



RESOLUTION NO. 2011-39

A JOINT RESOLUTION OF THE FRESNO CITY COUNCIL AND THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, CALIFORNIA APPROVING REDEVELOPMENT GRANT AGREEMENT BETWEEN THE 21<sup>ST</sup> DISTRICT AGRICULTURAL ASSOCIATION, THE BIG FRESNO FAIR, AN INSTITUTION OF THE STATE OF CALIFORNIA, AND THE REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, AND MAKING CERTAIN FINDINGS PURSUANT TO HEALTH AND SAFETY CODE SECTION 33445 OF THE COMMUNITY REDEVELOPMENT LAW, REGARDING AN AGENCY GRANT TO HELP FUND STREETScape IMPROVEMENTS BY THE FAIR ALONG KINGS CANYON ROAD WITHIN THE SOUTHEAST FRESNO REVITALIZATION REDEVELOPMENT PROJECT AREA

WHEREAS, the Council of the City of Fresno (the "Council") on June 29, 1999, by Ordinance No. 99-45, adopted the Plan for the Southeast Fresno Revitalization Redevelopment Project Area, (as amended), pursuant to the Community Redevelopment Law of California (Health & Safety Code Sections 33000 et. seq.) (the "Law"); and

WHEREAS, the Redevelopment Agency of the City of Fresno (the "Agency") is engaged in activities necessary to execute and implement the Southeast Fresno Revitalization Redevelopment Plan (the Redevelopment "Plan") for that area of the City of Fresno, California, described in the Redevelopment Plan (the "Project Area"); and

WHEREAS, the Redevelopment Plan authorizes the Agency to cause or provide for installing, constructing or reconstructing public improvements to help eliminate blight and as necessary to carry out the Redevelopment Plan; and

WHEREAS, the Redevelopment Plan further authorizes and directs the Agency to

Adopted 3-8-11  
Approved 3-8-11  
Effective 3-8-11

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seek the aid and cooperation of other public bodies and to coordinate the Redevelopment Plan, to the extent possible, with the activities of public bodies to accomplish the purposes of redevelopment and the highest public good; and, in that regard, authorizes the Agency, as permitted by the California Community Redevelopment Law (Health & Safety Code §§ 33000 et seq.) (the "Law"), to assist financially or otherwise any public entity with the cost of public land, buildings, facilities, structures or other improvements in or outside the Project Area if the land, buildings, facilities, structures or other improvements will benefit the Southeast Fresno Revitalization Redevelopment Project; and

WHEREAS, the Redevelopment Plan further authorizes the Agency to pay for, install or construct publicly-owned buildings, facilities, structures and other improvements identified in Attachment No. 4 to the Redevelopment Plan, including streetscape improvements of Kings Canyon Road and entryway improvements at selected locations along designated major streets; and

WHEREAS, on March 3, 2011, the Agency adopted Resolution No. 1776, approving an updated Five-Year Implementation Plan for the Southeast Fresno Revitalization Redevelopment Area (the "Implementation Plan") pursuant to the Law; and

WHEREAS, the Implementation Plan, to help eliminate physical and economic blighting influences and establish a positive visual image, includes a program to make selected public improvements in the Project Area including, without limitation, streetscape improvements on major streets and entryways associated with the Redevelopment Plan Implementation; and

WHEREAS, the 21<sup>ST</sup> District Agricultural Association, The Big Fresno Fair, an



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institution of the State of California (the "Fair"), operates and manages, facilities and improvements located in Southeast Fresno Revitalization Redevelopment Project Area on Kings Canyon Road between Butler and Chance Avenues (the "Fairgrounds") for the purpose of conducting an agricultural fair and related activities authorized by the California Food & Agriculture Code; and

WHEREAS, prior to 2007 the Fairgrounds pedestrian and vehicular entrances with frontage on Kings Canyon Road had diminished substantially, creating potential safety hazards to the Fair's patrons and blight within the Project Area; and

WHEREAS, in order to improve the appearance of the portion of Fairgrounds with frontage on Kings Canyon, the Fair must continue the renovations and, upgrades, and enhance the East and West portions of the new pedestrian and vehicular entrances to the Fairgrounds along approximately 300 feet of Kings Canyon Road, as provided in attached Exhibit "A", "Project Description" (the "Project"); and

WHEREAS, at its meeting on September 28, 2010, the Board of Directors of the Fair (the "Fair Board"), by Resolution, has determined that the Fair can fund only approximately half the cost of the Project through available cash and in-kind contributions due to the timing of the Project, State budget restraints, and other priorities; and

WHEREAS, the Fair has requested that the Agency provide financial assistance to the Project by a grant of up to \$150,000.00 (the "Agency Grant") in order to complete the Project in a timely and cost efficient manner; and



WHEREAS, subject to the requirements of the Law, the Agency is willing to provide a grant of up to \$150,000 toward funding of the Project in order for the Fair to install streetscape improvements and enhance the appearance of the pedestrian and vehicular entries to the Fairgrounds along Kings Canyon Road between Chance and Butler Avenues as provided in (the "Agency Grant") Agreement attached to this Resolution as Exhibit A; and

WHEREAS, the Project will result in streetscape improvements and beautification along a portion of Kings Canyon Road located within the Project Area as contemplated by the Redevelopment Plan, and specified in Attachment No. 4 to the Redevelopment Plan, and consistent with the Ventura/Kings Canyon Master Streetscape Plan approved by the City Council and the Agency Board in May 2001; and

WHEREAS, Health and Safety Code Section 33220 provides the authority for the Fair to enter an agreement with the Agency to aid and cooperate in the planning, undertaking, construction or operation of redevelopment projects within the area in which the Fair is authorized to act, upon the terms and with or without consideration as the Fair determines; and

WHEREAS, Health and Safety Code Section 33445 permits the Agency, with the consent of the legislative body, in this case the Council of the City (the "Council"), to pay the cost of installing and constructing any facility or other improvement which will be publicly owned, either within or outside the Project Area, subject to certain Council determinations; and

WHEREAS, the Fair and Agency propose to enter into the Redevelopment Grant



Agreement, substantially in the form attached, under which the Agency will assist with the costs of the Project improvements; and

WHEREAS, the Fair shall be solely responsible, without limitation, for all aspects of the Project and all Project costs, with the exception of (the "Agency Grant"); and

WHEREAS, the Agency has \$150,000.00 budgeted in its FY 2010-2011 Budget for the Project, available from net tax increments generated from the Project Area and/or other funds available to it; and

WHEREAS, the Division of Fairs and Expositions and Department of Food and Agriculture, acting as the lead agency for the Project for purposes of the California Environmental Quality Act ("CEQA"), has determined that the Project is categorically exempt from further CEQA review pursuant to CEQA Guidelines Section 15304 as a Class 4 categorical exemption, applicable to minor alterations in the condition of the land, that do not involve removal of mature, scenic trees, and issued a Letter of Exemption for the Project, a copy of which is attached to (the "Agency Grant") as Exhibit E ; and

WHEREAS, the Fair Board, in its Resolution of which is attached to (the "Agency Grant") as Exhibit D adopted at a regularly scheduled and noticed meeting on September 28, 2010, found that the Fair had no other reasonable means of financing the Project without financial assistance from the Agency, and requested that the Agency provide financial assistance in the form of a \$150,000.00 grant to provide the additional funding necessary to complete the entire Project in a timely and efficient fashion; and

WHEREAS, on March 7, 2011, the Housing and Community Development Commission (HCDC) reviewed the Project and (the "Agency Grant"), recommended by



staff, and evaluated all the information, testimony and evidence presented during the public meeting; and

WHEREAS, on March 8, 2011, the Council and Agency Board, reviewed the proposed Project and (the "Agency Grant"), and evaluated all the information, testimony, and evidence presented during the public meeting; and

WHEREAS, the proposed Project will enhance the appearance of the portion of the Fairgrounds with frontage on Kings Canyon Road, and will improve the quality of life for residents of and visitors to Fresno by helping to stabilize and enrich the neighborhoods around Fairgrounds, thereby making them attractive for development and investments; and

WHEREAS, the Project and investment also are consistent with the Ventura/Kings Canyon Beautification Master Plan that was approved by the Council and Agency Board in May 2001; and

WHEREAS, the Project also will help to reduce blight, attract and improve marketability of related industrial, commercial, office and public economic activity in the immediate, and overall Project Area; and

WHEREAS, the Agency and Council, after due consideration, believe that the Agency's Grant of up to \$150,000.00 for Project is in the best interests of the City and the health, safety, and welfare of employees and visitors to the Project Area, and is consistent with the public purposes and provisions of applicable state and local laws; and

WHEREAS, all actions required by all applicable law with respect to the proposed Redevelopment Grant Agreement have been timely and appropriately taken;

**NOW, THEREFORE, BE IT RESOLVED** by the Council and the Redevelopment



Agency of the City of Fresno as follows:

1. Based on the above recitals and substantial evidence provided in the record before it, the Council and the Agency find and determine as follows:

**Finding No 1.1:** Providing the proposed Project improvements to the pedestrian and vehicular entrances to the Fairgrounds along the Kings Canyon Road frontage within the Project Area, and Agency funding assistance as provided in the Redevelopment Grant Agreement, is necessary to achieve the purposes of, and is consistent with, the Redevelopment Plan in that, among other things, the Project will cause installation of streetscape improvements along Kings Canyon Road and entryway improvements as specified and authorized in Attachment No. 4 to the Redevelopment Plan.

**Finding No. 1.2:** Agency payment of up to \$150,000.00 toward the costs of the Project will help eliminate one or more blighting conditions within the Project Area, in that installation of the proposed streetscape and entryway improvements will assist in establishing a positive visual image for the frontages of the Kings Canyon Road in the vicinity of the Fairgrounds property, enhance the entry ways, and help to alleviate impaired property values, and business vacancies along the area of Kings Canyon Road, and the neighborhoods and business districts around the Fairgrounds by making them attractive for new development and investment.

**Finding No. 1.3:** The public improvements continue to benefit the Project Area and the immediate neighborhoods in which the Project is located, by providing esthetically pleasing streetscape improvements and entryway improvements along Kings Canyon Road consistent with the Redevelopment Plan objectives, and have eliminated potential



pedestrian and vehicle safety hazards to members of the public entering and exiting the Fairgrounds on this portion of Kings Canyon Road.

**Finding No. 1.4:** Based on the findings of the Fair Board at its meeting held on September 28, 2010, evidenced in the Fair Board Resolution a copy of which is attached to (the "Agency Grant"), due to the timing of the Project, State budget constraints, and other priorities there are no reasonable means of financing the Project available to the Fair or the community, other than the Redevelopment Agency Grant, combined with other funds available to the Fair.

**Finding No. 1.5:** The proposed Project is consistent with the Redevelopment Implementation Plan.

2. The Council consents to the Agency expending money, as set forth in the Redevelopment Grant Agreement, to assist the Fair with a grant of up to \$150,000.00 for the costs of the Project improvements.

3. The Redevelopment Grant Agreement, substantially in the form attached and presented to the Agency and Council, is approved, subject to nonmaterial changes consistent with this resolution that the Agency Executive Director approves, and the City Attorney - Ex Officio Attorney for the Agency approves as to form.

4. The Agency Executive Director is authorized and directed to execute the Redevelopment Grant Agreement for the Agency, including any such non-material changes by the Executive Director, and the City Clerk/ Ex-officio Clerk of the Agency, is authorized and directed to attest thereto, and the Executive Director is directed to place a copy of the Redevelopment Grant Agreement with the City Clerk's office.



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5. The Executive Director, the Ex Officio Clerk and all other officers and employees of the Agency are further authorized and directed to execute all other documents and take all other steps necessary or appropriate to carry out the Agency's obligations under the Redevelopment Grant Agreement and to finalize and carry out the intent and purposes of the Agency Board and City Council in this Resolution.

Attachment: "A" – Redevelopment Grant Agreement



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STATE OF CALIFORNIA )  
COUNTY OF FRESNO ) ss.  
CITY OF FRESNO )

I, REBECCA E. KLISCH, City Clerk of the City of Fresno and Ex Officio Clerk to the Agency, certify that the foregoing resolution was adopted by the Council and the Agency Board at a joint meeting hearing held on the 8th day of March, 2011 and that the same was passed by the following vote.

AYES : Baines, Olivier, Quintero, Westerlund, Xiong, Brand  
NOES : Borgeas  
ABSENT : None  
ABSTAIN : None

REBECCA E. KLISCH  
City Clerk and Ex-officio Clerk  
of the Redevelopment Agency

BY: *Rebecca E. Klisch*  
~~Deputy~~

APPROVED AS TO FORM  
JAMES C. SANCHEZ  
City Attorney and Ex-officio Attorney  
of the Redevelopment Agency

BY: *James C. Sanchez*  
Deputy/Assistant/  
Special Counsel



**REDEVELOPMENT GRANT AGREEMENT**  
**(Southeast Fresno Revitalization Redevelopment Project Area)**

This Grant Agreement ("Agreement") is entered into as of the Effective Date (defined in Section 1 below) between the REDEVELOPMENT AGENCY OF THE CITY OF FRESNO, a public body corporate and politic (the "Agency"), and the 21<sup>st</sup> DISTRICT AGRICULTURAL ASSOCIATION, THE BIG FRESNO FAIR, an institution of the State of California (the "Fair").

**Recitals:**

The parties enter this Agreement based on the following facts, understandings and intentions:

- A. Pursuant to authority granted under the Community Redevelopment Law of California (Health & Safety Code §§ 33000 *et. seq.*) (the "Law"), the Agency has the responsibility to implement the Redevelopment Plan for the Southeast Fresno Revitalization Redevelopment Project, adopted June 29, 1999, recorded August 13, 1999, of Official Records, Document No. 1999-0119351, and all subsequent amendments thereto (collectively, the "Redevelopment Plan").
- B. The Redevelopment Plan is intended to redevelop the Southeast Fresno Revitalization Redevelopment Project Area, as more particularly described in the Redevelopment Plan (the "Project Area"), in conformity with the Law by, among other things, installing, constructing or reconstructing streets, utilities and other public improvements and facilities.
- C. The Redevelopment Plan authorizes and directs the Agency to seek the aid and cooperation of other public bodies and to coordinate the Redevelopment Plan, to the extent possible, with the activities of public bodies to accomplish the purposes of redevelopment and the highest public good. In that regard, the Redevelopment Plan authorizes the Agency, as permitted by the Law, to assist financially or otherwise any public entity with the cost of public land, buildings, facilities, structures or other improvements in or outside the Project Area if the land, buildings, facilities, structures or other improvements will benefit the Southeast Fresno Revitalization Redevelopment Project.
- D. The Redevelopment Plan further authorizes the Agency to pay for, install or construct publicly-owned buildings, facilities, structures and other improvements identified in to the Redevelopment Plan, including streetscape improvements of Kings Canyon Road and entryway improvements at selected locations along designated major streets.
- E. The Fair operates and manages property, facilities and improvements located in the Project Area on Kings Canyon Road between Butler and Chance Avenues (the "Fairgrounds") for purposes of conducting an agricultural fair and related activities authorized by the California Food & Agriculture Code. In order to improve the appearance of the portion of



the Fairgrounds with frontage on Kings Canyon Road, the Fair proposes to renovate, improve and beautify the pedestrian and vehicular entrances to the Fairgrounds along approximately 300 feet of Kings Canyon Road (the "Project"). The Project is described in more detail on Exhibit A, attached. The Project is to be constructed in one phase and completed by December 31, 2011, as described in Exhibit "A".

- F. The estimated cost of the Project is \$300,000.00. At its meeting on September 28, 2010, the board of directors of the Fair, by resolution, has determined that the Fair can fund approximately half the cost of the Project through available cash and in-kind contributions, and has requested that the Agency provide financial assistance to the Project by a \$150,000.00 grant (the "Agency Grant"), and has found that the Fair has no reasonable means of financing the additional cost of the Project other than the Agency Grant for the reasons stated in the resolution.
- G. The Agency and the Council of the City of Fresno (the "Council") have determined that this Agreement, the Project and the Agency Grant are in the vital and best interests of the Agency and the City of Fresno (the "City") and the health, safety and welfare of City and Project Area residents, and will materially contribute to Redevelopment Plan implementation, in that completion of the Project will assist with elimination of one or more blighting conditions in the Project Area, will result in streetscape improvements and beautification along a portion of Kings Canyon Road within the Project Area as contemplated by the Redevelopment Plan, and is consistent with and will help implement the Kings Canyon Master Streetscape Plan approved by the City Council and the Agency Board in May 2001, and is consistent with the implementation plan adopted for the Project Area pursuant to Section 33490 of the Law.
- H. The Agency and the Council have further found, based on the evidence and findings in the attached Fair Board resolution, Exhibit "D" that the Fair has no reasonable means of financing that portion of the cost of the Project not funded by the Fair other than the Agency Grant, as provided below.
- I. Section 33220 of the Law provides authority for the Fair to enter an agreement with the Agency to aid and cooperate in the planning, undertaking, construction or operation of redevelopment projects within the area in which the Fair is authorized to act, upon the terms and with or without consideration as the Fair determines.

**THEREFORE**, the Agency and the Fair agree as follows:



## Agreement:

**Section 1. Effective Date.** This Agreement shall be effective on the date that the last party signs after the Agency Board and the City Council approve the Agreement and make the required findings.

**Section 2. Fair Obligations.** The Fair shall be responsible for performing and completing all aspects of the Project at its expense, except only the Agency Grant described in Section 3. The Fair's responsibilities include, but are not limited to, the following:

- 2.1 Design and Engineering.** The Fair shall design, engineer, plan and construct the Project in conformity with Exhibit A.
- 2.2 Agency Review of Project-related Items.** Solely to assure the Agency that the Project will be compatible with and implement the Kings Canyon Master Streetscape Plan described in Recital G and will further the redevelopment goals, requirements and expectations of the Redevelopment Plan, the Law and this Agreement, the Fair will submit certain Project-related items to the Agency for review and written approval. These Project-related items include, without limitation, permits, plans, basic concept drawings, elevation and other drawings showing architectural style, design features and landscaping plans.

Agency review and approval shall be by the Executive Director of the Agency or the Executive Director's designee. The Agency's review will be in addition to review by any other governmental agency (e.g., the City) of Project-related matters required by any law, code, regulation or rule. The Agency will not require the Fair to take any action or inaction that conflicts with City requirements.

Any material change to Project-related items previously approved by the Agency shall be submitted to the Agency for written approval prior to any action based thereon.

- 2.3 CEQA Compliance.** The Fair, or the Division of Fairs and Expositions and Department of Food and Agriculture, shall be deemed the lead agency for purposes of the California Environmental Quality Act ("CEQA"). The Fair, or the Division of Fairs and Expositions and Department of Food and Agriculture, has determined that the Project is categorically exempt from review under the CEQA and the Guidelines issued under CEQA, pursuant to Section 15304 of the Guidelines. If it has not done so by the Effective Date, the Fair shall provide the Agency with a copy of the categorical exemption and the notice of exemption filed in accordance with Section 15062 of the Guidelines. The Fair shall be solely responsible for determining whether any additional studies, analysis or documents are required by CEQA or the Guidelines to complete the Project as provided in this Agreement, and shall, at its expense, prepare, process, and provide the Agency copies of such other studies, analysis or documents.



- 2.4 Compliance with Laws, Etc.** The Fair will obtain all permits required, and comply with all laws, codes, regulations and rules of, the City and other governmental agencies having jurisdiction and applicable to the Project, including without limitation applicable federal and state labor standards and environmental laws and regulations. The Fair, not the Agency or the City, is responsible for determining applicability of and compliance with all local, state, and federal laws including, without limitation, the California Labor Code, Public Contract Code, Public Resources Code, Health & Safety Code, Government Code, the City Charter and the Fresno Municipal Code. The Agency makes no representations regarding the applicability of any such laws to the Project or the parties' respective rights or obligations hereunder including, without limitation, payment of prevailing wages, competitive bidding, subcontractor listing, or other matters. The Agency and the City shall not be liable or responsible, in law or equity, to any person for the failure to comply with any such laws, whether the Agency or the City knew or should have known of the need for the Fair to comply, or whether the Agency or the City failed to notify the Fair of the need to comply.
- 2.5 Construction Management, Inspection.** The Fair shall provide all management and inspection of construction of the Project improvements, subject to the rights of the City and other governmental agencies to inspect such improvements for compliance with applicable laws, ordinances, codes and regulations.
- 2.6 Project Completion.** The Fair shall complete the Project within the time specified in the Project Schedule, attached to this Agreement as Exhibit B. For purposes of this Agreement, the Project will be deemed "complete" when (i) a Notice of Completion has been filed pursuant to Civil Code 3093, (ii) the Fair's project construction inspector has finally inspected that phase of the Project and determined in writing that the Project is complete and meets the Fair's plans and specifications, (iii) the project construction inspector has given final inspection of the Project and determined in writing that the Project complies with all applicable laws, ordinances, codes, standards and regulations, and (iv) the Agency has inspected that phase of the Project and determined in writing that the Project has been completed in conformity with this Agreement, the Project-related items approved by the Agency (see Section 2.2), the Redevelopment Plan and the Kings Canyon Master Streetscape Plan described in Recital G.
- 2.7 Record-keeping and Accounting.** The Fair shall maintain records of contracts, labor and material costs, expenditures and obligations incurred for the Project improvements. The records shall be maintained in accordance with usual and customary business accounting standards and shall accurately reflect, in sufficient verifiable detail, how Agency Grant funds have been expended for Project improvements. The Fair shall maintain such records for at least five years after the Project is complete (see Section 2.6). The Agency shall have the right to inspect



and copy such records during the Fair's regular business hours after reasonably prior notice to the Fair. The Fair also shall furnish the Agency with such additional statements, records, data, copies and information concerning the Project in such form and at such times as the Agency may require from time to time. Within 90 days after the Project is complete, the Fair shall prepare and deliver to the Agency a full and final accounting of all uses of Agency Grant funds disbursed to the Fair.

**2.8 Insurance.** Until the Project is complete (see Section 2.6), the Fair shall pay for and maintain in effect all insurance policies required hereunder with insurance companies either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or (ii) authorized by the City's Risk Manager. Upon request by the Agency, the Fair shall provide certificates of insurance or self-insurance, as appropriate, evidencing the insurance required hereunder. The following policies of insurance are required:

- 2.8.1 **Commercial General Liability** insurance that includes contractual, products and completed operations coverages, bodily injury and property damage liability insurance with combined single limits of not less than \$1,000,000 per occurrence.
- 2.8.2 **Commercial Automobile Liability** insurance, endorsed for "any auto," with combined single limits of liability of not less than \$1,000,000 per occurrence.
- 2.8.3 **Workers' Compensation** insurance as required under the California Labor Code.

The above-described policies of insurance shall be endorsed to provide an unrestricted 30-day written notice in favor of the Agency of policy cancellation, change or reduction of coverage, except that the Workers' Compensation policy shall provide a 10-day written notice of such cancellation, change or reduction of coverage. If any policy is due to expire during the term of this Agreement, the Fair shall provide a new certificate evidencing policy renewal not less than 15 days before the expiration date of the policy. When an insurer, broker or agent issues a notice of cancellation, change or reduction in coverage, the Fair shall immediately obtain and file a certified copy of a new or renewal policy and certificates for such policy with the Agency.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name the Agency, the City and their respective officers, officials, agents, employees and volunteers as additional insureds. Each policy shall be endorsed so that the Fair's insurance is primary and no contribution is required of the Agency or the City. The Fair shall furnish the Agency with



copies of the actual policies upon the request of the Agency's Executive Director, the Executive Director's designee or the City's Risk Manager.

If the Fair fails to maintain the required insurance in full force and effect, the Fair shall immediately discontinue all work under this Agreement until the Agency receives notice that the required insurance has been restored to full effect and that the premiums for the insurance have been paid for a period satisfactory to the Agency. The Fair's failure to maintain any required insurance shall be sufficient cause for the Agency to terminate this Agreement.

The Fair may satisfy the above insurance requirements through a program of self-insurance and providing the appropriate certificates of self-insurance.

If the Fair contracts or subcontracts all or any portion of the work under this Agreement, the Fair shall require each contractor and subcontractor to provide insurance protection in favor of the Fair, the Agency, the City and their respective officers, officials, employees, agents and volunteers according to the terms of each of the preceding paragraphs, except that the contractor's or subcontractor's certificates and endorsements shall be on file with the Fair and the Agency before the contractor or subcontractor begins any work.

- 2.9 Indemnification.** The Fair shall indemnify, hold harmless and defend the Agency, the City and their respective officers, officials, employees, agents and volunteers from any loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability including, without limitation, personal injury, death at any time and property damage) incurred by the Agency, the City, the Fair or any other person, and from any claims, demands and actions in law or equity (including attorneys' fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. The Fair's obligations under the preceding sentence shall apply regardless of whether the Agency, the City or any of their respective officers, officials, employees, agents or volunteers are actively or passively negligent. However, the preceding sentence shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the active negligence or by the willful misconduct of the Agency or any of its officers, officials, employees, agents or volunteers.

This indemnity also shall cover, without limitation the following: (i) any act, error or omission of the Fair or any of its officers, employees, contractors, subcontractors, lessees, invitees, agents or representatives in connection with this Agreement or the Project; (ii) any use of the Project improvements or the Fairgrounds by the Fair or any of its officers, employees, contractors, subcontractors, lessees, invitees, agents or representatives, successors or assigns; (iii) the design, construction, operation or maintenance of the Project, and (iv) failure of the Fair or any of its officers, employees, contractors, subcontractors,



lessees, invitees, agents or representatives to comply with any federal, state or local law, code, ordinance or regulation applicable to this Agreement or the Project.

If the Fair contracts or subcontracts any of the work to be performed under this Agreement, the Fair shall require each contractor or subcontractor to indemnify, hold harmless and defend the Agency, the City and each of their respective officers, officials, employees, agents and volunteers in accordance with the preceding paragraph.

Additionally, the Fair shall indemnify, defend and hold the Agency, the City and each of their respective officers, officials, employees, agents, boards and volunteers harmless from any judicial action filed against the Agency or the City by any third party arising out of the Agency's or the City's approval of this Agreement or any permit, entitlement or other action required to implement this Agreement, including without limitation approvals under the Law, CEQA or the City's Municipal Code. The City will promptly notify the Fair of the action. Within fifteen (15) days after receipt of the notice, the Developer shall take all steps necessary and appropriate to assume defense of the action. The City and Agency will cooperate with the Fair in the defense of the action (at no cost to the Agency or the City). Neither the Fair nor the City will compromise the defense of such action or permit a default judgment to be taken against Agency or the City without the prior written approval of the other party(ies).

This section shall survive termination or expiration of this Agreement and completion of the Project.

- 2.10 Project Maintenance.** The Fair shall operate, maintain and repair the Project in compliance with applicable Federal, State and local laws, ordinances, codes and regulations.

**Section 3. Agency Grant.** In consideration for construction and completion of the Project, the Agency shall make the Agency Grant in the amount \$150,000.00, pursuant to the Law, to pay or reimburse in part the cost of constructing the Project. The Agency shall make available and disburse the proceeds of the Agency Grant to the Fair according to the disbursement terms, conditions, restrictions and schedule in this section. The obligation to make the Agency Grant is an indebtedness of the Agency within the meaning of Sections 33670 *et seq.* of the Law.

- 3.1 Eligible Costs.** Notwithstanding Project contract or contracts awarded by the Fair or any Project cost overruns, the Agency's obligation for funding Project costs will not exceed \$150,000.00. Eligible costs to be funded by the Agency Grant will include hard and soft costs for the Project set forth in the Agency-approved Project budget, attached to this Agreement as Exhibit C. The Fair will be responsible for all Project costs in excess of the Agency Grant amount.



- 3.2 Disbursement Terms, Conditions, Restrictions and Schedule.** The Agency Grant shall be available and used solely to pay or reimburse eligible costs directly associated with construction of the Project. As conditions of receiving disbursements of the Agency Grant, the Fair shall do all the following: (i) within 45 days after the date for completion of the Project in the Project Schedule (Exhibit B), submit a written request, signed by an authorized Fair representative, to the Agency requesting reimbursement or payment of Project costs, together with appropriate evidence of expenditure or immediate obligation to pay, invoices and written evidence that the related work has been completed, all in form and substance satisfactory to the Agency; (ii) be in compliance with the Redevelopment Plan and all federal, state and local laws, ordinances, codes, regulations and standards applicable to the Project.

Within 10 days after the Agency's receipt and approval of the all the above items, the Agency will disburse Agency Grant proceeds to the Fair equal to the amount in the request approved by the Agency, not to exceed \$150,000.00. If Agency Grant proceeds are to be used to make payments to contractors, suppliers or other third parties, the Agency may, at its option, disburse those Agency Grant proceeds by joint checks issued to the Fair and such third party.

Disbursement in accordance with this Section 3.2 will satisfy in full all obligations of the Agency to make or disburse the Agency Grant.

- 3.3 Inspection and Monitoring.** Authorized Agency representatives may monitor the Fair's performance under this Agreement. Monitoring may include, without limitation, inspection to confirm that construction of the Project is progressing according to the Project Schedule (Exhibit B) and other provisions of this Agreement. The Agency may defer making any disbursement of the Agency Grant (i) until it receives evidence that the Project work is being performed in conformity with this Agreement; (ii) until any event of default existing under this Agreement has been cured; or (iii) so long as any notice to withhold disbursement served on the Agency remains unsatisfied or any lien, stop notice or claim of any contractor, supplier or others relating to the Project remains or any suit on any such notice, lien or claim is pending.

The Agency shall have the right, but not the obligation, to monitor actual use of the Agency Grant proceeds from time to time, and to require the Fair to certify in writing from time to time that the Agency Grant proceeds have been used and applied as required by this Agreement. However, the Fair, not the Agency, shall be entirely responsible to ensure proper use and application of the Agency Grant proceeds.

- 3.4 Termination of Funding Obligation.** The Agency's obligation to fund the Agency Grant will terminate on the earliest of the following: (i) termination of this Agreement as provided in Section 6; or (ii) failure of the Fair to submit a



disbursement request (Section 3.2) within 45 days after the date for completion of Phase I of the Project stated in the Project Schedule (Exhibit B), unless the Agency has granted, in its sole discretion, an extension of the disbursement request submittal date.

**Section 4. Project Ownership; Nature of Project.** The Fair shall own and assume all risk associated with the Project improvements, except any improvements dedicated to the City or other public agency. This Agreement does not create a partnership, joint venture or any similar relationship between the Fair and the Agency. The Fair will have full power and exclusive control over the Project and the Fairgrounds, and all employees, contractors or other persons employed in connection with development, use operation or maintenance of the Project, subject only to the limitations, obligations, standards, covenants, restrictions, controls and conditions set forth in this Agreement, the Redevelopment Plan and applicable federal, state and local laws, ordinances, codes, regulations and standards, as any of them may be amended from time to time

**Section 5. Default.** If the Fair defaults under this Agreement, the Agency may terminate this Agreement and seek any other remedy available to it in law or equity, including but not limited to recovery of Agency Grant proceeds and other benefits received by the Fair from the Agency hereunder. Any of the following will be a default under this Agreement if the Fair fails to cure or remedy within 30 days after notice from the Agency:

- 5.1 The Fair fails to timely begin and complete the Project according to the Project Schedule (Exhibit B);
- 5.2 The Fair uses the Agency Grant proceeds for other than the reimbursement or payment of costs of constructing the Project;
- 5.3 The Fair fails to obtain or maintain the insurance coverage required under Section 2.8;
- 5.4 The Fair fails to timely perform any other covenant or obligation on its part under this Agreement;
- 5.5 The Fair files or has filed against it a petition of bankruptcy, insolvency or any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief, and such petition has not been vacated or set aside within 60 days;
- 5.6 The Fair is adjudicated bankrupt or insolvent under any present or future statute, law or regulation under federal or state law, and the judgment or decree has not been vacated or set aside within 60 days;
- 5.7 The Fair fails or is unable, or admits in writing its inability, to pay its debts as they become due, or the Fair makes an assignment for benefit of creditors;



- 5.8 A receiver, trustee or liquidator is appointed for the Fair or any substantial part of the Fair's assets and has not been removed within 60 days;
- 5.9 Any representation or warranty made by or on behalf of the Fair in connection with this Agreement or any other agreement, instrument or documents referred to herein or hereafter submitted to the Agency or the City in connection with the construction, redevelopment, rehabilitation, use, maintenance or ownership of the Project proves at any time to have been incorrect in any material respect when made.

**Section 6. Termination.** This Agreement will terminate on the earliest of the following: (i) the Fair's default under this Agreement and failure to cure or remedy as provided in Section 5, and the Agency's election in writing to terminate; or (ii) complete performance by each party of its agreements, obligations and covenants hereunder. Upon any termination for default, the Agency's obligations hereunder shall terminate and the Agency will retain any undisbursed Agency Grant proceeds. The Agency also will be entitled to recover any Agency Grant proceeds that the Fair improperly expended.

**Section 7. Nondiscrimination.** The Fair covenants that it shall not discriminate against or segregate any person, or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code (race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability or any other basis prohibited by California Civil Code \_ 51), as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, rental, transfer, use occupancy, tenure or enjoyment of the Project improvements or the Fairgrounds, nor shall the Fair itself or any person claiming under or through it establish any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of vendees, tenants, lessees, subtenants or sublessees in the Project improvements or the Fairgrounds.

The Fair shall provide in all conveyances, leases or subleases affecting the Project, the Fairgrounds or any part thereof or interest therein that no person shall, on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code (race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability or any other basis prohibited by California Civil Code \_ 51), as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, be excluded from participation in, be denied the benefits of or be subject to discrimination under any program or activity contemplated by this Agreement.

The covenants and obligations in this Section 7 shall be binding on and obligate the Fair, its officers, directors, employees and agents, any contractor or subcontractor of the Fair, and any transferees, successors and assigns of the Fair.



## **Section 8. Miscellaneous Provisions.**

- 8.1 Conflict of Interests.** No member, official, officer or employee of the Agency shall have any direct or indirect interest in this Agreement or shall participate in any decision relating to this Agreement where such interest or participation is prohibited by law. No officer, employee or agent of the City who exercises any function or responsibility concerning the planning and carrying out of the Project, or any other person who exercises any function or responsibility concerning any aspect of this Agreement or the Project, shall have any personal financial interest, direct or indirect, in this Agreement or the Project.
- 8.2 Agency Approvals and Actions.** Whenever this Agreement requires or permits Agency action or approval, the Executive Director of the Agency or her designee is authorized to act for the Agency unless the Agreement, applicable law or Agency bylaws, resolutions or adopted procedures provide otherwise.
- 8.3 Nonliability of Agency Officials, Employees and Agents.** No member, official, officer, employee or agent of the Agency shall be personally liable to the Fair, or any successor in interest, for any default or breach by the Agency.
- 8.4 Relationship of the Parties.** The Fair is acting independently in pursuing and completing the Project. Nothing in this Agreement or any other document executed in connection with this Agreement shall be construed as creating a partnership, joint venture, agency, employment relationship or similar relationship between the Agency and the Fair or any of the Fair's contractors, subcontractors, employees, agents, representatives, transferees, successors-in-interest or assigns. Nothing in this Agreement establishes a principal and agent relationship between the parties. Except for the Agency Grant, the Fair shall bear all costs and expenses for the Project.
- 8.5 Assignment.** This Agreement is personal to the Fair. The Fair shall not assign or delegate its rights or obligations under this Agreement without the prior written consent of the Agency. If the Fair attempts any assignment or delegation without Agency prior written consent, the assignment shall be void.
- 8.6 Notice, Demands and Communication.** Notices, demands and communications between the Agency and the Fair shall be given as follows: (i) personal delivery, or (ii) delivery by a reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) by facsimile via a machine that issues a confirmation showing the date and time of transmission, and the office name and number to which the transmission was made, or (iv) by registered or certified mail, return receipt requested, postage prepaid, addressed to the Agency or the Fair as follows:



**AGENCY:**

Redevelopment Agency of the City of Fresno  
Attention: Executive Director  
2344 Tulare Street, Suite 200  
Fresno CA 93721  
Facsimile No.: (559) 498-1870

**FAIR:**

21<sup>st</sup> District Agricultural Association, The Big Fresno Fair  
Attention: John C. Alkire, Chief Executive Officer  
1121 South Chance Avenue  
Fresno, CA 93702-3707  
Facsimile No.: (559) 650-3226

Either party may change its address by notice given according to this subsection.

- 8.7 Waiver.** Either party's waiver of the other's breach of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or a different provision of this Agreement. No provision of this Agreement may be waived except in a writing signed by both parties. Waiver of any provision shall not be deemed to be a waiver of any other provision herein or a waiver of the same provision under any other circumstances.
- 8.8 Governing Law.** This Agreement shall be interpreted and enforced, and the rights and duties of the parties under this Agreement (both procedural and substantive) shall be determined, according to California law.
- 8.9 Headings.** All headings are for convenience only, are not a part of this Agreement, and are not to be used in construing this Agreement.
- 8.10 Entire Agreement.** This Agreement, including the exhibits, is the entire understanding and agreement of the parties. All prior discussions, understandings and oral and written agreements are superseded by this Agreement. Should the terms of any exhibit conflict with the body of this Agreement, the body of this Agreement shall govern.
- 8.11 Binding on Successors, Etc.** This Agreement shall bind and inure to the benefit of the successors in interest, personal representatives and assigns of each party, subject to the limitation on transfer and assignment in this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor, representative or assign of the party who has acquired an interest in compliance with the terms of this Agreement or under law.

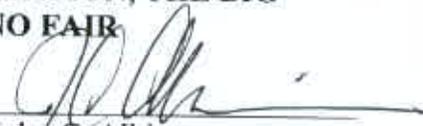


- 8.12 Interpretation.** This Agreement is the result of the combined efforts of the parties. If any provision of this Agreement is found ambiguous, the ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but by construing the terms according to their generally accepted meaning, considering the objective of the Agreement.
- 8.13 Amendment; Modification.** This Agreement shall not be amended or modified except by written instrument duly approved as required by law and executed by authorized representatives of the parties.
- 8.14 Number and Gender.** Masculine, feminine or gender neutral terms and singular or plural numbers will include others when the context so indicates.
- 8.15 Attorneys' Fees.** If either party initiates or defends litigation or any legal proceeding regarding this Agreement, the Project or the Agency Grant, the prevailing party in such litigation or proceeding, in addition to any other relief that may be granted, shall be entitled to recover from the other party its reasonable attorneys' fees and legal expenses.
- 8.16 Exhibits.** Each exhibit referred to in this Agreement is, by that reference, incorporated in and made part of this Agreement for all purposes.
- 8.18 Further Assurances.** Each party will take any further acts and will sign and deliver any further instruments required to carry out the intent and purposes of this Agreement.
- 8.19 Partial Invalidity.** If any part of this Agreement is held to be invalid, void or unenforceable in any legal, equitable or arbitration proceeding, the remainder of the Agreement shall continue in effect, unless not giving effect to the invalid or unenforceable part would prevent effecting the redevelopment purposes of the Project and this Agreement.
- 8.20 Force Majeure.** If this Agreement shall be deemed unenforceable, or if Agency is prevented from performing its obligations under this Agreement, by any court for reasons including but not limited to acts of god, government, changes in law, and/or any other cause beyond the reasonable control of the Agency, then the Agency shall not be liable for any damages for breach of this Agreement.
- 8.20 Survival of Provisions.** Each indemnification provision and each other provision in this Agreement that by its express terms or nature is a continuing obligation shall survive the termination of this Agreement.
- 8.21 Counterparts.** This Agreement may be executed in counterparts. Executed counterparts, taken together, shall constitute only one Agreement.



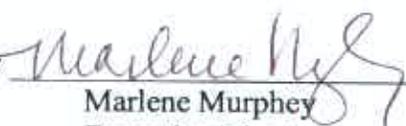
The Agency and the Fair acknowledge and represent that this Agreement has been executed by their respective duly authorized representative(s) on the dates set forth below.

**21<sup>st</sup> DISTRICT AGRICULTURAL  
ASSOCIATION, THE BIG  
FRESNO FAIR**

By   
John C. Alkire  
Chief Executive Officer

Dated: 3-9-11

**REDEVELOPMENT AGENCY OF  
THE CITY OF FRESNO**

By   
Marlene Murphey  
Executive Director

Dated: 3-9-11

APPROVED AS TO FORM:  
JAMES C. SANCHEZ  
Ex Officio Attorney

By:   
Deputy/Assistant/  
Special Counsel *Mark E. Casar*

ATTEST:  
REBECCA E. KLISCH  
Ex Officio Clerk

By:   
Deputy 3-9-11



**EXHIBIT A**  
**PROJECT DESCRIPTION**



## PROJECT DESCRIPTION EXHIBIT

### 2011 Kings Canyon Blvd. Façade Project Description Kings Canyon Boulevard (Kings Canyon Frontage)

In 2011, management of The Big Fresno Fair intends, with the assistance of The City of Fresno Redevelopment Agency to continue fairground improvements on Kings Canyon between Chance Avenue and Maple in accordance with the City of Fresno Redevelopment Master Plan. In 2007 and 2008, the Kings Canyon Pedestrian Entry and Kings Canyon Infield Tunnel Entry were improved in accordance with a City of Fresno Redevelopment Grant Agreement authorizing support for those improvements.

In 2011, Fair Management seeks to add additional improvement on Kings Canyon between Chance Avenue and Maple. Fair management seeks to improve the area directly east and west of the new Kings Canyon Pedestrian Entry. Faux rock entries will be improved upon for the two vehicular entries on either side of the new Kings Canyon Pedestrian Entry and approximately 300 lineal feet of façade improvement will be made in the form of a replica old style Western/Spanish themed cityscape. These improvements will add to the aesthetic relevance of the area and contribute to removal of blight in southeast Fresno.

The total lineal footage of the project area is approximately 300 feet. The project will be complete in one year.

In order to keep project costs at a minimum the majority of labor on the project will be completed by the maintenance staff at The Big Fresno Fair. All maintenance staff are permanent, civil service employees of the State of California. Additionally, an outside company will be hired for the aesthetic design of the façade and the labor needed to execute the custom creative features of the project.

**EXHIBIT B**  
**PROJECT SCHEDULE**





## PROJECT SCHEDULE (2011)

April 1, 2011 – December 31, 2011    Finish improvements to the Vehicular Entry  
Structures (Add Faux Rock Structures)  
Erect 300 feet of Old Style Storefront Façade

**EXHIBIT C**  
**PROJECT BUDGET**





2011 Kings Canyon Gate Improvements  
Project Budget Estimation and Specifications

Concept, Design, Construction:

|  |               |
|--|---------------|
| <u>Drawing &amp; Engineering (Cool Stuff Studios)</u>              | \$10,000.00   |
| • 298' long cartoon style western façade with addition faux rock   |               |
| ○ 7' – 9' tall structures, 12' above sidewalk, 10'/20' on center,  |               |
| 21' total height,  |               |
| <u>Labor: (Cool Stuff Studios)</u>                                 | \$42,000.00   |
| • 6 months (includes design, construction fabrication)             |               |
| <u>Fair Maintenance Staff</u>                                      |               |
| • Demolition & Prep  | \$24,000.00   |
| • Electrical & Water   | \$30,000.00   |
| • Façade Construction Labor  | \$50,000.00   |
| <u>Equipment Rental:</u>   |               |
| 40' reach and safety gear \$3,250.00/mo. X 4.5 mo.                 | \$14,625.00   |
| Large bobcat and Auger \$4,125.00/mo. X 4.5 mo.                    | \$18,563.00   |
| <u>Materials:</u>  |               |
| Raw Materials (paint, foam, wood, steel foundation/supports, gate) | \$60,000.00   |
| Lighting/Animatronics  | \$30,000.00   |
| <u>Landscaping:</u>  |               |
| • Integrated Desert/Drought Resistant Landscape                    | \$22,000.00   |
| <br>TOTAL PROJECT COST:  | <br>\$301,188 |



**EXHIBIT "D"**

**FAIR BOARD RESOLUTION**



BOARD OF DIRECTORS  
21<sup>ST</sup> DISTRICT AGRICULTURAL ASSOCIATION

RESOLUTION  
BEAUTIFY, UPGRADE, AND IMPROVE KINGS CANYON FRONTAGE

In an effort to beautify, upgrade, and improve patron safety for the portion of the grounds of the Big Fresno Fair with Kings Canyon Boulevard frontage, the Board of Directors of The Big Fresno Fair and Fair Management are seeking financial support from the City of Fresno Redevelopment Agency to upgrade and beautify the frontage and vehicular entrances on Kings Canyon Boulevard. The Board and Fair Management believe this project is in harmony with the Redevelopment Agency's Kings Canyon Master Plan and the Redevelopment Plan for the Southeast Fresno Revitalization Redevelopment Project.

In order to complete the entire project in a timely fashion, the estimated total budget for completion of the project is \$300,000. The Fair has the capability to provide labor for the project. Unfortunately, it is not feasible for the Fair to fund the entire project based on timing and other budget priorities, such as ADA compliance projects, irrigation and major asphalt resurfacing projects. Nor is it reasonable for the Fair to fund the entire project with a drawn-out financing plan, since this will increase the cost of the project and extend time of completion.

Therefore, it is resolved that at the 21<sup>st</sup> District Agricultural Association's Board of Directors Meeting on September 28, 2010, a motion was made by Director Jones, seconded by Director Barsamian to approve the following:

1. The Board and Fair Management request that the City of Fresno Redevelopment Agency provide financial assistance for the project in the form of a \$150,000 grant to provide the additional funding necessary to complete the entire project in a timely and efficient fashion and to help implement the Agency's Kings Canyon Master Plan.
2. For the reasons stated in the above recitals, the Fair has no reasonable means of financing the additional costs of the project other than such financial assistance from the Agency.

CERTIFIED TO BE A TRUE COPY

John C. Alkire, Chief Executive Officer  
21<sup>st</sup> DAA, The Big Fresno Fair

9-28-10

Date



**EXHIBIT "E"**  
**EXEMPTION LETTER**



# LETTER OF EXEMPTION

CCA Project Number: 021321105 Project Title: Kings Canyon Gate Improvements

Project Location: 21<sup>st</sup> DAA – Big Fresno Fair County: Fresno

Description of the nature, purpose and beneficiaries of the Project:

Nature/Type: Replacement Purpose: Kings Canyon Gate Improvements

Beneficiaries: The health and safety of the Fair and public.

Name of Public Agency Approving Project: Division of Fairs and Expositions and Department of Food and Agriculture

Name of Public Agency Carrying Out Project: California Construction Authority

Exempt Status:

- 15269 - Projects Damaged in a declared disaster.
- 15301 - Repair or Alteration of an existing facility, for the same use, involving less than a 50% increase of floor area or 2,500 SF, or 10,000 SF if all infrastructure is in place for maximum permissible development under the General Plan. Demolition of small structures (approximately 1,200 SF)
- 15302 - Replacement or Reconstruction of existing facilities on the same site, involving substantially the same purpose and capacity.
- 15303 - New Construction of small structures (2,000 – 3,000 SF) or conversion from one use to another involving minor modifications. Installation of small new equipment.
- 15304 - Minor Alterations to the Land which do not involve removal of mature, scenic trees.
- 15305 - Minor Alterations to the Land Use which do not result in any land use changes, e.g., minor lot line adjustments.
- 15311 – Construction of Accessory Structures (signs, small parking lots, small temporary structures).
- 15323 - Normal operations of existing facilities for public gatherings for a similar purpose that has occurred in past history.

Reasons why Project is exempt: Kings Canyon Gate Improvements

Contact Person: Becky Bailey-Findley Area Code/Telephone/Extension: (916) 263-6100

Signature: *Becky Bailey-Findley* Date Received for Filing: March 7, 2011  
Interim Executive Officer

Cc CEQA File  
Project File  
David Freese