

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“this **Agreement**”) is made and entered into as of _____ (the “**Effective Date**”), by and between the City of South San Francisco, a municipal corporation (“**City**”), and South San Francisco Italian American Citizens Club, a non-profit organization (“**IACC**”). City and IACC are collectively referred to herein as the “**Parties**.”

RECITALS

- A. Pursuant to a Lease Agreement between the Parties dated January 29, 1999 (“Original Lease”), IACC has leased a City-owned trailer (“Trailer”) located at the bocce courts at Orange Memorial Park.
- B. The Trailer has been used by IACC for club activities, including facilitation of the use of bocce courts and related community activities.
- C. The condition of the trailer has deteriorated to such an extent that the cost of repair exceeds the worth of the Trailer and the Trailer has no value to the City.
- C. Pursuant to a separate Lease Agreement executed concurrently herewith, the Parties intend to terminate the Original Lease and the City intends to lease to IACC the portion of land at the bocce courts at Orange Memorial Park where the Trailer is currently located.
- D. The City now desires to sell and IACC intends to buy the Trailer located at Orange Memorial Park bocce courts.
- E. Sale of the Trailer serves a public purpose as the IACC is a City co-sponsored group, and the transfer to IACC and continued use of the Trailer for IACC activities will promote the public’s use and enjoyment of the park’s bocce courts.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the parties, City and IACC hereby agree as follows:

- 1. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals set forth above and the Exhibits attached to this Agreement are each incorporated into the body of this Agreement as if set forth in full.
- 2. PURCHASE AND SALE.
 - 2.1. Agreement to Buy and Sell. Subject to the terms and conditions set forth herein, City agrees to sell the Trailer to IACC, and IACC hereby agrees to acquire the Trailer from Seller.
 - 2.2. Purchase Price. The purchase price for the Trailer to be paid by Buyer to Seller is One Dollar (\$1.00).

2.3. Conveyance of Title. Upon payment of purchase price, City will deliver marketable title of the Trailer to IACC, clear of all title, interest and liability. City has not alienated, encumbered, transferred, mortgaged, assigned, pledged, or otherwise conveyed its interest in the Trailer, and there are no liens, encumbrances, mortgages, covenants, conditions, reservations, restrictions, or other matters affecting the Trailer.

2.4 No Guarantees or Warranties. The Trailer will be conveyed by City to IACC in an “as is” condition, with no warranty, express or implied, by City as to the Trailer’s fitness for a particular purpose or as to its physical condition including, but not limited to, the appearance, structural strength or the presence of known or unknown faults or hazardous conditions.

3. INDEMNIFICATION. To the fullest extent allowed by law, IACC shall indemnify, defend, and hold harmless the City, its officers, officials, directors, employees, and agents from and against any or all loss, liability, expense, claim, costs (including reasonable costs of defense), suits, and damages of every kind, nature and description directly or indirectly arising from this Agreement or the use of the Trailer.

4. ASSIGNMENT. Absent an express signed written agreement between the Parties to the contrary, neither City nor IACC may assign its rights or delegate its duties under this Agreement without the express written consent of the other, which consent may be withheld for any reason. No permitted assignment of any of the rights or obligations under this Agreement shall result in a novation or in any other way release the assignor from its obligations under this Agreement.

5. MISCELLANEOUS.

5.1. Attorneys’ Fees. In the event that either party to this Agreement commences any legal action or proceeding (including but not limited to arbitration) to interpret the terms of this Agreement, the prevailing party in such a proceeding shall be entitled to recover its reasonable attorney’s fees associated with that legal action or proceeding.

5.2. Interpretation. This Agreement has been negotiated at arm’s length and each party has been represented by independent legal counsel in this transaction and this Agreement has been reviewed and revised by counsel to each of the Parties. Accordingly, each party hereby waives any benefit under any rule of law (including Section 1654 of the California Civil Code) or legal decision that would require interpretation of any ambiguities in this Agreement against the drafting party.

5.3. Survival. All indemnities, covenants, representations and warranties contained in this Agreement shall survive after the sale has been completed.

5.4. Successors. Except as provided to the contrary in this Agreement, this Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

5.5. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

5.6. Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, any such provision shall not be affected by the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this Section, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision this is in keeping with the intent of the Parties as expressed herein.

5.7. Notices. Any delivery of this Agreement, notice, modification of this Agreement, collateral or additional agreement, demand, disclosure, request, consent, approval, waiver, declaration or other communication that either party desires or is required to give to the other party or any other person shall be in writing. Any such communication may be served personally, or by nationally recognized overnight delivery service (i.e., Federal Express) which provides a receipt of delivery, or sent by prepaid, first class mail, return receipt requested to the party's address as set forth below:

To IACC: Bill Green
 803 Lomita Ave.
 Millbrae, CA 94030

To City: City Clerk
 City of South San Francisco
 400 Grand Avenue
 South San Francisco, CA 94080

Any such communication shall be deemed effective upon personal delivery or on the date of first refusal to accept delivery as reflected on the receipt of delivery or return receipt, as applicable. Any party may change its address by notice to the other party. Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this section and that any person to be given notice actually receives such notice.

5.8. Waivers. Any waiver by any party shall be in writing and shall not be construed as a continuing waiver. No waiver will be implied from any delay or failure to take action on account of any default by any party. Consent by any party to any act or omission by another party shall not be construed to be consent to any other subsequent act or omission or to waive the requirement for consent to be obtained in any future or other instance.

5.9. Signatures/Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

5.10. Date and Delivery of Agreement. Notwithstanding anything to the contrary contained in this Agreement, the parties intend that this Agreement shall be deemed effective, and delivered for all purposes under this Agreement, and for the calculation of any statutory time periods based on the date an agreement between parties is effective, executed, or delivered, as of the Effective Date.

5.11. Representation on Authority of Parties. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY:

CITY OF SOUTH SAN FRANCISCO,
a California municipal corporation

By: _____
Mike Futrell
City Manager

ATTEST:

By: _____
Name: _____
Title: _____

IACC:

Italian American Citizens Club,
a nonprofit organization

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
City Attorney
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