City of
FRESNO

REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.	9:30am D
COUNCIL	1/27/09
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

January 27, 2009

FROM: RANDALL L. COOPER, Director
Parks, After School, Recreation and Community Services Department

BY: JERRY HAYNES, Assistant Director
Parks, After School, Recreation and Community Services Department

SUBJECT: AUTHORIZE THE PURCHASE OF A NEIGHBORHOOD CENTER/GYMNASIUM FROM THE FRESNO COUNTY ECONOMIC OPPORTUNITIES COMMISSION AND EXECUTION OF DOCUMENTS

KEY RESULT AREA: ONE FRESNO

RECOMMENDATIONS

It is recommended that the Council approve and authorize the purchase of the Fresno County Economic Opportunities Commission (EOC) Neighborhood Youth Center/Gymnasium and land (NYC), approximately 2.20 improved acres at California and Elm Avenues in the City of Fresno for a price not to exceed $3,727,967.63, in substantially the form of the attached Draft Purchase and Sale Agreement, subject to City Attorney approval to form.

EXECUTIVE SUMMARY

In July 2004, the RDA and EOC entered a real property Development and Disposition Agreement (DDA) where under land assembled by the RDA with tax increment funds was transferred to the EOC restricted to a phased project development and use. Shortly thereafter the EOC purchased the property at market rate.

In 2005, the EOC/Local Conservation Corps (LCC) offered to provide the Parks, After-School, Recreation and Community Services (PARCS) Department with a portion of the project land partially improved for use as a NYC if PARCS would commit to fund and operate the (NYC) ultimately constructed on the property. More recently discussions have turned to City's turnkey purchase of the NYC, unencumbered, with escrow to close conditioned upon (i) approval by state grant funding source(s) and City's assumption of EOC's obligations and responsibilities under the grant(s), (ii) City's assumption of EOC's obligations and responsibilities regarding the NYC phase (only) under the DDA and RDA Executive Director's consent thereto, and (iii) EOC securing completion and occupancy permits for the NYC. To date, EOC values it total investment in the NYC facility, including in-kind contributions and grant funding at approximately $5.3 million. The price of $3,727,967.63 to be paid by the City is net of in-kind and grant funding amounts per agreement of the parties.

PARCS staff presented this project to the Parks Commission who in their April 2006 report unanimously supported priority use of Impact Fees and recommended that City Council approve.

On December 5, 2006, the City Council approved Park Impact Fee Bond Reimbursement Resolution which included the NYC project as reimbursable from proceeds of subsequently issued bonds. In April of 2008 Council approved and the City subsequently sold Parks 2008 impact fee revenue bonds the proceeds of which are available for use on Parks capital projects including the NYC.

This NCY building will be a multi-use facility. The Emergency Generator System for the building would allow it to be used for an Emergency Operations Center and as a multi-use Emergency Response Site. Currently the City of Fresno has one building with an emergency generator. The last gymnasium built by the City was Frank H. Ball Center in 1940.

City staff has met continually with EOC staff and the contractor to ensure that the building was modified, designed and constructed to accommodate increased and expanded PACRS activities and programs and Emergency Operations Center building requirements.

PARCS worked with the Real Estate Division and requested an appraisal on the entire property. On July 20, 2007 an Appraisal Report was received from Real Property Analyst which identified $5,800,000 as the value of property when the building is completed.

The attached draft Purchase and Sale Agreement reflects substantial agreement on terms and conditions for City's turnkey acquisition of the NYC facility through a purchase escrow.

The DDA and project thereunder were environmentally assessed in 2004, under Environmental Assessment Application No. C-03-253, resulting in Finding Conformity under MEIR No.10130 for 2025 General Plan, duly adopted by Fresno Redevelopment Agency and the City Council. The EOC as lead agency caused environmental assessment of the project Facilities pursuant to EA No./CUP No. C-03-253 resulting in a finding of Categorical Exemption.

KEY OBJECTIVE BALANCE

This recommendation addresses the three key objectives of Customer Satisfaction, Employee Satisfaction and Financial Management by:

1. Providing a much needed facility and amenities to the community.
2. Providing employees with a flexible facility to support the delivery of programs and an opportunity for advancement.
3. By leveraging the EOC investment, the City's financial resources are maximized. The City of Fresno benefits from the EOC in-kind and grant funded investment in the NYC.

BACKGROUND

In July 2004, the RDA and EOC entered a DDA where under land assembled by the RDA with tax increment funds was transferred to the EOC restricted to phased project development and use. Shortly thereafter the EOC purchased the property at market rate. The EOC-Local Conservation Corps then began identifying funding and designing a four building campus complex. This complex, located in Southwest Fresno at California and Elm Avenues, has been proposed to include a Charter Vocational School (including a

Maintenance Yard), Preschool (Headstart Program), Administration Building and a Neighborhood Youth Center/Gymnasium (NYC). The EOC so far has completed the NYC portion of the campus complex. Cash flow generated from the NYC sale to the City is anticipated to help stimulate/facilitate work on the balance of the phased project.

In 2005, the EOC/Local Conservation Corps (LCC) offered to provide the PARCS Department with a portion of the project land partially improved for use as a NYC if PARCS would commit to fund and operate the (NYC) ultimately constructed on the property. More recently discussions have turned to City's turnkey purchase of the NYC with escrow to close conditioned upon (i) approval by state grant funding source(s) and City's assumption of EOC's obligations and responsibilities under the grant(s), (ii) City's assumption of EOC's obligations and responsibilities regarding the NYC phase (only) under the DDA and RDA's consent thereto, and (iii) EOC securing completion and occupancy permits for the NYC. To date, EOC values it total investment in the facility, including in-kind contributions and grant funding at approximately $5.3 million. The price paid of $3,727,967.63 to be paid by the City is net of in-kind and grant funding.

PARCS staff presented this project to the Parks Commission who in their April 2006 report unanimously supported priority use of Impact Fees and recommended that City Council approve.

In May 2006 EOC received conditional approval from the State of California to allow the City of Fresno to purchase the EOC Neighborhood Youth Center/Gymnasium. EOC used State grant funds to build the NYC.

To enhance the multiple uses of this facility and increase benefits to the City and the community, an Emergency Power Generator System and expanded gymnasium/auditorium was added to the project. The Parks Commission recommended that the gymnasium be an NBA size floor. The gym/auditorium/stage is designed for large community events, programs and city department activities. Estimated capacity: 1,300 seating for conferences or 700 for dinner.

The Emergency Power Generator System would allow this facility to serve as an Emergency Operations Center and as a multi-use emergency response site. This facility would replace the outdated MSC location until the Police/Fire joint headquarters is built. Specifically this facility could serve the following incidents:

- Business Continuity – with proper technology infrastructure, site would be an outlet to facilitate City business in a crisis.
- Swat team action – evacuation site for local residents during police action.
- Highway Disaster – proximity to 99 would allow potential hospital triage area for major fog pile-ups.
- Train Derailments – the potential exists for a catastrophic spill and/or fire. Multiple uses.
- Epidemic – distribution point for medications or inoculations
- Packing Plant Explosion/Incident – proximity is close enough, yet far enough away and out of prominent wind pattern to serve residential evacuations.
- Decontamination - the splash park can be used as a decontamination area.

City staff, specifically the Emergency Preparedness Officer, Police, Fire, Planning & Development and Information Systems Departments, have all provided input into building improvements to maximize Emergency Operations uses and efficiency. To accommodate these uses and be in compliance with City Building Ordinances, Planning and Development required significant structural modifications to the plan which significantly increased the cost of the facility.

City staff has met continually with EOC staff and the contractor to ensure that the building is modified, designed and constructed to accommodate increased and expanded PARCS activities and programs and Emergency Operations Center building requirements.

PARCS worked with the Real Estate Division and requested an appraisal on the entire property. On July 20, 2007 an Appraisal Report was received from Real Property Analyst which identified $5,800,000 as the value of property when the building is completed.

The last gymnasium built for the City of Fresno Parks, After-School, Recreation and Community Services Department was Frank H. Ball Center in 1940. This center serves the community for the EOC project and has significant facility/repair issues, limited capacity and limited uses.

Frank H. Ball has midnight basketball leagues that bring over 1,000 kids per night. The attendance is so severe that the police department closes streets which causes a strain on the residents of this area. These leagues would move to the new facility.

To appropriately staff and maintain this facility and the grounds on an annual basis PARCS anticipates that it will need to provide for the following in the next budget cycle:

Programming/Facility Staff

a. Transfers from existing facilities:
- Community Recreation Supervisor II
- Recreation Specialists (2) $92,239 – created from 3 existing Permanent Part-time Vacancies.

b. New Positions for New Facility
- Senior Administrative Clerk (1) at $38,074
- Services Aide (4) at $11,000 = $44,000
- Custodian (1) at $25,000 – approximately 5 hours
- **Total Staffing Cost: $107,074**

Grounds Maintenance/Custodial Operating Costs
- Labor (PMWI, Irrigation Specialist, Parks Supervisor I & II) $35,000
- Estimated Utilities (Water, Electric, Solid Waste) $15,600
- Supplies (Custodial, Fertilizers, Re-Seeding, Herbicides) $5,000
- **Total Maintenance/Custodial Cost: $55,600**

Equipment – Grounds Maintenance/Custodial – One Time Expense
- Grounds (Reel Mower, Mowing Trailer, Dump Truck, Blowers, Edger) $42,600
- Custodial (Floor Scrubber, Propane Floor Buffer, Upright Vacuum) $7,300
- **Total One-Time Equipment Cost: $49,900**

City staff, the EOC and their respective attorneys have prepared the attached draft Purchase and Sale Agreement, which provides substantial terms and conditions for City's turnkey acquisition of the NYC, unencumbered, through escrow conditioned upon (i) approval by state grant funding source(s) and City's assumption of EOC's obligations and responsibilities under the grant(s), (ii) City's assumption of EOC's obligations and responsibilities regarding the NYC phase (only) under the DDA and RDA Executive Director's consent thereto, and (iii) EOC securing completion and occupancy permits for the NYC. To date, EOC values it total investment in the facility, including in-kind contributions and grant funding at approximately $5.3 million. The price of $3,727,967.63 to be paid by the City is net of the in-kind and grant funding.

This Council item does not impact the balance of the EOC phased campus project referenced in the July 2004 RDA/EOC DDA. The EOC will remain obligated to the RDA under the DDA as to the balance of the EOC campus project.

FISCAL IMPACT

The total purchase price of $3,727,967.6 will be derived from Park Impact fee bond proceeds/currently budgeted funding sources. There is no impact to the General Fund to purchase this property.

Attachments Exhibit A -Draft EOC Youth Center Facility Purchase and Sale Agreement

DRAFT OF 1-23-09

REAL PROPERTY PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS BETWEEN THE FRESNO COUNTY ECONOMIC OPPORTUNITIES COMMISSION AND CITY OF FRESNO

Neighborhood Youth Center/Gymnasium/Emergency Operations Center and Land
(California and Elm Avenues – City of Fresno, California - 2.20 Acres)
APNs: 478-081-39T, 478-081-40T

The FRESNO COUNTY ECONOMIC OPPORTUNITIES COMMISSION, a California nonprofit public benefit corporation ("**Seller**" or "**EOC**"), and the City of Fresno a California charter city and municipal corporation ("**Purchaser**" or "**Buyer**" or "**City**"), enter this Real Property Purchase and Sale Agreement and Joint Escrow Instructions (the "Agreement"), subject to consent by the State of California Resources Agency and the Executive Director of the Redevelopment Agency of the City of Fresno, effective as of ["___"] upon execution by the Buyer and Seller and Fresno City Council approval.

RECITALS:

The EOC variously acquired in fee the certain real property in the vicinity of California and Elm Avenues – City of Fresno, California +/- 2.20 Acres, APNs: 478-081-39T, 478-081-40T, as more specifically described/depicted in Exhibit A hereto/incorporated herein, (collectively "Site") pursuant to a July 2004 Fresno Redevelopment Agency/EOC Disposition and Development Agreement ("DDA") including covenants and conditions thereunder that run with the land ("Agency Covenants"), incorporated herein by this reference.

The EOC thereupon improved portions of the Site with a neighborhood youth center, recreation complex, and related improvements, as more specifically described/depicted in Exhibit A, (collectively "Facilities", the Site and Facilities hereinafter referred to as the "Property"), variously utilizing a [*Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000 (the Villaraigosa-Keeley Act)*] program grant] ("State Grant") from the State of California Resources Agency, ("the State") and subject to related covenants, conditions and assurances on its use and operation, including conditions on and under what circumstances it may lease, sell or otherwise dispose of the Property, ("State Covenants"), incorporated herein by this reference.

The City has adopted a parks and recreational facilities impact fee to address the need for open space and recreational facilities generated by new residential growth throughout the City.

In furtherance of the public and recreational purposes and uses set forth herein, the City desires to purchase the Property and to operate such as a City public, recreational and parks facility, upon the terms and conditions set forth in this Agreement, variously utilizing allocated and available 2008 Park Facilities Fees Bond ("Bond") proceeds.

The acquisition proposed herein is consistent with the City's 2025 General Plan including the Open Space and Recreational Element, hereinafter the "Plan" and the Plan's objective of coordinating with other agencies and organizations providing recreation facilities and services.

The acquisition is consistent with all applicable Plan policies, and with the applicable zoning designation, and related zoning regulations and will contribute to improved opportunities for public and community recreational activity in the City.

The DDA and project thereunder were environmentally assessed in 2004, under Environmental Assessment Application No. C-03-253, resulting in Finding Conformity under MEIR No.10130 for 2025 General Plan, duly adopted by Fresno Redevelopment Agency and the City Council. Furthermore, the EOC as lead agency caused environmental assessment of the project Facilities pursuant to EA No./CUP NoC-03-253 resulting in a finding of Categorical Exemption.

AGREEMENT:

1 **Purchase and Sale**. Seller will sell the Property to Buyer, and Buyer will purchase the Property from Seller on the terms and conditions set forth in this Agreement. Seller, upon the close of escrow shall promptly assign/transfer to Buyer all OEM and/or vendor warranties relating to the Facilities.

1.1 **State and Agency Covenants/No Release**. The Seller hereby assigns and the Buyer hereby assumes and shall be responsible for performing and complying with all applicable State Covenants and Agency Covenants that run with the Property, from and after the Closing of Escrow, provided however that such assignment/assumption shall not constitute a release, waiver, relinquishment, or compromise by either the State or the Agency of rights/remedies thereunder as against the Seller, and further provided that the State and the EOC jointly and severally hereby waive, release and discharge the City and the Property as to any and all rights, remedies, claims, damages, liens, action and/or proceedings relating to the State Grant, including without limitation that certain October 2008 State Department of Finance Fiscal Compliance Audit re Grant Agreements 05-5310-0864 and 06-5310-1010, arising or accruing prior to the date City takes title to the Property hereunder and/or from the actions/omissions of EOC, and any and all rights, benefits and protections provided by Section 1542 of the California Civil Code which reads 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 BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

2 **Conditions Precedent**. Escrow Closing and Buyer's obligation to purchase the Property are subject to the satisfaction of all the following conditions precedent. The conditions are solely for Buyer's benefit unless otherwise indicated. Each condition must be satisfied or Buyer must waive it in writing within the time provided. If no time is

stated, then the condition must be satisfied within a reasonable time. If any condition is not timely satisfied, the Buyer may waive the condition and close escrow, or it may terminate this Agreement by giving the Seller and Title Company 10 days' written notice. After expiration of the 10 days, this Agreement, and any escrow will terminate. The Title Company will return any documents and money deposited into escrow to the depositor, after deducting any escrow cancellation fee, and Buyer will have no further obligation to Seller.

2.1 **Buyer's Right to Enter and Inspect the Property.** Buyer shall have the right to enter, inspect, and conduct any due diligence tests on the Property that Buyer deems advisable. Seller grants Buyer, and/or Buyer's agents, the right, upon 24 hours notice, to enter onto the Property to conduct tests and investigations, if all the following occur: (a) Buyer conducts tests and investigations at its sole cost and expense, (b) the tests and investigations do not unreasonably interfere with Seller's possession, (c) Buyer indemnifies and holds Seller harmless from any costs or liability resulting from the tests or investigations excluding pre-existing conditions and, if the escrow is canceled for a reason that is not the fault of Seller, for any damage to the Property resulting from Buyer's tests and investigations excluding pre-existing conditions.

2.2 **Compliance with CEQA.** The Buyer and Seller shall have complied with the California Environmental Quality Act, as applicable.

2.3 **State Consent.** The State shall have consented to this Agreement including the City's proposed public and recreations purposes and uses regarding the Facility, in a writing noticed to the Escrow Officer.

2.4 **Clearance Regarding State Audit Exceptions.** The Buyer shall have noticed to the Escrow Officer its approval of the State's clearance of all exceptions noticed in the November 21, 2008 State Department of Finance Final Audit Report – Fresno County Economic Opportunities Commission and Fresno Local Conservation Corps, California Conservation Corps Grant Agreements 05-5310-0864 and 06-5310-1010.

2.5 **Agency Consent.** The Agency Executive Director shall have consented to this Agreement, in a writing noticed to the Escrow Officer.

2.6 **Turnkey Sale of Completed Facilities**. The Buyer shall have noticed to the Escrow Officer its approval of (i) an Architect's Certificate of Completion covering the Facilities, (ii) a Certificate of Occupancy covering the Facilities, and (iii) unconditional final lien releases from all Preliminary Stop Notice filers relating to the Facilities.

3 **Purchase Price.** The total purchase price for the Property is [Three Million Seven Hundred Twenty Seven Thousand Nine Hundred Sixty Seven Dollars and 63 Cents ($3,727,967.63).] Buyer will pay the purchase price by depositing a check into the escrow in time to meet the Title Company's requirements regarding immediately available funds for Closing.

4 **Eminent domain.** Seller acknowledges that Buyer has the power, subject to legal requirements, to acquire the Property by eminent domain. Buyer and Seller stipulate that the purchase price payable to Seller includes all compensation to which Seller would be entitled under Chapter 9 of the California Eminent Domain Law (Code of Civil Procedure Sections 1263.010, and following) or otherwise, connected with or arising out of the following: (a) Buyer's acquisition of the Property subject to the restrictions herein, and (b) any pre-condemnation or pre-acquisition activities of Buyer (and any officer, agent, contractor, or employee of Buyer). "Compensation" as used in the preceding sentence includes, without limitation, any claims that Seller may have for the following: all improvements, crops, fair market value of the Property, injury to remainder property, loss of goodwill, inverse condemnation, interference with or interruption of business, loss of rents in connection with relocation activities, and any other claims, losses, or damages. Buyer may file this Agreement with the Court as a stipulation upon which the Court may enter judgment in any eminent domain proceeding for the Property. Seller waives all defenses and the right to seek any additional compensation in any eminent domain proceeding for the Property. This stipulation will survive the Closing and any expiration or termination of this Agreement. Buyer acknowledges that in the event of its exercise of its eminent domain power, the Property may remain subject to the State Covenants and Agency Covenants described hereinabove.

5 **Seller's Warranties.** Seller represents and warrants that: (a) Seller owns the Property, free and clear of all liens, licenses, claims, encumbrances, easements, encroachments on the Property from adjacent properties, encroachments from the Property onto adjacent properties, and any rights of way, other than those disclosed by the public record and/or expressly referenced in this Agreement; (b) Seller has no knowledge of any pending litigation involving the Property, (c) Seller has no knowledge of any violations of, or notices concerning defects or noncompliance with, any code, statute, regulation, ordinance, judicial order, or judicial holding concerning the Property; (d) Seller has no knowledge of any hazardous materials or substances stored, discharged, or otherwise present in, on, or affecting the Property, (e) Seller has no knowledge of any material defects in the Property, and (f) the Property is free of occupancies excepting only those as may be stated in Section 6 hereof. These warranties shall survive the Closing and the recording of the grant deed.

6 **Property Occupancies.** Seller represents and warrants that the Property is not

currently leased or occupied (other than occupancy by Seller.) Seller shall not rent, re-rent, or otherwise permit any portion or part of the Property to be occupied (other than occupancy by Seller) after the Seller executes this Agreement until the earlier to occur of the following: (a) Closing, (b) failure of the City Council to approve this Agreement, or (c) or other termination of this Agreement. Buyer shall comply with any applicable relocation laws.

7 **Opening Escrow.** The parties will open an escrow with [_____] Title Company, [_____Fresno, CA _____ ("Title Company"), Attention: _____.

7.1 **Agreement as Joint Escrow Instructions.** This Agreement, when signed by Buyer and Seller and deposited into escrow with the Title Company, will be the parties' joint escrow instructions. Buyer and Seller will sign and deliver any other form instructions the Title Company may require that are consistent with this Agreement.

7.2 **Deposits into Escrow.** Buyer and Seller will deposit all instruments, documents, money, and other items into escrow with the Title Company that (i) this Agreement identifies or (ii) the Title Company may require that are consistent with the terms and purposes of this Agreement, and necessary to Closing. Within five days after the Buyer's City Council approval of this Agreement, Seller will deposit a recordable grant deed, substantially in the form attached as Exhibit "B", into the escrow with the Title Company, or will conditionally deliver it to Buyer.

7.3 **Title.** Except as provided herein, Seller will convey title of the Property to Buyer free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, leases or agreements, and other adverse interests of record or known to Seller, subject only to title exceptions numbered [___] through [___] in the preliminary title report, Order No. [_____] issued by the Title Company, effective as of [_____, 200__], ____p.m./a.m.

7.4 **Title and Closing Costs.** Seller will pay any costs of clearing and conveying title in the condition described in Section 7.3, above. Buyer will pay the costs of a CLTA owner's title policy insuring Buyer's title in the condition described in Section 7.3, escrow fees, and costs to record the grant deed. Buyer and Seller will pay any other costs according to the custom in Fresno County.

7.5 **Closing.** The escrow will be considered closed ("Closing" or "Close" or the "Closing Date") on the date that the Title Company records the grant

deed. The escrow will be in condition to Close when all conditions to Close are satisfied or waived, the Title Company is prepared to issue the title policy described herein, and the Title Company is otherwise able to record the grant deed. The escrow will continue in effect until Closing unless Buyer or Seller gives a 30-day written demand to terminate the escrow. If Seller demands that escrow terminate, then Buyer, within the 30 days, may either (a) deposit the purchase price into escrow, and the Title Company will Close escrow, or, (b) it may agree to the demand, and the Title Company will terminate the escrow and return to the depositor all funds or all documents, less any termination fee, and this Agreement will be of no further effect except as herein provided.

7.6 **Disbursements.** At Closing, the Title Company may disburse the purchase price, less Seller's costs to clear title, prorations, and other costs, if any, to Seller, when the Title Company is committed to issue a standard CLTA owner's title insurance policy to Buyer insuring its fee title in the condition set forth in Section 7.3, above, for the purchase price or such lesser amount as Buyer may designate.

7.7 **Prorations.** At Closing, the Title Company will prorate the following, between Seller and Buyer, based on a 30-day month: real property taxes, special assessments, and rents, if any.

7.8 **Risk of loss.** Any loss or damage, to the Property or any improvements on it, before Closing is at Seller's risk.

7.9 **Broker.** Each party represents and warrants that it has not engaged a broker or real estate agent for this transaction, and no commissions are payable concerning this purchase and sale.

8 **Delivery of Possession.** Seller shall deliver possession at Closing.

9 **Miscellaneous Provisions.**

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

9.2 **Notices.** All notices and other communications required or permitted under this Agreement shall be in writing and duly given on the date of service, if (a) served personally on the person to receive the notice, (b) delivered by depositing the notice or communication in the U. S. mail, postage prepaid, and addressed to the relevant party at the address set

forth below, or (c) by facsimile that provides a transmission confirmation showing the date and time transmitted.

To Sellers: Fresno County Economic Opportunities Commission
Attn: Paul McLain-Lugowski
1920 Mariposa Mall
Fresno, CA 93721

Mail a Copy To: Michael E. Moss, Esq.
Kimble, MacMichael & Upton
5260 N. Palm, Suite 221
Fresno, CA 93704

To Buyer: City of Fresno
Attn: [_____]
[_____]

9.3 **Entire Agreement.** Each Exhibit referred to in this Agreement is by that reference incorporated into and made a part of this Agreement. This Agreement is the entire agreement between the parties regarding the purchase and sale of the Property, and supersedes all prior discussions, negotiations, commitments or understanding, written or oral.

9.4 **Amendment or Cancellation.** Buyer and Seller may amend or cancel this Agreement only by mutual written consent of the parties, unless otherwise expressly provided herein.

9.5 **Successors and Assigns.** This Agreement is binding upon and shall inure to the benefit of each party, and each party's heirs, successors, assigns, transferees, agents, employees or representatives. The Buyer may assign this agreement and its rights hereunder.

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

9.7 **Attorneys' Fees**. If any party to this Agreement or The Title Company begins any action, proceeding, or arbitration arising out of this Agreement, then as between Buyer and Seller, the prevailing party shall be entitled to receive from the other party, besides any other relief that may be granted, its reasonable attorneys' fees, costs, and expenses incurred in the action, proceeding, or arbitration.

9.8 **Governing Law**. This Agreement and the legal relations between the parties shall be governed by and construed according to California law. Venue for the filing of any action to enforce or interpret this Agreement or any rights and duties hereunder shall be in Fresno, California.

9.9 **Headings**. The section headings in this Agreement are for convenience only. The headings are not part of this Agreement and shall not be used to construe it.

9.10 **Waiver**. If Buyer or Seller waives a breach of any provision herein, the waiver will not be a continuing waiver. The waiver will not constitute a waiver of any subsequent breach, or a waiver of a breach of any other provision hereof.

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

9.12 **Interpretation.** This Agreement is the result of the combined efforts of the parties. If any provision of this Agreement is found ambiguous, the ambiguity will not be resolved by construing this Agreement in favor or against any party, but by construing the terms according to their generally accepted meaning.

9.13 **Precedence of documents.** If any conflict exists between the body of this Agreement and any Exhibit or Attachment to it, the provisions of the body of this Agreement will control and take precedence over the Exhibit or Attachment.

9.14 **Counterparts.** This Agreement may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument.

9.15 **Survival.** All representations and warranties, indemnifications, and other provisions which, by their nature are intended to continue, shall survive Closing and delivery of the grant deed.

10 **Environmental Indemnity.** Seller shall indemnify, hold harmless, and defend the Buyer, its officers, agents, employees, and volunteers from any liability, loss, fines, penalties, forfeitures, claims, expenses, and costs, whether incurred by the Seller, Buyer, or any other third party, arising directly or indirectly from the release, presence or disposal of any hazardous substances or materials (as now or hereafter defined in any law, regulation, or rule) in, on, or about the Property on or before Closing. This

indemnity shall include, without limitation, any claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), or any other federal, state or local law whether statutory or common law, ordinance, or regulation. Costs or losses covered will include, without limitation, consultants, engineering, investigator fees, clean up or disposal costs and attorney's fees, and damages. Upon written notice from the Buyer, the Seller, at Seller's sole cost and expense, shall immediately assume the defense of any claims, suit or action brought against the Buyer by any public body, individual, partnership, corporation or other legal entity, relating to any matter covered by this paragraph. Seller's obligations under this indemnity shall survive the close of escrow and the recording of the grant deed.

11. **Indemnity Regarding State and Agency Covenants**. Seller shall indemnify, hold harmless, and defend the Buyer, its officers, agents, employees, and volunteers from any liability, loss, fines, penalties, forfeitures, claims, suits, judgments, expenses, and costs, including reasonable attorneys fees and costs, whether incurred by the Seller, Buyer, or any other third party, arising directly or indirectly from or related to Seller's acts or omissions relating to both and each of the State Covenants and the Agency Covenants, including without limitation regarding dangerous or defective condition or negligent design of the Facilities or the suitability of the project Site for the project Facilities; or, the Seller's negligent or wrongful act or omission in bidding, contract award, construction and other activities with respect to the installation of the project Facilities. Upon written notice from the Buyer, the Seller, at Seller's sole cost and expense, shall immediately assume the defense of any claims, suit or action brought against the Buyer by any public body, individual, partnership, corporation or other legal entity, relating to any matter covered by this paragraph. Seller's obligations under this indemnity shall survive the close of escrow and the recording of the grant deed.

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

DRAFT OF 1-23-09

BUYER:
THE CITY OF FRESNO

BY:_____

Name:
Title:

Dated:_____, 2009

City of Fresno Parks & Rec Dept
Attn: Paul Melikian
2326 Fresno St, Rm 101
Fresno, CA 93721

SELLER:
FRESNO COUNTY ECONOMIC
OPPORTUNITIES COMMISSION

By:_____

Name:
Title:

Dated: _____, 2009

Fresno County EOC
Attn: Paul McLain-Lugowski
1920 Mariposa Mall
Fresno, CA 93721

The City of Fresno has signed this Agreement pursuant to authority granted by the Fresno City Council on _____, 2009.

ATTEST:

REBECCA E. KLISCH
City Clerk

By: _____
Deputy
Dated: _____, 2009

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By:_____
Deputy / Sr. Deputy / Assistant
Dated: _____, 2009

Attachments:
Exhibit A: Legal Description
Exhibit B: Grant Deed

CITY DRAFT REVISED 1/7/09

EXHIBIT "A"

LEGAL DESCRIPTION

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

APN(s):

CITY DRAFT REVISED 1/7/09

EXHIBIT "B"

Recording Requested By:
City of Fresno
No Fee-Govt. Code Sections
6103 and 27383

When Recorded Mail to:
City of Fresno
[___]

APNs [___]

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

For a valuable consideration, receipt of which is hereby acknowledged, FRESNO COUNTY ECONOMIC OPPORTUNITIES COMMISSION, a California nonprofit public benefit corporation (GRANTOR), hereby GRANTS to the CITY OF FRESNO, a California municipal corporation, (GRANTEE), all that certain improved real property in the City of Fresno, County of Fresno, State of California, more particularly described and shown as follows:

[___]

Said grant is subject to those State Covenants and Agency Covenants contained in that certain Real Property Purchase and Sale Agreement and Joint Escrow Instructions, dated [_____] entered into between the Grantor and Grantee as consented to by the State of California Resources Agency and the Executive Director of the Redevelopment Agency of the City of Fresno, incorporated herein, which Covenants shall run with the land.

SELLER

Date

(attach notary acknowledgment to record)

Date

(attach notary acknowledgment to record)