapproved Exception"), Seller shall, within ten (10) days following expiration of the seven (7) day period provided under section 7.1.2 above, use its best efforts to cause each Disapproved Exception to be discharged, satisfied, released or terminated, as the case may be, of record, and in a form that is reasonably satisfactory to Buyer, all at Seller's sole cost and expense. If Seller is unable to obtain a discharge, satisfaction, release, or termination within the period specified above, Buyer shall have the right to: (i) waive the Disapproved Exception and proceed with Closing, accepting title to the Property subject to the Disapproved Exception, or (ii) terminate this Agreement, in which event Seller shall pay all costs of Buyer in connection with this transaction; both Buyer and Seller shall be relieved of all further obligation and liability to each other under this Agreement and any funds transferred from Buyer to Seller shall be promptly refunded or returned to Buyer.

Section 8. Closing Date of Transaction.

8.1 Closing Date. The term "Closing Date" or "Closing" shall mean the date on which the recording of the Grant Deed transferring the Property and Improvements from Seller to Buyer occurs. All requirements of Section 8.3 shall be satisfied prior to the Closing Date.

8.2 Cancellation.

8.2.1 In the event that the Closing Date does not occur by November 30, 2016 and both parties have performed their respective obligations hereunder, Buyer shall have the right to terminate this Agreement by written notice to Seller.

8.2.2 In the event that any of the conditions precedent per section 4.2 and/or Seller's Covenants, Representations and Warranties per Section 5 are not satisfied prior to the Closing Date, the Buyer may cancel this transaction.

8.3 Seller's Provision of Documents to Buyer. On or before one (1) Business Day prior to the date set for the Closing Date, Seller shall provide to Buyer:

8.3.1 A Grant Deed executed and acknowledged by Seller conveying the Property to Buyer in good and marketable fee simple title in the form of Exhibit "B" attached hereto with appropriate insertions, duly executed and acknowledged by Seller (the "Grant Deed") subject only to the approved Exceptions; and,

8.3.2 Resolution of Seller (Exhibit "E") confirming authorization of the sale of the Property.

8.3.3 Seller's share of prorations, if any, and costs described in Agreement sections 8.6 and 8.7.

8.4 Buyer's Responsibilities Prior to Closing. On or prior to November 30, 2016, Buyer shall provide:

8.4.1 A Preliminary Change of Ownership Report in the form of Exhibit "F" attached with appropriate insertions, duly executed by Buyer (the "Preliminary Change of Ownership Report").

8.5 Closing Instructions. Provided that this Agreement is not earlier terminated pursuant to the terms and provisions hereof, and provided that all of the conditions precedent to the Closing have been satisfied or waived, the Property and Improvements shall be transferred to Buyer. At the Closing, the following shall occur:

8.5.1 Date. As of the Closing Date, the parties shall ensure that a stamp or printed date shall be made on all instruments calling for a date.

8.5.2 Tax Statement. Prepare a separate non-recordable documentary transfer tax statement in the form accompanying in the form of the Grant Deed (the "Documentary Transfer Tax Statement").

8.5.3 Recordation of Grant Deed. Record in the Official Records of Fresno County, California the Grant Deed.

8.5.4 Recordation of Ownership Documents. Submit to the County Recorder the Preliminary Change of Ownership Report, concurrently with the submission of the Grant Deed for recordation.

8.5.5 Issuance of Title Policy. Issue an ALTA Owners Policy of Title Insurance subject only to exceptions approved by the Buyer in accordance with Section 7.1.

8.5.6 Deliver to Buyer: (i) one (1) copy of the Grant Deed, as file-stamped by the County Recorder; and (ii) one (1) Resolution of Seller approving the sale of the Property and Improvements.

8.6 Prorations. Upon the Closing, real property taxes shall be prorated as to the Property between Seller and Buyer as of the Closing Date based upon the latest available tax bill and based upon the ratio that the area of the Property bears to the area of the County Assessor's tax parcel or parcels of which the Property is a part. The parties agree that if such prorations are inaccurate because the latest available tax bill does not represent the taxes actually assessed, then the parties will, as soon as tax bills actually covering the period during which the Closing takes place are available, make such further adjustments as may be appropriate. All installments of any bond or assessment that constitutes a lien on the Property at the Closing shall be paid by Seller.

8.7 Costs to be Paid by Seller. Upon the Closing, Seller shall pay the following costs:

8.7.1 An amount equal to the premium which would be payable for an ALTA owner's policy of title insurance (1987 policy form) (the "ALTA Title Policy") issued by Title Company;

8.7.2 Documentary transfer taxes as specified and applicable to the Property, if any;

8.7.3 Unpaid interest on loan(s) for property, if any; and,

8.7.5 ALTA survey cost.

8.7.6 Any and all delinquent taxes, and/or any other lien(s).

8.8 Costs to be Paid by Buyer. Upon the Close of Escrow, Buyer shall pay the following costs:

8.8.1 None.

8.9.11 Possession. Possession of the Property shall be delivered to Buyer on the Closing Date.

Section 9. Default by Seller.

9.1 Events of Default. The occurrence of any of the following, prior to the Closing Date, shall be an "Event of Default" by Seller with respect to Seller's obligations hereunder:

9.1.1 The discovery by Buyer that any of Seller's representations and warranties set forth herein were untrue or misleading in any material respect; or,

9.1.2 The failure of Seller to perform any other material act to be performed by Seller, to refrain from performing any other material prohibited act, or to fulfill any other material condition to be fulfilled by Seller herein or under any agreement referred to herein or attached hereto.

9.2 The occurrence of the following prior to the Closing Date shall be an "Event of Default" by the Seller with respect to its obligations: The filing of a petition or the institution of proceedings of, by, or against Seller pursuant to the federal Bankruptcy Code or pursuant to any state bankruptcy, insolvency, moratoria, reorganization, or similar laws; or Seller's making a general assignment for the benefit of its creditors or the entering by Seller into any compromise or arrangement with its creditors generally; or Seller becoming insolvent in the sense that Seller is unable to pay its debts as they mature or in the sense that Seller's debts exceed the fair market value of Seller's assets; or,

9.3 Remedies. Upon the occurrence of any Event of Default by the Seller, Buyer shall have such rights or remedies as Seller may have under this Agreement or at law or in equity.

Section 10. Possession.

10.1 Possession. Possession of the Property shall be delivered to Buyer at the Closing.

Section 11. General.

11.1 Notices. All notices hereunder shall be in writing and shall be sent by messenger, overnight air courier, or certified mail, postage prepaid, addressed to the parties as follows:

Messengered and air couriered notices shall be deemed given upon receipt. Mailed notices shall be deemed given on the fourth (4th) Business Day after mailing. The addresses for notices may be changed by notice.

Seller:

CITY OF PARLIER
1100 E. Parlier, Parlier, CA 93648

with a copy to:

Buyer:

FRESNO COUNTY FIRE PROTECTION
DISTRICT
210 South Academy Ave., Sanger, CA
93657

with a copy to:

LAW OFFICES OF WILLIAM D. ROSS
400 Lambert Street, Palo Alto, CA 94306

11.2 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.3 Attorneys' Fees. In the event of any legal or equitable proceeding for enforcement of any of the terms or conditions of this Agreement, or any alleged disputes, breaches, defaults or misrepresentations in connection with any provision of this Agreement, the prevailing party in such action (including any appellate proceedings therein or relating thereto), or the non-dismissing party where the dismissal occurs other than by reason of settlement, shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs of defense paid or incurred in good faith, and the same shall be included in any judgment. The "prevailing party" for purposes of this Agreement, shall be deemed to be the party who obtains substantially the result sought, whether by settlement, dismissal or judgment.

11.4 Entire Agreement. This Agreement, together with the other written agreements referred to herein, is intended by the parties to be a final expression of their agreement with respect to the subject matter hereof, and is intended as the complete and exclusive statement of the terms of the agreement between the parties. As such, this Agreement supersedes any prior understandings between the parties, whether oral or written to the extent such understandings are inconsistent with the terms of this Agreement.

11.5 Amendments. No addition to or modification of this Agreement shall be effective unless set forth in writing and signed by the party against whom the addition or modification is sought to be enforced.

11.6 Time. Time is of the essence of this Agreement between the parties.

11.7 Severability. If any provision of this Agreement as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

11.8 Waivers. A waiver or breach of covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act.

11.9 Construction. The section headings and captions used in this Agreement are, and the arrangement of this instrument is, for the sole convenience of the parties to this Agreement. The section headings, captions, and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement. The singular form shall include plural, and vice versa.

11.10 Merger. This Agreement, and each of the Agreement provisions and all warranties and representations contained in the Agreement herein, shall survive the Closing and shall not merge in any instrument conveying title to Buyer.

11.11 Governing Law; Venue. All questions with respect to the construction of this Agreement and the rights and liabilities of the parties under this Agreement shall be determined in accordance with the laws of the State of California. Any action challenging the validity, construction or implementation of this Agreement may only be filed in the Superior Court of Fresno County or the Eastern District of the United States District Court for California.

11.12 No Brokers or Finders. Each party warrants to the other that no finder or broker has been involved in this transaction. In the event of any claim for brokers or finders fees or commissions in connection with the negotiation, execution or consummation of this Agreement, then (a) Buyer shall indemnify, save harmless and defend Seller from and against any such claims, if it shall have been based upon any statement, representation or agreement alleged to have been made by Buyer and (b) Seller shall indemnify, save harmless and defend Buyer from and against any such claims, if it shall have been based upon any statement, representation or agreement alleged to have been made by Seller.

11.13 Authority. The parties warrant that the persons executing this Agreement on their behalf are authorized to do so, and on execution of this Agreement, this Agreement shall be valid and enforceable against Buyer or Seller in accordance with this Agreement.

11.14 Successors. This Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors, and assigns.

11.15 References and Terms. Unless otherwise indicated, (i) all section references are to the sections of this Agreement; and, (ii) all references to days are to calendar days. Whenever under the terms of this Agreement the time for performance of a covenant or condition falls upon a Saturday, Sunday or California legal public state holiday, such time for performance shall be extended to the next Business Day. All exhibits referred to in this Agreement are attached to it and incorporated in it by this reference.

11.16 Further Assurances. Seller, at any time before or after Closing, shall, at its own expense, execute, acknowledge and deliver any further deeds, assignments, conveyances and other assurances, documents or instruments of transfer reasonably requested by Buyer and shall take any other action consistent with the terms of this Agreement that may reasonably be requested by Buyer for the purpose of transferring and confirming to Buyer, or

reducing to Buyer's possession, any or all of the Property or otherwise carrying out the terms of this Agreement.

11.17 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respected permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any third person to any party hereto or give any third person any right of subrogation or action against any party to this Agreement.

11.18 Remedies Cumulative. The remedies set forth in this Agreement are cumulative and not exclusive to any other legal or equitable remedy available to a party.

11.19 "Business Day" Definition. For the purpose of this Agreement, the term "Business Day" shall mean any day other than a Saturday, Sunday, or public holiday legally designated as such in the State of California.

11.20 Independent Advice. Each party has received independent legal advice from its respective attorney regarding the advisability of making its respective representations and warranties, and entering into the Agreement.

11.21 No Party Deemed To Be Draftsman. The parties acknowledge and agree that this Agreement is to be construed without regard to the identity of the persons who drafted its various provisions. The parties further agree that each and every provision of this Agreement shall be construed as though all parties participated equally in drafting the same, and that any rule of construction (including section 1654 of the Civil Code) that the document is to be construed against the drafting party shall not be applicable to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date written above.

SELLER

BUYER

CITY OF PARLIER

**FRESNO COUNTY
FIREPROTECTION DISTRICT**

By: _____

By: _____

Its _____

Its: _____

ATTEST:

By: _____
City Clerk

Date: _____

APPROVED AS TO FORM

City Attorney

Date: _____

ATTEST:

By: _____
District Clerk

Date: _____

APPROVED AS TO FORM

William D. Ross, District Counsel

Date: _____

EXHIBIT A

LEGAL DESCRIPTION

Real property in the unincorporated area of the County of FRESNO, State of CALIFORNIA, described as follows:

THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 15 SOUTH, RANGE 22 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE CITY OF PARLIER, FRESNO COUNTY, CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 23; THENCE SOUTH 00 DEG. 08' 11" EAST, ALONG THE EAST LINE OF SAID SECTION 23, A DISTANCE OF 42.00 FEET TO A POINT ON A LINE PARALLEL AND 42.00 FEET SOUTH, AT RIGHT ANGLES, OF THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 23, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE SOUTH 00 DEG. 08' 11" EAST, ALONG SAID EAST LINE, 165.00 FEET; THENCE NORTH 89 DEG. 40' 19" WEST AND PARALLEL TO SAID NORTH LINE, 264.00 FEET; THENCE NORTH 00 DEG. 08' 11" WEST AND PARALLEL TO SAID EAST LINE, 165.00 FEET TO A POINT ON A LINE PARALLEL AND 42.00 FEET SOUTH, AT RIGHT ANGLES, OF SAID NORTH LINE; THENCE SOUTH 89 DEG. 40' 19" EAST, ALONG SAID PARALLEL LINE, 264.00 FEET TO THE POINT OF BEGINNING.

RESERVING THEREFROM A PORTION OF LAND FOR PUBLIC ROAD RIGHT-OF-WAY AND PUBLIC UTILITY PURPOSES, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT SAID TRUE POINT OF BEGINNING; THENCE SOUTH 00 DEG 08' 11" EAST, ALONG SAID EAST LINE, 165.00 FEET; THENCE NORTH 89 DEG. 40' 19" WEST AND PARALLEL TO SAID NORTH LINE, 42.00 FEET; THENCE NORTH 00 DEG 08' 11" WEST AND PARALLEL TO SAID EAST LINE, 156.00 FEET; THENCE NORTH 44 DEG 54' 15" WEST, 12.78 FEET TO A POINT ON A LINE PARALLEL AND 42.00 FEET SOUTH, AT RIGHT ANGLES, OF SAID NORTH LINE; THENCE SOUTH 89 DEG 40' 19" EAST, ALONG SAID PARALLEL LINE, 51.00 FEET TO THE POINT OF BEGINNING.

containing 43,560 square feet or 1,000 acre more or less.

CERTIFICATE OF ACCEPTANCE

In accordance with the provisions of Section 27281 of the California Government Code of the State of California, this will certify that the interest in real property conveyed by the attached deed from THE CITY OF PARLIER, grantor, to the FRESNO COUNTY FIRE PROTECTION DISTRICT, grantee, is hereby accepted by the Fire Chief of the Fresno County Fire Protection District pursuant to authority conferred upon him by action of the Fresno County Fire Protection District taken on _____, 2016 at a regular meeting of the District Board.

The Fresno County Fire Protection District hereby consents to the recordation of the attached instrument by and through its undersigned duly authorized officer.

DATED: _____

Mark Johnson, Fire Chief

EXHIBIT C

MUTUAL RELEASE AND COMPROMISE AGREEMENT

This Agreement is made and entered into this 13th day of September, 2016, by and between the City of Parlier, (hereinafter referred to as “City”), and the Fresno County Fire Protection District, (hereinafter referred to as “District”), on the following terms and conditions:

WHEREAS, on July 1, 2004, City and District entered into an agreement for fire protection services entitled, “Fresno County Fire Protection District and City of Parlier Agreement for Fire Protection Services” (hereafter referred to as the “2004 Agreement”), a copy of which is incorporated herein by this reference.

WHEREAS, on or about July 1, 2014, the City was unable to continue to pay pursuant to the terms of the 2004 Agreement.

WHEREAS, a dispute between the City and District arose concerning the City’s inability to pay under the terms of the 2004 Agreement.

WHEREAS, City and District entered into mediation and negotiated new terms; and

WHEREAS, each party now desires to reach a full and final agreement as it relates to the above-referenced dispute:

In consideration of the mutual promises and releases set forth herein, the parties agree as follows:

1. **RELEASE.** Each party hereby releases and forever discharges the other parties, their officers, including the employees, agents, accountants, attorneys and all others acting for, under or in concert with such party, past or present, of and from any and all claims, demands, actions, causes of action, allegations, damages, liabilities, losses, costs or expenses, including attorney’s fees of any kind or nature whatsoever, past or present, ascertained or unascertained, whether or not known, suspected or claimed, or which might have been alleged in the above-referenced dispute.

2. **CONSIDERATION.** As consideration for this Mutual Release and Compromise Agreement, the parties agree as follows:

A. The City will place a special tax measure on the ballot, at the City’s expense, for the June 2017 election. The measure will be a special tax proposing a property tax increase for the provision of fire protection services to the City of Parlier. The measure will be a “stand-alone” measure meaning that it will not be tied to any other services or measures.

B. The City will pay to Fresno County Fire Protection District \$200,000.00 (two hundred thousand dollars) in \$50,000.00 (fifty thousand dollar) installments. The first installment will be due on September 1, 2016, with the subsequent installments due of \$50,000.00 due on January 1, 2017, July 1, 2017 and January 1, 2018.

C. The terms in item B above will only apply to the dates referenced. After July 1, 2018, the terms set forth in the 2004 Agreement shall once again apply in full force and effect, beginning with the Fiscal Year commencing on July 1, 2018 and continuing until each year afterward. Notwithstanding Section 4. or any other provision of this Agreement, the District may seek any legal action under the 2004 Agreement or applicable law and equity for nonpayment for services occurring on or after July 1, 2018 should the City's special tax measure fail to pass by that date.

D. The City of Parlier will have an ongoing obligation to place a general revenue measure on the ballot for the full cost of fire services, equal to the base amount for subsequent fiscal years, calculated as follows:

i. The amount of the measure shall be equal to Fresno County Fire Protection District's property tax rate, within the City as applied to the City's net secured and unsecured assessed property values for the most recent fiscal year for the City.

ii. The formula used to calculate the amount of the measure shall be as follows:

Current Assessed Value of all real property within the City of Parlier as determined by the Fresno County Assessor, multiplied by the District-wide tax rate area average as determined from data provided by the county auditor. Agreement to such rate shall be based on a determination as follows: if the actual cost of fire services by FCFPD exceeds the rate established by this calculation, the calculated rate shall prevail.

iii. If the Special tax is approved by the voters, the amount will be confirmed by a property tax allocation agreement within sixty (60) days of the election certification, structured consistent with the terms set forth herein, and shall be subject to an annual constitutional increase not to exceed 2%.

iv. The City's ownership interests in the fire equipment, real property, and fire station located at 1300 E. Parlier Avenue in the City shall be wholly transferred to the District as full compensation for all sums due and owing as of June 30, 2016 for fire services previously provided. The transfer shall be completed by November 30, 2016.

v. Fresno county Fire Protection District will waive reimbursement for the costs it incurred for the appraisal previously conducted for the fire station and equipment.

vi. If a special tax measure is not approved by the voters of Parlier, then the Fresno county Fire Protection District may seek any legal action under the terms of the 2004 Fire Services Agreement for fiscal year 2018 and following.

3. **NO ADMISSION.** This Agreement is the compromise of the parties and fully and finally settles all possible claims between City and District regarding the above-referenced dispute and is intended to prevent any further disputes between the parties. No part of this Agreement shall be interpreted or construed to be an admission of liability on the part of any person or party named herein.

4. **FINAL SETTLEMENT.** The parties understand and agree that this Agreement shall act as a full and final release of all claims, known or unknown, whether or not asserted, arising from the above-referenced past unpaid fire services. Each party expressly waives any rights or benefits available under section 1542 of the Civil Code of the State of California, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which, if known to him, must have materially affected his settlement with the debtor.

5. **NO FURTHER ACTION.** The parties agree not to bring or maintain any legal action or proceedings against the other parties with any court or administrative agency, or any other forum whatsoever, by reason of any claims, liability, or cause of action based upon facts known or unknown which may have occurred prior to the effective date of this Agreement.

6. **SUCCESSORS.** This Agreement shall inure to the benefit of each party hereto, their predecessors, successors, subsidiaries, affiliates, representatives, assigns, agents, officers, directors, employees and personal representatives, past, present and future.

7. **EFFECTUATION.** The parties will execute any and all documents and do all other things as may be necessary to carry out the terms of this Agreement.

8. **LEGAL REPRESENTATION.** The parties represent and acknowledge that each of them have had the opportunity to be represented by legal counsel with respect to this Agreement and that each party has had the opportunity to be fully advised with respect to all rights which are affected by this Agreement.

9. **MODIFICATION.** With the exception of a later tax sharing agreement to be executed between the parties upon passage of the tax measure referenced in this Agreement and the 2004 Agreement, this Agreement contains the entire agreement between the parties and may not be altered, amended, or modified in any respect, except by a writing duly executed by both parties. All prior agreements, understandings, oral agreements, and writings are expressly superseded hereby and are of no further force or effect.

10. **CONSTRUCTION.** Headings are used herein for convenience only and shall have no force or effect in the interpretation or construction of this Agreement. As used in this Agreement, the singular shall include the plural, the masculine, the feminine, and neuter genders. This Agreement shall be deemed to have been drafted by both parties. Any ambiguity found in its terms shall not be construed against either party.

11. **EFFECTIVE DATE.** This Agreement shall become effective as of the last date this document is signed by all parties.

12. **AUTHORIZATION.** By signing this Agreement, the parties warrant that the persons signing have the full authority by the City Council of the City of Parlier and the Fresno County Fire Protection District Board of Directors to execute this Agreement on their behalf.

13. **ATTORNEY'S FEES.** Each party shall bear his/its own attorneys' fees, expenses and costs incurred in connection with this Agreement, the disputes between the parties.

CITY OF PARLIER

DATED: _____

By _____
Alma Beltran, Mayor

APPROVED AS TO FORM:

Nancy A. Jenner, Special Counsel

FRESNO COUNTY FIRE PROTECTION DISTRICT

DATED: _____

By: _____
Michael Del Puppo, Board Chair

APPROVED AS TO FORM:

William Ross, District Counsel

EXHIBIT D

POLICY OF TITLE INSURANCE

(TO BE PROVIDED BY SELLER)

EXHIBIT E

RESOLUTION CONFIRMING AUTHORIZATION OF SALE OF PROPERTY

(TO BE PROVIDED BY SELLER)

EXHIBIT F

PRELIMINARY CHANGE OF OWNERSHIP REPORT

(TO BE PROVIDED)

EXHIBIT A

THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 15 SOUTH, RANGE 22 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE CITY OF PARLIER, FRESNO COUNTY, CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 23; THENCE SOUTH 00 DEG. 08' 11" EAST, ALONG THE EAST LINE OF SAID SECTION 23, A DISTANCE OF 42.00 FEET TO A POINT ON A LINE PARALLEL AND 42.00 FEET SOUTH, AT RIGHT ANGLES, OF THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 23, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE SOUTH 00 DEG. 08' 11" EAST, ALONG SAID EAST LINE, 165.00 FEET; THENCE NORTH 89 DEG. 40' 19" WEST AND PARALLEL TO SAID NORTH LINE, 264.00 FEET; THENCE NORTH 00 DEG. 08' 11" WEST AND PARALLEL TO SAID EAST LINE, 165.00 FEET TO A POINT ON A LINE PARALLEL AND 42.00 FEET SOUTH, AT RIGHT ANGLES, OF SAID NORTH LINE; THENCE SOUTH 89 DEG. 40' 19" EAST, ALONG SAID PARALLEL LINE, 264.00 FEET TO THE POINT OF BEGINNING.

RESERVING THEREFROM A PORTION OF LAND FOR PUBLIC ROAD RIGHT-OF-WAY AND PUBLIC UTILITY PURPOSES, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT SAID TRUE POINT OF BEGINNING; THENCE SOUTH 00 DEG 08' 11" EAST, ALONG SAID EAST LINE, 165.00 FEET; THENCE NORTH 89 DEG. 40' 19" WEST AND PARALLEL TO SAID NORTH LINE, 42.00 FEET; THENCE NORTH 00 DEG 08' 11" WEST AND PARALLEL TO SAID EAST LINE, 156.00 FEET; THENCE NORTH 44 DEG 54' 15" WEST, 12.78 FEET TO A POINT ON A LINE PARALLEL AND 42.00 FEET SOUTH, AT RIGHT ANGLES, OF SAID NORTH LINE; THENCE SOUTH 89 DEG 40' 19" EAST, ALONG SAID PARALLEL LINE, 51.00 FEET TO THE POINT OF BEGINNING.

containing 43,560 square feet or 1,000 acre more or less.

CERTIFICATE OF ACCEPTANCE

In accordance with the provisions of Section 27281 of the California Government Code of the State of California, this will certify that the interest in real property conveyed by the attached deed from the City of Parlier, grantor, to the Fresno County Fire Protection District, grantee, is hereby accepted by the Fire Chief of the Fresno County Fire Protection District pursuant to authority conferred upon him by action of the Fresno County Fire Protection District taken on _____, 2016 at a regular meeting of the District Board.

The Fresno County Fire Protection District hereby consents to the recordation of the attached instrument by and through its undersigned duly authorized officer.

DATED: _____

Mark Johnson, Fire Chief

EXHIBIT A

THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 15 SOUTH, RANGE 22 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE CITY OF PARLIER, FRESNO COUNTY, CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 23; THENCESOUTH 00 DEG. 08' 11"EAST, ALONG THE EAST LINE OF SAID SECTION 23, A DISTANCE OF 42.00 FEET TO A POINT ON A LINE PARALLEL AND 42.00 FEET SOUTH, AT RIGHT ANGLES, OF THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 23, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE SOUTH 00 DEG. 08'11" EAST, ALONG SAID EAST LINE, 165.00 FEET; THENCE NORTH 89 DEG. 40' 19" WEST AND PARALLEL TO SAID NORTH LINE, 264.00 FEET; THENCE NORTH 00 DEG. 08' 11" WEST AND PARALLEL TO SAID EAST LINE, 165.00 FEET TO A POINT ON A LINE PARALLEL AND 42.00 FEET SOUTH, AT RIGHT ANGLES, OF SAID NORTH LINE; THENCE SOUTH 89 DEG. 40' 19" EAST, ALONG SAID PARALLEL LINE, 264.00 FEET TO THE POINT OF BEGINNING.

RESERVING THEREFROM A PORTION OF LAND FOR PUBLIC ROAD RIGHT-OF-WAY AND PUBLIC UTILITY PURPOSES, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT SAID TRUE POINT OF BEGINNING; THENCE SOUTH 00 DEG 08'11" EAST, ALONG SAID EAST LINE, 165.00 FEET; THENCE NORTH 89 DEG. 40' 19" WEST AND PARALLEL TO SAID NORTH LINE, 42.00 FEET; THENCE NORTH 00 DEG 08' 11" WEST AND PARALLEL TO SAID EAST LINE, 156.00 FEET; THENCE NORTH 44 DEG 54' 15" WEST, 12.78 FEET TO A POINT ON A LINE PARALLEL AND 42.00 FEET SOUTH, AT RIGHT ANGLES, OF SAID NORTH LINE; THENCE SOUTH 89 DEG 40' 19" EAST, ALONG SAID PARALLEL LINE, 51.00 FEET TO THE POINT OF BEGINNING.

containing 43,560 square feet or 1,000 acre more or less.

CERTIFICATE OF ACCEPTANCE

In accordance with the provisions of Section 27281 of the California Government Code of the State of California, this will certify that the interest in real property conveyed by the attached deed from the City of Parlier, grantor, to the Fresno County Fire Protection District, grantee, is hereby accepted by the Fire Chief of the Fresno County Fire Protection District pursuant to authority conferred upon him by action of the Fresno County Fire Protection District taken on _____, 2016 at a regular meeting of the District Board.

The Fresno County Fire Protection District hereby consents to the recordation of the attached instrument by and through its undersigned duly authorized officer.

DATED: _____

Mark Johnson, Fire Chief