

**CITY OF TEMECULA
AGENDA REPORT**

TO: City Manager/City Council

FROM: Patrick Thomas, Director of Public Works/City Engineer

DATE: July 28, 2020

SUBJECT: Adopt a Resolution Approving an Agreement for Sale and Purchase of Real Property and Joint Escrow Instructions Between Riverside County Flood Control and Water Conservation District and the City of Temecula and Related Documents

PREPARED BY: Amer Attar, Principal Engineer
Paula Gutierrez Baeza, City Attorney's Office

RECOMMENDATION: That the City Council take the following actions:

1. Adopt a resolution entitled:

RESOLUTION NO. 2020-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMECULA APPROVING AN AGREEMENT FOR SALE AND PURCHASE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS BETWEEN RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AND THE CITY OF TEMECULA (DISTRICT PARCELS 7021-32A AND 7021-18A1)

2. Approve in substantially the form attached the Consent of First & Front, a California General Partnership, Regarding Real Property Conveyance;
3. Approve in substantially the form attached the letter entitled "Commitment Letter from the City of Temecula to First & Front Regarding Reconfiguration and Improvements of the South Side Parking Lot and Consent of First & Front and Other Conditions";
4. Authorize the City Manager to approve and execute all necessary documents, including those in substantially the form attached to the Agenda Report, and take all necessary actions to effectuate the transfer of the approximate 32,314 square foot portion of the River Street right of way identified as District Parcel Numbers 7021-32A and 7021-18A1.

BACKGROUND: The Riverside County Flood Control and Water Conservation District (“District”) seeks to purchase in fee an approximate 32,314 square foot portion of the River Street right of way identified as District Parcel 7021-32A and District Parcel 7021-18A1 (“Subject Property”) located directly adjacent to the portions of the City’s South Side Parking Lot identified as Riverside County Tax Assessor’s Parcel Numbers 922-073-024 and 922-046-025. The District seeks to acquire the Subject Property in connection with the Murrieta Creek Flood Control, Environmental Restoration and Recreation Project (“Project”).

Description of Project

The District, in cooperation with the U.S. Army Corps of Engineers, has completed the construction of Phase IIA of the Project, except for a headwall and landscaping that is being constructed on several properties. Phase II of the Project seeks to reduce the potential threat of future flooding along Murrieta Creek in the Southwest area of Riverside County. The Project is comprised of several funding sources, including local participation by the Cities of Temecula and Murrieta. The City is a local participant in this Project pursuant to that certain Cooperative Agreement dated January 11, 2005 between the District, the City of Temecula and the City of Murrieta.

The Project was authorized as a multipurpose flood control, ecosystem restoration and recreation project. The Project was originally anticipated to be constructed in four phases, subject to the necessary federal appropriations as follows:

- Phase I: Consists of a green-belt channel starting near the USGS gauging station located downstream of Old Town Temecula that extends approximately 3,000 feet upstream to First Street in Temecula.
- Phase II: Consists of a green-belt channel starting at First Street in Old Town Temecula that extends approximately 15,000 feet upstream, to Winchester Road in Temecula.
- Phase III: Consists of a 250-acre stormwater detention basin, located near the confluence of Santa Gertrudis, Warm Springs and Murrieta Creeks in Murrieta. An approximate 50-acre park and recreation area is included within the basin.
- Phase IV: Consists of a green-belt channel starting from the basin that extends approximately 19,000 feet upstream to Vineyard Parkway (formerly Tenaja Road) in the City of Murrieta.

The City previously authorized the District to possess and use the Subject Property for the construction of Phase II pursuant to a Possession and Use Agreement entered into by the parties.

Summary of Background Regarding District's Purchase of Subject Property and Parking Agreement Impacting South Side Parking Lot

The District extended several written offers to the City since approximately 2005 to purchase the approximate 32,314 square foot portion of the River Street right of way located adjacent to the South Side Parking Lot in connection with the Project. Based on the status of the Project, funding, and issues relating to the need to obtain a disclaimer or consent from First & Front in connection with the sale of the Subject Property, the parties did not previously finalize the District's proposed purchase of the Subject Property. In 2012, the District extended new written offers based on the District's appraisals of the fair market value of the subject properties that used a date of value of August 24, 2012. The City obtained its own independent appraisal.

District Staff and City Staff negotiated the terms of the District's purchase of the Subject Property, and have reached an agreement on the terms, subject to approval by the City Council. Further, First & Front has agreed to execute the Consent of First & Front, attached as Exhibit "E" to the Agreement for Sale and Purchase. The Consent is necessary because certain Agreement and Grant of Real Property Subject to and Reserving Parking Easement recorded on May 13, 1999, as Document No. 1999-208241 of the Official Records of the County of Riverside ("Parking Agreement") between First & Front, a General Partnership by its general partners Temecula Investment Company, Inc., a California Corporation and Cleveland Investment Co., Inc., a California Corporation ("First & Front Entities"), which granted in fee to the City all the interest of the First & Front Entities in that real property referred to as Parcel 2 and Parcel 3 described in the Parking Agreement (comprising portions of the South Side Parking Lot) reserved in favor of the existing and future owners of the adjacent Parcel 1 (owned by the First & Front Entities) and their current and future tenants, servants, visitors, invitees, licensees, etc. an easement for parking and other benefits. Said Consent confirms that the First & Front Entities disclaim any right, title or interest in or to the 32,314 square foot Subject Property located entirely in the River Street right of way or to the just compensation that the District may award to the City for the purchase of the Subject Property. It also confirms that said Parking Agreement remains in full force and effect, subject to the provisions of this Consent, the Settlement Agreement entered into between the City and the First & Front Entities on January 15, 2007 to fully compromise and settle certain claims that arose between the parties arising out of and/or relating to the Parking Agreement, and certain development applications relating to the parcel owned by the First & Front Entities.

Salient Terms of Agreement for Sale and Purchase of Subject Property

The District wishes to proceed with the proposed acquisition of the Subject Property and the City wishes to sell the Subject Property to the District for the benefit of the community. The parties agreed, subject to ratification of the attached Agreement for Sale and Purchase, that the District would pay to the City the total consideration of \$771,136.16, consisting of the \$343,944 Purchase Price for the Subject Property and \$427,192.16 in cost-to-cure damages, representing the District's share for the estimated costs of reconfiguring the South Side Parking Lot consistent with the parking lot layout attached as Exhibit "C" to the Agreement for Sale and Purchase. The total costs for the parking lot reconfiguration are expected to exceed the \$427,192.16 cost-to-cure damages. The Agreement for Sale and Purchase provides that the City will provide to the District a copy of the final parking lot reconfiguration prior to commencing the construction of the reconfiguration and that the City will reimburse to the District the difference between the cost-to-cure damages

and the City's actual costs to reconfigure the parking lot if the actual costs are less than \$427,192.16.

The Agreement for Sale and Purchase also requires that the First & Front Entities execute the Consent substantially in conformance with the form attached as Exhibit "E" to said Agreement.

Consent of First & Front Entities and Commitment Letter Requested by First & Front Entities

As discussed above, the Parking Agreement that conveyed to the City the fee interest in portions of the South Side Parking Lot reserves for the benefit of Parcel 1, owned by the First & Front Entities, an easement for parking. The City disclosed to the District the existence of the recorded Parking Agreement, which is identified as an exception in the title report obtained by the District. Based on the impact to the parking spaces located along the Subject Property, it was necessary for the City to reconfigure the parking lot to mitigate the impact to the loss of parking in said area. Accordingly, the City and the District agreed that, as part of the District's purchase of the Subject Property, the District would contribute \$427,192.16 towards the costs of the parking lot reconfiguration.

The City has been working with the First & Front Entities for several years to obtain the necessary consent of the First & Front Entities. After several years of negotiations, the First & Front Entities have agreed to execute a Consent in substantially the form attached as Exhibit "E" to the Agreement for Sale and Purchase. The Consent confirms that the sale of the Subject Property to the District does not impact the Parking Agreement. It also provides that the sale of the Subject Property to the District will not interfere with and will have no impact on the development applications approved in connection with First & Front's parcel. Pursuant to the Consent, the First & Front Entities disclaim any right, title or interest in or to the 32,314 square foot Subject Property or to the just compensation that the District may award to the City for the purchase of the Subject Property.

First & Front has also requested that the City sign a Commitment Letter ("Letter") that confirms the City's commitment to reconfigure the parking lot in substantial conformance with the layout attached as Exhibit "C" to the Agreement for Sale and Purchase, which is also attached as Exhibit "A" to the Commitment Letter. The Letter confirms that the City will use the entire \$427,192.16 amount allocated for cost-to-cure damages to reconfigure the parking lot. The Letter also addresses ADA-compliant parking spaces on both the parking lot and the parcel owned by First & Front; steps that the parties agree to take relating to parking if the First & Front Entities determine to terminate public use of parking on the spaces located on the First & Front parcel as permitted under the Old Town Specific Plan; timing of street, curb, and sidewalk improvements on the north and west side of the First & Front parcel; temporary parking on the First & Front parcel, and related issues. The Letter confirms that the City will complete the construction of the reconfiguration of the parking lot in accordance with the parking layout no later than two years following the recordation of the Consent.

FISCAL IMPACT: The City will receive a total of \$771,136.16, consisting of the \$343,944 Purchase Price for the Subject Property and \$427,192.16 in cost-to-cure damages for the District's

share of costs for the reconfiguration of the South Side Parking Lot. The City anticipates that the costs of the parking lot reconfiguration will exceed the \$427,192.16 allocated as cost-to-cure damages.

ATTACHMENTS:

1. Resolution
2. Purchase & Sale Agreement (32,314 square foot portion of River Street right of way adjacent to APNs 922-073-024 and 922-046-025) and Exhibits:
 - Exhibit “A” and Exhibit “B”- description and depiction of District Parcel 7021-32A
 - Exhibit “A-1” and Exhibit “B-1” - description and depiction of District Parcel 7021-18A1
 - Exhibit “C” - South Side parking lot proposed reconfiguration layout
 - Exhibit “D” - Form of Grant Deed for Subject Property
 - Exhibit “E” - Consent of First & Front Entities
3. Map of Subject Property to be Acquired