



AGENDA ITEM NO. 10:00am # 2

COUNCIL MEETING 3/25/10

APPROVED BY

[Signature]

DEPARTMENT DIRECTOR

CITY MANAGER

[Signature]

March 25, 2010

FROM: PATRICK N. WIEMILLER, Public Works Director
Public Works Department

BY: SCOTT L. MOZIER, PE, City Engineer / Assistant Director
Public Works Department

[Signature]

KAREN M. BRADLEY, Assistant Controller
Finance Department

[Signature]

SUBJECT: RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRESNO (1) AUTHORIZING THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY (THE "AUTHORITY"), TO FORM A COMMUNITY FACILITIES DISTRICT WITHIN THE TERRITORIAL LIMITS OF THE CITY OF FRESNO TO FINANCE PUBLIC IMPROVEMENTS AND DEVELOPMENT IMPACT FEES TO PARTIALLY MITIGATE THE IMPACTS OF THE DEVELOPMENT PROJECT COMMONLY KNOWN AS FANCHER CREEK; (2) EMBODYING A JOINT COMMUNITY FACILITIES AGREEMENT SETTING FORTH THE TERMS AND CONDITIONS OF THE COMMUNITY FACILITIES DISTRICT FINANCING; (3) APPROVING AN ACQUISITION AGREEMENT BETWEEN THE CITY AND THE DEVELOPER; AND (4) AUTHORIZING STAFF TO COOPERATE WITH THE AUTHORITY AND ITS CONSULTANTS IN CONNECTION THEREWITH

RECOMMENDATIONS

Staff recommends that the Council:

1. Adopt a resolution (1) authorizing the California Statewide Communities Development Authority (CSCDA, the "Authority") to form a Community Facilities District (CFD) within the territorial limits of the City Of Fresno to finance public improvements and development impact fees to partially mitigate the impacts of the development project commonly known as "Fancher Creek"; (2) embodying a Joint Community Facilities Agreement setting forth the terms and conditions of the Community Facilities District Financing; (3) Approving an Acquisition Agreement Between the City and the Developer in substantially the form of the attached draft Acquisition Agreement; and (4) authorizing staff to cooperate with the Authority and its consultants in connection therewith.
2. Authorize the Public Works Director to execute the Acquisition Agreement in substantially the form attached, subject to City Attorney approval as to form.

EXECUTIVE SUMMARY

The City has received a request by a developer (Fancher Creek Properties LLC) for the City to participate in one of the many programs sponsored by the CSCDA. CSCDA is a joint powers authority sponsored by the League of California Cities and the California State Association of Counties. Staff recommends that the Council adopt a resolution approving the City's participation with California Statewide Communities Development Authority ("CSCDA") in partnering to form a community facilities district (CFD) for the Fancher Creek project, within the territorial limits of the City of Fresno. The CFD is not a maintenance CFD, but rather is a district for the purpose of acquiring and financing public improvements such as streets, traffic signals, water and sewer, as well as to finance Urban Growth Management (UGM) and development impact fees for the Fancher Creek project. The proposed resolution would enable CSCDA to accept the application from owners of property of Fancher Creek within the City's planning jurisdiction and to apply for tax-exempt financing of public capital facilities and development impact fees through the formation of a CFD. CSCDA's authority would be limited to the properties shown within the resolution which are entirely owned by the developers of the Fancher Creek project. The resolution also approves the Acquisition Agreement in substantially the form attached to the resolution; staff recommends that the Council authorize the Public Works Director to execute the Agreement on behalf of the City in substantially the form as attached, subject to approval as to form by the City Attorney's Office.

Should the City authorize the formation of the CFD and participation in the CFD program, the City of Fresno would have no obligation or liability associated with CFD formation and the issuance of bonds under this program or special taxes imposed. The CFD special mailed ballot election, public hearing and resolutions associated with the formation of the CFD, and administration of the CFD will be handled by CSCDA with no further Council action required beyond this resolution.

BACKGROUND

The City has received a request by a developer (Fancher Creek) for the City to participate in one of the many programs sponsored by the CSCDA. CSCDA is a joint powers authority sponsored by the League of California Cities and the California State Association of Counties. The member agencies of CSCDA include approximately 336 cities and 57 of the counties throughout California, including the City of Fresno (the "City").

The CFD program was instituted by CSCDA to allow owner(s)/developer(s) of property in participating cities and counties to finance the development impact fees that would be payable by property owners upon receiving development entitlements or building permits. The program also authorizes financing of public capital facilities directly. If a property owner/developer chooses to participate, the selected public capital facilities and the development impact fees owed to the City will be financed by the issuance of tax-exempt bonds by CSCDA. CSCDA will impose a special tax on the owner's property to repay the bonds. With respect to impact fees, the property owner will either pay the impact fees at the time of permit issuance, and will be reimbursed from the CFD bond proceeds when the bonds are issued, or the fees will be prepaid to the City from the proceeds of the bonds. In this way, the City is never at risk for the receipt of the impact fees.

The benefits to the property owner include:

- Only property owners who choose to participate in the program will have special taxes imposed on their property.
- Instead of paying cash for public capital facilities and/or development impact fees, the property owner receives low-cost, long-term tax-exempt financing of those fees, freeing up capital for other purposes.
- The property owner can choose to pay off the special taxes at any time.
- For home buyers, paying for the costs of public infrastructure through a special tax is superior to having those costs "rolled" into the cost of the home. Although the tax bill is higher, the amount of the mortgage is smaller, making it easier to qualify. Moreover, because the special tax financing is at tax-exempt rates, it typically comes at lower cost than mortgage rates.
- Owners of smaller projects, both residential and commercial, can have access to tax-exempt financing of infrastructure.

The benefits to the City include:

- The City is not liable to repay the bonds issued by CSCDA or the special taxes imposed on the participating properties.
- CSCDA handles all district formation, district administration, bond issuance and bond administration functions. A participating city can provide tax-exempt financing to property owners through the CFD while committing virtually no Finance Department staff time to administer the program.
- Providing tax-exempt financing helps participating cities and counties cushion the impact of rising public capital facilities costs and development impact fees on property owners.
- The availability of financing will encourage developers to pull permits and pay fees in larger blocks, giving the participating city immediate access to revenues for public infrastructure, rather than receiving a trickle of revenues stretched out over time. As part of the entitlement negotiation process, the possibility of tax-exempt financing of fees can be used to encourage a developer to pay fees up front.
- In some cases, the special taxes on successful projects can be refinanced through refunding bonds. Savings achieved through refinancing will be directed back to the participating city for use on public infrastructure, subject to applicable federal tax limitations.

In August 2008, the City Council approved Resolution 2008-209 which authorized CSCDA to accept applications from owner(s) of property within the City's planning jurisdiction to apply for participation in the CFD program allowing for the tax-exempt financing of public capital facilities and development impact fees through CSCDA. It also allowed CSCDA to develop draft Acquisition Agreements to be entered into between the City and the participating property owner(s)/developer(s), if applicable, to assist in formulating the terms and conditions under which financing for public capital facilities will be provided and to establish the procedure for disbursement of bond proceeds to pay for completed facilities, and then return to Council. Fancher Creek is the first development since the Council's approval in 2008 for

the City's participation in the program to request Council's authorization to move forward with a CFD under the CSCDA program.

The CFD special mailed ballot election, public hearing and resolutions associated with the formation of the CFD will be handled by CSCDA with no further Council action required beyond this resolution.

The parties are still in discussion regarding Section H of the draft acquisition agreement and, therefore, have requested authority for the Public Works Director to execute the agreement in substantially the form attached, subject to City Attorney's Office approval as to form.

FISCAL IMPACT

The City would not be liable to repay the bonds issued by the CSCDA, or pay or administer the special tax imposed on the participating properties in the Fancher Creek CFD. CSCDA would handle the district formation, district levy, district administration, bond issuance and bond administration functions. Virtually no Finance Department City staff time would be required to administer the program. The City is not obligated to issue debt, levy special taxes, or pay any debt service. All Public Works Department staff costs for approval of construction plans, inspection, acceptance of improvements and notifying CSCDA of the acceptance will be paid for by the developer. All project regulatory requirements and agreement(s) will be unaffected by participation in this CSCDA program.

PW/SLM/KMB/ss

Attachment: Resolution
 Draft Acquisition Agreement

RESOLUTION NO. _____

RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO (1) AUTHORIZING THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY (THE "AUTHORITY"), TO FORM A COMMUNITY FACILITIES DISTRICT WITHIN THE TERRITORIAL LIMITS OF THE CITY OF FRESNO TO FINANCE PUBLIC IMPROVEMENTS AND DEVELOPMENT IMPACT FEES TO PARTIALLY MITIGATE THE IMPACTS OF THE DEVELOPMENT PROJECT COMMONLY KNOWN AS FANCHER CREEK; (2) EMBODYING A JOINT COMMUNITY FACILITIES AGREEMENT SETTING FORTH THE TERMS AND CONDITIONS OF THE COMMUNITY FACILITIES DISTRICT FINANCING; (3) APPROVING AN ACQUISITION AGREEMENT BETWEEN THE CITY AND THE DEVELOPER; AND (4) AUTHORIZING STAFF TO COOPERATE WITH THE AUTHORITY AND ITS CONSULTANTS IN CONNECTION THEREWITH.

WHEREAS, the City of Fresno (the "City") is a municipal corporation and charter city duly organized and existing under a freeholders' charter pursuant to which the City has the right and power to make and enforce all laws and regulations in respect to municipal affairs and certain other matters in accordance with and as more particularly provided in Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and Section 200 of the Charter of the City; and

WHEREAS, the California Statewide Communities Development Authority (the "Authority") is a California joint-exercise of powers authority lawfully formed and operating within the State of California pursuant to an agreement (the "Joint Powers Agreement") entered into as of June 1, 1988 under the authority of Title 1, Division 7, Chapter 5 (commencing with Section 6500) of the California Government Code; and

WHEREAS, the City of Fresno (the "City") is a party to the Joint Powers Agreement and by virtue thereof a member (a "Program Participant") of the Authority; and

WHEREAS, the Joint Powers Agreement was entered into to establish the Authority as an agency authorized to issue bonds to finance projects within the territorial limits of its Program Participants; and

WHEREAS, the Joint Powers Agreement authorizes the Authority to undertake financing programs under any applicable provisions of State law to promote economic development, the stimulation of economic activity, and the increase of the tax base within the jurisdictional boundaries of its Program Participants; and

WHEREAS, the "Mello-Roos Community Facilities Act of 1982," being Chapter 2.5, Part 1, Division 2, Title 5 (beginning with Section 53311) of the Government Code of the State of California (the "Act") is an applicable provision of State law available to, among other things, finance public improvements necessary to meet increased demands placed upon local agencies as a result of development; and

WHEREAS, there is a development project in the City referred to as the Fancher Creek Project, owned by Fancher Creek Properties, LLC., a California limited liability company (respectively, the "Development Project" and the "Developer") and a development plan has been approved by the City pursuant to the Fancher Creek Environmental Impact Report (EIR), which was certified by the Fresno City Council on May 17, 2005; and the Developer has requested the City to consider formation of a community facilities district for the Development Project under the Act; and

WHEREAS, the City does not desire to allocate City resources and City staff time to the formation and administration of a community facilities district and to the issuance of bonds; and

WHEREAS, the Development Project will promote economic development, the stimulation of economic activity, and the increase of the tax base within the City; and

WHEREAS, both the Authority and the City are "local agencies" under the Act; and

WHEREAS, the Act permits two or more local agencies to enter into a joint community facilities agreement to exercise any power authorized by the Act; and

WHEREAS, the City desires to enter into such an agreement with the Authority to authorize the Authority to form a community facilities district within the territorial limits of the City to finance public improvements and related development impact fees required of the Development Project and listed in Exhibit 2 referenced hereunder and attached hereto; and

WHEREAS, a form of Acquisition Agreement (the "Acquisition Agreement") between the City and the Developer has been presented to the City Council and is on file with the City Clerk; and

WHEREAS, nothing herein constitutes the City's approval of any applications, Development Project entitlements and/or permits, and such are subject to and contingent upon City Council approval following environmental review in compliance with the California Environmental Quality Act ("CEQA"); and

WHEREAS, nothing herein affects, without limitation, requirements for and/or compliance with any and all applicable and/or necessary improvement standards, land use requirements or subdivision requirements relating to the Development Project or any portion thereof, which obligations are and shall remain independent and subsisting; and

WHEREAS, the City shall not be obligated to accept any improvements, or process an acquisition payment application, until maintenance funding satisfactory to the City is in place; and

WHEREAS, the Developer shall not participate in or be entitled to any City project impact fee mitigation fee credit and/or reimbursement relating to the Development Project including the facilities, City Improvements, and any/all fees financed hereunder, such credit and/or reimbursement shall benefit only the community facilities district referenced herein; and

WHEREAS, the City Council is fully advised in this matter;

NOW THEREFORE, the Council of the City of Fresno hereby finds, determines, declares and resolves as follows:

Section 1. The City hereby specifically finds and declares that the actions authorized hereby constitute and are with respect to municipal affairs of the City and the statements, findings and determinations of the City set forth in the recitals above and in the preambles of the documents approved herein are true and correct.

Section 2. This resolution shall constitute full “local approval,” under Section 9 of the Joint Powers Agreement, and under the Authority’s Local Goals and Policies (see below), for the Authority to undertake and conduct proceedings in accordance herewith and under the Act to form a community facilities district (the “Community Facilities District”) with boundaries substantially as shown on Exhibit 1, attached hereto, and to authorize a special tax and to issue bonds with respect thereto.

Section 3. The Joint Powers Agreement, together with the terms and provisions of this resolution, shall together constitute a joint community facilities agreement between the City and the Authority under the Act. As, without this resolution, the Authority has no power to conduct proceedings under the Act to form the Community Facilities District, adoption by the Commission of the Authority of the Resolution of Intention to form the Community Facilities District under the Act shall constitute acceptance of the terms hereof by the Authority.

Section 4. This resolution and the agreement it embodies are determined to be in the best interests of the residents of the City, and of the future residents of the area within the Community Facilities District.

Section 5. The City acknowledges that the Authority has adopted Local Goals and Policies as required by Section 53312.7 of the Act. The City approves the use of those Local Goals and Policies for use in connection with the Community Facilities District, and hereby agrees that the Authority may act under those Local Goals and Policies in forming and administering the Community Facilities District.

Section 6. Pursuant to the Act and this resolution, the Authority may conduct proceedings under the Act to form the Community Facilities District and to have it authorize the financing of the facilities set forth on Exhibit 2, attached hereto. All of the facilities, whether to be financed directly or through fees, are facilities that have an expected useful life of five years or longer and are facilities that the City or other local public agencies, as the case may be, are authorized by law to construct, own or operate, or to which they may contribute revenue. The facilities are referred to herein as the “City Improvements.” The fees are referred to as the “City Fees.”

Section 7. For fees to be paid to another local agency, the Authority will obtain the written consent of that local agency before issuing bonds to fund such fees, as required by the Act. For the improvements to be owned by other local agencies, the Authority will separately identify them in its proceedings, and will enter into joint community facilities agreements with those local agencies prior to forming the Community Facilities District, as required by the Act.

Section 8. The City Council certifies to the Commission of the Authority that all of the City Improvements including the improvements to be constructed with the proceeds of City Fees are necessary to meet increased demands placed upon the City of Fresno as a result of development occurring or expected to occur within the Community Facilities District.

Section 9. The Authority will apply the special tax collections initially as required by the documents under which any bonds are issued; and thereafter, to the extent not provided in the bond documents, may pay its own reasonable administrative costs incurred in the administration of the Community Facilities District. The Authority will remit any special tax revenues remaining after the final retirement of all bonds to the City. The City will apply any such special tax revenues it receives for authorized City Improvements and its own administrative costs only as permitted by the Act.

Section 10. The Authority will administer the Community Facilities District, including employing and paying all consultants, annually levying the special tax and all aspects of paying and administering the bonds, and complying with all State and Federal requirements appertaining to the proceedings, including the requirements of the United States Internal Revenue Code. The City will cooperate fully with the Authority in respect of the requirements of the Internal Revenue Code and to the extent information is required of the City to enable the Authority to perform its disclosure and continuing disclosure obligations with respect to the bonds, although the City will not participate in nor be considered to be a participant in the proceedings respecting the Community Facilities District (other than as a Party to the agreement embodied by this resolution) nor will the City, except as set forth in the following sentence, be or be considered to be an issuer of the bonds. For the purposes of determining eligibility for the "small issuer" exception to the rebate requirements, and for determining whether debt may be issued as "bank qualified" bonds, and for certain other purposes under the United States Internal Revenue Code, the Community Facilities District bonds will be considered to be issued on behalf of the City in the proportion that the spendable proceeds of the bonds are used to fund City Improvements and City Fees.

Section 11. In the event the Authority completes issuance and sale of bonds, and bond proceeds become available to finance the Improvements, the Authority shall establish and maintain a special fund to be known as the "City of Fresno Fancher Creek Project Community Facilities District Acquisition and Construction Fund" (the "Acquisition and Construction Fund") The portion of bond proceeds which is intended to be utilized to finance the Improvements and Fees shall be deposited in the Acquisition and Construction Fund. The Acquisition and Construction Fund will be available both for City Improvements City Fees.

Section 12. As respects the Authority, the City agrees to fully administer, and to take full governmental responsibility for, the construction or acquisition of the City Improvements and for the administration and expenditure of the City Fees including but not limited to environmental review, approval of plans and specifications, bid requirements, performance and payment bond requirements, insurance requirements, contract and construction administration, staking, inspection, acquisition of necessary property interests in real or personal property, the holding back and administration of retention payments, punch list administration, and the Authority and the other local agencies shall have no responsibility in that regard. The City

reserves the right, as respects the Developer, to require the Developer to contract with the City to assume any portion or all of this responsibility.

Section 13. The City agrees to indemnify and to hold the Authority, its other members, and its and its other members' officers, agents and employees, (collectively, the "Indemnified Parties") harmless from any and all claims, suits and damages (including costs and reasonable attorneys' fees) arising out of the design, engineering, construction and installation of the City Improvements and the improvements to be financed with the City Fees, and any act or omission of the Developer related to the City Improvements. The City reserves the right, as respects the Developer, to require the Developer to assume by contract with the City any portion or all of this responsibility.

Section 14. As respects the Authority, the City agrees – once the City Improvements are constructed according to the approved plans and specifications, and the City and the Developer have put in place their agreed arrangements for the funding of maintenance of the City Improvements – to accept ownership of the City Improvements, to take maintenance responsibility for the City Improvements, and to indemnify and hold harmless the Indemnified Parties to the extent provided in the preceding paragraph from any and all claims, etc., arising out of the use and maintenance of the City Improvements. The City reserves the right, as respects the Developer, to require the Developer by contract with the City to assume any portion or all of this responsibility.

Section 15. The City acknowledges the requirement of the Act that if the City Improvements are not completed prior to the adoption, by the Authority Commission, of the Resolution of Formation of the Community Facilities District, the City Improvements must be constructed as if they had been constructed under the direction and supervision, or under the authority of, the City. The City acknowledges that this means all City Improvements must be constructed under contracts that require the payment of prevailing wages as required by Section 1720 and following of the Labor Code of the State of California. The Authority makes no representation that this requirement is the only applicable legal requirement in this regard. The City reserves the right, as respects the Developer, to assign appropriate responsibility for compliance with this paragraph to the Developer.

Section 16. The Acquisition Agreement now on file with the City Clerk is hereby approved, and the City Manager or his designee is authorized to execute, and deliver to the Developer, the Acquisition Agreement on behalf of the City in substantially the form now on file with the City Clerk, with such changes as shall be approved by the City Attorney after consultation with the Authority's bond counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 17. After completion of the City Improvements and appropriate arrangements for the maintenance of the City Improvements, or any discrete portion thereof as provided in Section 53313.51 of the Act and in the Acquisition Agreement, to the satisfaction of the City, and in conjunction with the City's acceptance thereof, acquisition of the City Improvements shall be undertaken as provided in Article II of the Acquisition Agreement.

Section 18. The City hereby consents to the formation of the Community Facilities District in accordance with this resolution and consents to the assumption of jurisdiction by the Authority for the proceedings respecting the Community Facilities District with the understanding that the Authority will hereafter take each and every step required for or suitable for consummation of the proceedings, the levy, collection and enforcement of the special tax, and the issuance, sale, delivery and administration of the bonds, all at no cost to the City and without binding or obligating the City's general fund or taxing authority.

Section 19. The terms of the Agreement embodied by this resolution may be amended by a writing duly authorized, executed and delivered by the City and the Authority, except that no amendment may be made after the issuance of the bonds by the Authority that would be detrimental to the interests of the bondholders without complying with all of the bondholder consent provisions for the amendment of the bond resolutions, bond indentures or like instruments governing the issuance, delivery and administration of all outstanding bonds.

Section 20. Except to the extent of the indemnifications in the Agreement embodied by this resolution, and the City's agreement to take responsibility for and ownership of the City Improvements, no person or entity, including the Developer, shall be deemed to be a third party beneficiary of this resolution, and nothing in this resolution (either express or implied) is intended to confer upon any person or entity other than the Authority and the City (and their respective successors and assigns) any rights, remedies, obligations or liabilities under or by reason of this resolution.

Section 21. INTENTIONALLY OMITTED.

Section 22. This resolution shall remain in force until all bonds have been retired and the authority to levy the special tax conferred by the Community Facilities District proceedings has ended or is otherwise terminated.

Section 23. The City Council hereby authorizes and directs the City Manager, City Finance Director and other appropriate City staff to cooperate with the Authority and its consultants and to do all things necessary and appropriate to carry out the intent of this resolution and the Community Facilities District financing, and to execute any and all certificates and documents in connection with the bond issuance as shall be approved by the City Attorney after consultation with the Authority's bond counsel.

Section 24. The City Council hereby approves delivery of a certified copy of this resolution to the Authority.

Section 25. The City Council hereby acknowledges that Orrick, Herrington & Sutcliffe LLP ("Orrick") will serve as counsel to the Authority in connection with the formation and administration of the Community Facilities District and the issuance of bonds and will have responsibility for drafting any documents to be entered into by the City and the Authority; and that Orrick currently serves as bond counsel to the City in connection with proposed financing related to the Fresno Metropolitan Museum and to Granite Park. The City Council hereby acknowledges and consents to and waives any conflict that arises from the appointment of Orrick

as counsel to the Authority in connection with the formation and administration of the Community Facilities District and the issuance of bonds.

Section 26. This Resolution shall take effect upon its final adoption.

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

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the 25th day of March, 2010.

AYES:

NOES:

ABSENT:

ABSTAIN:

MAYOR APPROVAL: _____, 2010
MAYOR APPROVAL/NO RETURN: _____, 2010
MAYOR VETO: _____, 2010
COUNCIL OVERRIDE VETO: _____, 2010

REBECCA E. KLISCH
City Clerk

By: _____
Deputy

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

By: R 3-18-10
Robert R. Coyle, Senior Deputy

rrc:elb [52743elb/rrc- fancher creek reso]

Fancher Creek Properties					
		Assessor's Parcel Numbers			
Town Center		313-021-01			
		313-101-22 (Tom Richards)			
		313-101-24			
Village Center		313-021-25			
		313-280-72			

Business Park		310-132-01 Through 09			
		310-133-01 Through 06			
		313-270-57 Through 85			

EXHIBIT 2

AUTHORIZED IMPROVEMENTS AND FEES

STREETS

Clovis Avenue

Fancher Creek to Belmont

Fowler Avenue

Kings Canyon to Fancher Creek Drive

Fancher Creek Drive to Fancher Creek

Fancher Creek to Grant Avenue

Fancher Creek Drive

Fancher Creek at the Tulare Alignment to 700' Easterly

Fowler Avenue Easterly to Tentative Tract 5232

Fancher Creek to the West boundary of P.M. 2004-36

P.M. 2004-36 Frontage

Renn Avenue to Fowler Avenue within Tentative Tract 5232

East of Fowler Avenue

Kings Canyon Road

East boundary of Final Tract 5232 to Fowler Avenue

Fowler Avenue Easterly to Tentative Tract 5232

Tentative Tract 5232 frontage East of Fowler Avenue

Belmont Avenue

Sunnyside Avenue to Fowler Avenue

Fowler Avenue to Armstrong Avenue (PM 2004-36)

Fowler Avenue to Armstrong Avenue (North Side)

Clovis Avenue to Sunnyside Avenue

Armstrong Avenue

Fancher Creek Drive to Belmont Avenue

Belmont Avenue to Harvey Avenue

Armstrong Avenue Diagonal

Fancher Creek Drive to the East boundary of Tentative Tract 5232

Tulare Avenue

Clovis Avenue to Fancher Creek
Fancher Creek to Argyle Avenue

Local Streets

Adjacent to and within P.M. 2004-36 located North of Belmont
Avenue

Within P.M. 2004-36 located South of Belmont
Avenue

BRIDGES

Fancher Creek Bridge

Fancher Creek Drive between Fowler Avenue and Armstrong
Avenue

Fowler Avenue Widening

TRAFFIC SIGNALS

Fancher Creek Drive

at Clovis Avenue

Tulare Avenue

at Clovis Avenue

at Minnewawa Avenue

at Fowler Avenue

Belmont Avenue

at Minnewawa Avenue

at Sunnyside Avenue

at Armstrong Avenue

Kings Canyon Road

at Fowler Avenue

TRAFFIC SIGNAL INTERTIE

Clovis Avenue

Kings Canyon Road to Belmont Avenue

SEWER MAINS

Argyle Avenue

100' North of Beck Avenue to Fancher Creek Drive

Fancher Creek Drive

Argyle Avenue to Fancher Creek Town Center

Fowler Avenue Easterly to Tentative Tract 5232

Within Tentative Tract 5232

Belmont Avenue

Armstrong Avenue to 450' East of Fowler Avenue

Armstrong Avenue

Laverne Avenue to Freeway 180
R.O.W.

Belmont Avenue to Harvey Avenue

Local Streets and Easements

Adjacent to and within P.M. 2004-36 located North of Belmont Avenue

Within P.M. 2004-36 located South of Belmont Avenue

WATER MAINS

Fancher Creek Drive

Fowler Avenue Easterly to Tentative Tract 5232

Fancher Creek to the West boundary of P.M. 2004-36

P.M. 2004-36 Frontage

Within Tentative Tract 5232 East of Fowler Avenue

Armstrong Avenue

Fancher Creek Drive to Belmont Avenue

Belmont Avenue to Harvey Avenue

Armstrong Avenue Diagonal

Fancher Creek Drive to the East boundary to Tentative Tract 5232

Local Streets and Easements

Adjacent to and within P.M. 2004-36 located North of Belmont Avenue

Within P.M. 2004-36 located South of Belmont Avenue

WATER SUPPLY

City of Fresno Water Well

STORM DRAIN

FMFCD facilities within Fancher Creek Town Center

In Fancher Creek Drive and easements from Fancher Creek to Basin BO

In Belmont Avenue from Basin BO to Armstrong Avenue

In Armstrong Avenue from Belmont Avenue to Harvey Avenue

In Armstrong Avenue from Laverne Avenue to Freeway 180 R.O.W.

In the local streets and easements within P.M. 2004-36

DRY UTILITIES

In easements within the Fancher Creek Town Center

In streets and easements within P.M. 2004-36

TRAIL

Within Fancher Creek Town Center

Along Tulare Avenue from the Fancher Creek Town Center to Outlot F of Final Tract 5232

LANDSCAPING

East side of Armstrong from Fancher Creek Drive to Freeway 180 R.O.W.

DEVELOPMENT IMPACT FEES

1. Citywide Regional Street Impact Fees - this fee is charged on a Citywide basis to fund the construction and widening of the primary, regionally significant streets in the City of Fresno, in order to mitigate the impacts from new development upon the roadway network.
2. New Growth Area Major Street Impact Fees - this fee is charged within the designated "New Growth Area" of the City to fund the construction and widening of the balance of the planned major streets within the New Growth Area, namely the arterial and collector street system.
3. Citywide Traffic Signal Mitigation Impact Fees - this fee is charged on a Citywide basis and funds the installation of new traffic signals to serve new development and for the modification of existing traffic signals to provide the additional capacity to mitigate impacts from new development
4. Wastewater Facilities Sewer Charge - this fee pays for capacity expansion at the City's wastewater treatment plant to accommodate new development

5. Urban Growth Management (“UGM”) Trunk Sewer charges - this fee pays for the trunk sewers necessary to handle sewer flows from the new development
6. UGM Oversize Sewer charges - this fee pays for the sewer capacity needed in the oversize sewers in the collection system (10” and larger, but smaller than the trunk sewers) to serve new development
7. UGM Water Supply Fees - this fee pays for water wells to serve new development
8. UGM Transmission Grid Main Fees - this fee pays for the 14”-16” diameter distribution water mains that are necessary to serve new development
9. UGM Wellhead Treatment - this is an additional fee beyond the water supply that addresses facilities necessary to provide for wellhead treatment at sites serving new development
10. Recharge Area No. 501-S Fee - this fee pays for improvements needed to provide for groundwater recharge within the service area that this development is proposed for
11. Transmission Grid Main Bond Debt Service Charge - this fee pays for the water transmission grid main improvements that were previously bonded for and constructed in order to serve new development
12. Citywide Fire Facilities Impact Fees - this fee is charged on a Citywide basis to pay for the fire facilities needed to serve new development, including new and upgraded fire stations, equipment and vehicles
13. Citywide Police Facilities Impact Fees - this fee is charged on a Citywide basis to pay for the police facilities needed to serve new development, including new and upgraded police stations, equipment and vehicles
14. Citywide Park Facilities Impact Fees and Quimby Parkland Dedication Fees - these fees are charged on a Citywide basis to residential uses only. The fee mitigates the impact from new residential development and funds the acquisition and development of parkland and regional trails in order to provide the 2025 General Plan service level of 3 acres of green space per 1,000 new residents.

///

///

///

///

CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY
STATEWIDE COMMUNITY DEVELOPMENT PROGRAM

ACQUISITION AGREEMENT

BY AND AMONG

THE CITY OF FRESNO,
THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY
AND
FANCHER CREEK PROPERTIES, LLC

Dated as of _____, 2010

ACQUISITION AGREEMENT

Recitals

- A. The parties to this Acquisition Agreement (the "Agreement") are the CITY OF FRESNO (the "City"), the CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY ("Authority") and FANCHER CREEK PROPERTIES, LLC, a _____ limited liability company (the "Developer").
- B. The effective date of this Agreement is _____, 2010.
- C. The Developer has applied for the financing of certain public capital improvements, some of which public capital improvements are to be owned and operated by the City, and which financing is to be accomplished through a community facilities district (the "Community Facilities District") which will be administered by the Authority under and pursuant to the Mello-Roos Community Facilities Act of 1982 – California Government Code Sections 53311 and following (the "Act"). On _____, 2010, the City adopted Resolution No. _____ authorizing the Authority to form the Community Facilities District within the territorial limits of the City to finance certain development impact fees (the "Fees"), and the acquisition of certain public capital improvements (the "Acquisition Improvements") to be constructed by the Developer. On _____, 2010, the Authority formed the Community Facilities District and, on the same date, a landowner election was conducted in which all of the votes were cast unanimously in favor of conferring the specified powers of the Community Facilities District on the Authority Commission.
- D. The Authority Commission intends to levy special taxes for the purpose of repaying bonds which the Authority will issue to fund all or a portion of the costs of the Fees and the acquisition price of the Acquisition Improvements and associated authorized incidental expenses. The bond proceeds allocable to reimburse the cost of the Fees and Acquisition Improvements, together with interest earned thereon, is referred to herein as the "Available Amount".
- E. The Authority will provide financing for the Fees and the acquisition by the City of the Acquisition Improvements and the payment of the Acquisition Price (as defined herein) of the Acquisition Improvements from the Available Amount. Attached hereto as Exhibit A is a description of the Fees, and the Acquisition Improvements, including authorized discrete and usable portions thereof, if any, pursuant to Section 53313.51 of the Act, to be acquired from the Developer.
- F. The parties anticipate that, upon completion of the Acquisition Improvements and subject to the terms and conditions of this Agreement, the City will acquire the completed Acquisition Improvements.
- G. Any and all monetary obligations of the City arising out of this Agreement are the special and limited obligations of the City payable only from the Available Amount, and no other funds whatsoever of the City shall be obligated therefor under any circumstances.
- H. The Developer shall not participate in or be entitled to any City project impact fee mitigation fee credit and/or reimbursement relating to the Development Project including

the facilities, City Improvements, and any/all fees financed hereunder, such credit and/or reimbursement shall benefit only the community facilities district referenced herein.

- I. In consideration of Recitals A through H, inclusive, and the mutual covenants, undertakings and obligations set forth below, the Authority, the City and the Developer agree as stated below.
- J. Attached to this Agreement are Exhibit A (the Fees and the Acquisition Improvements and the Eligible Portions thereof), Exhibit B (form of Requisition), and Exhibit C (Bidding, Contracting and Construction Requirements for Acquisition Improvements), all of which are incorporated into this Agreement for all purposes.

Agreement

ARTICLE I

DEFINITIONS; COMMUNITY FACILITIES DISTRICT FORMATION AND FINANCING PLAN

Section 1.01. Definitions. As used herein, the following capitalized terms shall have the meanings ascribed to them below:

“Acceptable Title” means free and clear of all monetary liens, encumbrances, assessments, whether any such item is recorded or unrecorded, and taxes, except those items which are reasonably determined by the City Engineer not to interfere with the intended use and therefore are not required to be cleared from the title.

“Actual Cost” means the total cost of an Acquisition Improvement, as documented by the Developer to the satisfaction of the City and as certified by the City Engineer in an Actual Cost Certificate including, without limitation, (a) the Developer’s cost of constructing such Acquisition Improvement (including grading for such construction), including labor, material and equipment costs, (b) the Developer’s cost of designing and engineering the Acquisition Improvement, preparing the plans and specifications and bid documents for such Acquisition Improvement, and the costs of inspection, materials testing and construction staking for such Acquisition Improvement, (c) the Developer’s cost of any performance, payment and maintenance bonds and insurance, including title insurance, required hereby for such Acquisition Improvement, (d) the Developer’s cost of any real property or interest therein that is either necessary for the construction of such Acquisition Improvement (e.g., temporary construction easements, haul roads, etc.), or is required to be conveyed with such Acquisition Improvement in order to convey Acceptable Title thereto to the City or its designee, (e) the Developer’s cost of environmental evaluation or mitigation required for such Acquisition Improvement, (f) the amount of any fees actually paid by the Developer to governmental agencies in order to obtain permits, licenses or other necessary governmental approvals and reviews for such Acquisition Improvement, (g) the Developer’s cost for construction and project management, administration and supervision services for such Acquisition Improvement, (h) the Developer’s cost for professional services related to such Acquisition Improvement, including engineering, accounting, legal and similar professional services, and (i) the costs of construction financing incurred by the Developer with respect to such Acquisition Improvement.

"Actual Cost Certificate" means a certificate prepared by the Developer detailing the Actual Cost of an Acquisition Improvement, or an Eligible Portion thereof, to be acquired hereunder, as may be revised by the City Engineer pursuant to Section 2.03.

"Acquisition Account" means the "City of Fresno Fancher Creek Project Community Facilities District Acquisition and Construction Fund" established by the Authority pursuant to the Resolution and Section 1.03 hereof for the purpose of paying the Acquisition Price of the Acquisition Improvements.

"Acquisition Improvement" means a public improvement described in Exhibit A hereto.

"Acquisition Price" means the total amount eligible to be paid to the Developer upon acquisition of an Acquisition Improvement as provided in Section 2.03, or in the case of a development fee, the actual amount paid by the Developer, or the amount of a development fee to be paid on behalf of the Developer from bond or special tax proceeds, in every case not to exceed the Actual Cost of the Acquisition Improvement.

"Agreement" means this Acquisition Agreement.

"Authority" means the California Statewide Communities Development Authority.

"Authority Trust Agreement" means a Trust Agreement entered into by the Authority and an Authority Trustee in connection with the issuance of bonds.

"Authority Trustee" means the financial institution identified as trustee in an Authority Trust Agreement.

"Available Amount" shall have the meaning assigned to the term in Recital D.

"Bonds" means bonds or other indebtedness issued by the Authority that is to be repaid with the revenues from collected Special Taxes.

"City Engineer" means the City Engineer of the City of Fresno or his/her designee who will be responsible for administering the acquisition of the City's Acquisition Improvements hereunder.

"Code" means the Government Code of the State of California.

"Community Facilities District" means the Mello-Roos community facilities district established by the Authority pursuant to the Resolution and which includes the Developer's property for which the Acquisition Improvements are being funded.

"Developer" means Fancher Creek Properties, LLC, a _____ limited liability company, its successors and assigns.

"Disbursement Request Form" means a requisition for payment of funds from the Acquisition Account for an Acquisition Improvement, or an Eligible Portion thereof in substantially the form contained in Exhibit B hereto.

"Eligible Portion" shall have the meaning ascribed to it in Section 2.03 below.

"Fees" shall have the meaning assigned to the term in Recital C.

"Project" means the Developer's development of the property in the Community Facilities District, including the design and construction of the Acquisition Improvements and the other public and private improvements to be constructed by the Developer within the Community Facilities District.

"Resolution" means City of Fresno Resolution No. _____, adopted _____, 2010 titled "RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO (1) AUTHORIZING THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY (THE "AUTHORITY"), TO FORM A COMMUNITY FACILITIES DISTRICT WITHIN THE TERRITORIAL LIMITS OF THE CITY OF FRESNO TO FINANCE PUBLIC IMPROVEMENTS AND DEVELOPMENT IMPACT FEES TO PARTIALLY MITIGATE THE IMPACTS OF THE DEVELOPMENT PROJECT COMMONLY KNOWN AS FANCHER CREEK; (2) EMBODYING A JOINT COMMUNITY FACILITIES AGREEMENT SETTING FORTH THE TERMS AND CONDITIONS OF THE COMMUNITY FACILITIES DISTRICT FINANCING; (3) APPROVING AN ACQUISITION AGREEMENT BETWEEN THE CITY AND THE DEVELOPER; AND (4) AUTHORIZING STAFF TO COOPERATE WITH THE AUTHORITY AND ITS CONSULTANTS IN CONNECTION THEREWITH."

"Special Taxes" means the annual special taxes authorized to be levied by the Community Facilities District for the Acquisition Improvements.

"Title Documents" means, for each Acquisition Improvement acquired hereunder, a grant deed or similar instrument necessary to transfer title to any real property or interests therein (including easements), or an irrevocable offer of dedication of such real property with interests therein, necessary to the operation, maintenance, rehabilitation and improvement by the City of the Acquisition Improvement (including, if necessary, easements for ingress and egress) and a bill of sale or similar instrument evidencing transfer of title to the Acquisition Improvement (other than said real property interests) to the City, where applicable.

Section 1.02. Establishment of Community Facilities District. Developer has applied through the City to the Authority for financing of the Fees and Acquisition Improvements through the establishment and authorization of the Community Facilities District and the application has been approved by the City. The Community Facilities District was established by the Authority on _____, 2010, and through the successful landowner election held that same day, is authorized to levy the Special Tax and to issue the Bonds to finance the Fees and Acquisition Improvements. Developer, the City and the Authority agree to reasonably cooperate with one another in the completion of the financing through the issuance of the Bonds in one or more series.

Section 1.03. Deposit and Use of Available Amount. Upon the issuance of the first series of Bonds, the Authority will cause the Authority Trustee to establish and maintain the Acquisition Account for the purpose of holding that portion of the Bond proceeds allocated for the acquisition of the Acquisition Improvements. All earnings on amounts in the Acquisition Account shall remain in the Acquisition Account for use as provided herein and pursuant to the Authority Trust Agreement. Money in the Acquisition Account is available to respond to delivery of a Disbursement Request Form and to be paid to the Developer or its designee to pay the Acquisition Price of the Acquisition Improvements, as specified in Article II hereof. Upon completion of all of the Acquisition Improvements and the payment of all costs thereof, any remaining funds in the Acquisition Account (less any amount determined by the City as

necessary to reserve for claims against the account) (i) shall be applied to pay the costs of any additional Acquisition Improvements eligible for acquisition with respect to the Project as approved by the Authority and, to the extent not so used, (ii) shall be applied by the Authority to call Bonds or to reduce Special Taxes as the Authority shall determine.

Section 1.04. No City Liability; City Discretion; No Effect on Other Agreements. In no event shall any actual or alleged act by the City or any actual or alleged omission or failure to act by the City with respect to the Community Facilities District subject the City to monetary liability therefor. Further, nothing in this Agreement shall be construed as affecting the Developer's or the City's duty to perform their respective obligations under any other agreements, land use regulations or subdivision requirements related to the Project, which obligations are and shall remain independent of the Developer's and the City's rights and obligations under this Agreement.

ARTICLE II

DESIGN, CONSTRUCTION AND ACQUISITION OF ACQUISITION IMPROVEMENTS

Section 2.01. Letting and Administering Design Contracts. The Developer has awarded and administered, or will award and administer, engineering design contracts for the Acquisition Improvements to be acquired from Developer. All eligible expenditures of the Developer for design engineering and related costs in connection with the Acquisition Improvements (whether as an advance to the City or directly to the design consultant) shall be reimbursed at the time of acquisition of the Acquisition Improvements. The Developer shall be entitled to reimbursement for any design costs of the Acquisition Improvements only out of the Acquisition Price as provided in Section 2.03 and shall not be entitled to any payment for design costs independent of the acquisition of Acquisition Improvements.

Section 2.02. Letting and Administration of Construction Contracts; Indemnification. State law requires that all Acquisition Improvements not completed prior to the formation of the Community Facilities District shall be constructed as if they were constructed under the direction and supervision, or under the authority, of the City. In order to assure compliance with those provisions, except for any contracts resulting in the completion of Acquisition Improvements prior to the date of the Authority's Resolution of Formation of the Community Facilities District, Developer agrees to comply with the requirements set forth in Exhibit C hereto with respect to the bidding and contracting for the construction of the Acquisition Improvements. The Developer agrees that all the contracts shall call for payment of prevailing wages as required by the Labor Code of the State of California. The Developer's indemnification obligation set forth in Section 3.01 of this Agreement shall also apply to any alleged failure to comply with the requirements of this Section, and/or applicable State laws regarding public contracting and prevailing wages.

Section 2.03. Sale of Acquisition Improvements. The Developer agrees to sell to the City each Acquisition Improvement to be constructed by Developer (including any rights-of-way or other easements necessary for the Acquisition Improvements, to the extent not already publicly owned), when the Acquisition Improvement, and agreed arrangements for maintenance of the Acquisition Improvement, have been completed and put in place to the satisfaction of the City, for an amount not to exceed the lesser of (i) the Available Amount or (ii) the Actual Cost of the Acquisition Improvement. Exhibit A, attached hereto and incorporated herein, contains a list of each Acquisition Improvement. Portions of the Acquisition Improvements eligible for acquisition prior to completion of all of the Acquisition Improvements

are described as such in Exhibit A (each, an "Eligible Portion"). At the time of completion of each Eligible Portion, the Developer shall deliver to the City Engineer a written request for acquisition, accompanied by an Actual Cost Certificate and executed Title Documents for the transfer of the Eligible Portion, where necessary. In the event that the City Engineer finds that the supporting paperwork submitted by the Developer fails to demonstrate the required relationship between the subject Actual Cost and eligible work, the City Engineer shall advise the Developer that the determination of the Actual Cost (or the ineligible portion thereof) has been disallowed and shall request further documentation from the Developer. If the further documentation is still not adequate, the City Engineer may revise the Actual Cost Certificate to delete any disallowed items and the determination shall be final and conclusive.

Certain soft costs for the Acquisition Improvements, such as civil engineering, have been incurred pursuant to single contracts that include work relating also to the private portions of the Project. In those instances, the total costs under such contracts will be allocated to each Eligible Portion based on the methodology specified in Exhibit A, or as otherwise approved by the City Engineer. Where a specific contract has been awarded for design or engineering work relating solely to an Acquisition Improvement, one hundred percent (100%) of the costs under the contract will be allocated to that Acquisition Improvement. Amounts allocated to an Acquisition Improvement will be further allocated among the Eligible Portions of that Acquisition Improvement, if any, in the same proportion as the amount to be reimbursed for hard costs for each Eligible Portion bears to the amount to be reimbursed for hard costs for the entire Acquisition Improvement. Costs will be allocated to each Acquisition Improvement based on the methodology specified in Exhibit A, or as otherwise approved by the City Engineer. The costs of certain environmental mitigation required to mitigate impacts of the public and private portions of the Project will be allocated to each Acquisition Improvement based on the methodology specified in Exhibit A, or as otherwise approved by the City Engineer.

Section 2.04. Conditions Precedent to Payment of Acquisition Price. Payment to the Developer or its designee of the Acquisition Price for an Eligible Portion by the Authority from the Acquisition Account shall in every case be conditioned first upon the determination of the City Engineer, pursuant to Section 2.03, that the Eligible Portion satisfies all City regulations and ordinances and is otherwise complete and ready for acceptance by the City, and shall be further conditioned upon satisfaction of all the following additional conditions precedent:

(a) The Developer shall have provided the City with unconditional final lien releases or other similar documentation satisfactory to the City Engineer as evidence that the property (including any rights-of-way or other easements necessary for the operation and maintenance of the Eligible Portion, to the extent not already publicly owned) is not subject to any prospective mechanics lien claim respecting the Acquisition Improvement.

(b) The Developer shall be current in the payment of all due and payable general property taxes, and all special taxes of the Community Facilities District, on property owned by the Developer or under option to the Developer within the Community Facilities District.

(c) The Developer shall have provided the City with Title Documents needed to provide the City with title to the site, right-of-way, or easement upon which the subject Eligible Portion is situated. All such Title Documents shall be in a form acceptable to the City and shall convey Acceptable Title. The Developer shall provide a policy of title insurance as of the date of transfer in a form acceptable to the City Engineer insuring the City as to the interests acquired in connection with the acquisition of any interest for which such a policy of title insurance is not

required by another agreement between the City and the Developer. Each title insurance policy required hereunder shall be in the amount equal to the Acquisition Price.

(d) The City and the Developer shall have put in place their agreed arrangements for the funding of maintenance of the City Improvements.

Section 2.05. Disbursement Request Form. Upon a determination by the City Engineer to pay the Acquisition Price of an Eligible Portion pursuant to Section 2.04, the City Engineer shall cause a Disbursement Request Form substantially in the form attached hereto as Exhibit B to be submitted to the Authority Trustee, and the Authority Trustee shall make payment directly to the Developer or its designee of the amount pursuant to the Authority Trust Agreement. The Authority, the City and the Developer acknowledge and agree that the Authority Trustee shall make payment strictly in accordance with the Disbursement Request Form and shall not be required to determine whether or not the Acquisition Improvement or Eligible Portion has been completed or what the Actual Costs may be with respect to the Acquisition Improvement or Eligible Portion. The Authority Trustee shall be entitled to rely on the executed Disbursement Request Form on its face without any further duty of investigation.

In the event that the Actual Cost of an Acquisition Improvement or for an Eligible Portion is in excess of the Available Amount, the Authority Trustee shall withdraw all funds remaining in the Acquisition Account and shall transfer that amounts to the Developer or its designee. The unpaid portion of the Actual Cost shall be paid from funds that may subsequently be deposited in the Acquisition Account from a subsequent issuance of Bonds, if that occurs.

Section 2.06. Limitation on Obligations. In no event shall the City or the Authority be required to pay the Developer or its designee more than the amounts held in the Acquisition Account.

Section 2.07. Developer Payment of City Costs. Developer shall fund and maintain a deposit with the City, in the initial amount of \$20,000, from which City may reimbursement itself for its substantiated costs to review and process the acquisitions of specific infrastructure, including review of their invoices/financial statements/lien releases, etc. Developer shall replenish the deposit upon the City's reasonable request. City shall refund to Developer any portion of the deposit remaining following acquisition of all the City Improvements referenced herein.

ARTICLE III

MISCELLANEOUS

Section 3.01. Indemnification and Hold Harmless. The Developer hereby assumes the defense of, and indemnifies and saves harmless the City, the Authority and their respective officers, directors, employees and agents, including the Authority Trustee, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, including without limitation attorney's fees, by reason of, or resulting from or alleged to have resulted from the acts or omissions of the Developer or its agents and employees arising out of any contract for the design, engineering and construction of the Acquisition Improvements entered into by the Developer or arising out of any alleged misstatements of fact or alleged omission of a material fact made by the Developer, its officers, directors, employees or agents to the Authority's underwriter, financial advisor, appraiser,

district engineer or bond counsel or regarding the Developer, its proposed developments, its property ownership and its contractual arrangements contained in the official statement relating to the Authority financing (provided that the Developer shall have been furnished a copy of the official statement and shall not have objected thereto); and provided, further, that nothing in this Section 3.01 shall limit in any manner the City's rights against the Developer, and any of the Developer's architects, engineers, contractors or other consultants. Except as set forth in this Section 3.01, no provision of this Agreement shall in any way limit the extent of the responsibility of the Developer for payment of damages resulting from the operations of the Developer, its agents and employees. Nothing in this Section 3.01 shall be understood or construed to mean that the Developer agrees to indemnify the City, the Authority or any of their respective officers, directors, employees or agents, including the Authority Trustee, for any wrongful acts or omissions to act of the City, the Authority or their officers, employees, agents or any consultants or contractors, including the Authority Trustee.

Section 3.02. Audit. The City and the Authority shall have the right, during normal business hours and upon the giving of ten days' written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer (for which the Developer seeks reimbursement pursuant to this Agreement) in constructing the Acquisition Improvements.

Section 3.03. Cooperation. The City, the Authority and the Developer agree to cooperate with respect to the completion of the financing of the Acquisition Improvements by means of the Community Facilities District through the levy of Special Taxes and issuance of Bonds. The City, the Authority and the Developer agree to meet in good faith to resolve any differences on future matters which are not specifically covered by this Agreement.

Section 3.04. General Standard of Reasonableness. Any provision of this Agreement which requires the consent, approval or acceptance of either party hereto or any of their respective employees, officers or agents shall be deemed to require that the consent, approval or acceptance not be unreasonably withheld or delayed, unless the provision expressly incorporates a different standard. The foregoing provision shall not apply to provisions in the Agreement which provide for decisions to be in the sole discretion of the party making the decision.

Section 3.05. No Third Party Beneficiaries. It is expressly agreed that there are no third party beneficiaries of this Agreement, including without limitation any owners of bonds, any of the Developer's contractors for the Acquisition Improvements and any of the City's, the Authority's or the Developer's agents and employees.

Section 3.06. Conflict with Other Agreements. Nothing contained herein shall be construed as releasing the Developer or the City from any condition of development or requirement imposed by any other agreement between the City and the Developer, and, in the event of a conflicting provision, the other agreement shall prevail unless the conflicting provision is specifically waived or modified in writing by the City and the Developer.

Section 3.07. Notices. All invoices for payment, reports, other communication and notices relating to this Agreement shall be mailed to:

If to the City:

CITY MANAGER
CITY OF FRESNO
2600 Fresno Street
Second Floor
Fresno, CA 93721-3600

If to the Authority:

CALIFORNIA STATEWIDE COMMUNITIES
DEVELOPMENT AUTHORITY
2033 North Main Street, Suite 700
Walnut Creek, CA 94596

If to the Developer:

FANCHER CREEK PROPERTIES, LLC
855 M Street, Suite 1110
Fresno, CA 93721

Any party may change its address by giving notice in writing to the other parties.

Section 3.08. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Section 3.09. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

Section 3.10. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of the party's right to insist upon and demand strict compliance by the other party with the terms of this Agreement.

Section 3.11. Singular and Plural; Gender. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

Section 3.12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 3.13. Successors and Assigns. This Agreement is binding upon the heirs, assigns and successors-in-interest of the parties hereto. The Developer may not assign its rights or obligations hereunder, except to successors-in-interest to the property within the District, without the prior written consent of the City and Authority, which consent shall not be unreasonably withheld. In no event shall any successor-in-interest or assignee have any liability on account of any acts, omissions or liabilities of a prior owner (including the Developer), or for any acts, omissions or events that occur after the date on which such successor owner ceases to own such property. Without limiting and subject to the foregoing, the obligations described in Section 3.01 hereof shall apply to all assignees and successors-in-interest only with respect to acts, omissions or events occurring after the date of assignment or succession through the date on which such successor owner ceases to own such property; provided that the Developer and all assignees and successors-in-interest shall remain liable for their respective obligations under Section 3.01 and this Section 3.13 notwithstanding any subsequent assignment or succession.

Additionally, any mortgagee or other person that acquires the property within the District owned by the Developer pursuant to a foreclosure or trustee's sale or pursuant to a deed-in-lieu of foreclosure shall have the right to become the "Developer" (as a successor to the original Developer) under this Agreement.

Section 3.14. Remedies in General. It is acknowledged by the parties that the City would not have entered into this Agreement if it were to be liable in damages under or with respect to this Agreement or the application thereof.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that the City shall not be liable in damages to the Developer, or to any assignee or transferee of the Developer. Subject to the foregoing, the Developer covenants not to sue for or claim any damages for any alleged breach of, or dispute which arises out of, this Agreement.

Section 3.15. Assignment. The obligations and rights of the parties to this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, but those rights and obligations shall not be assignable, transferable or delegable, except pursuant to the terms hereof, without the written consent of the other parties hereto, and any attempted assignment, transfer or delegation thereof which is not made pursuant to the terms hereof shall be void.

Section 3.16. Amendments and Waivers. Any term of this Agreement may be amended or waived only with the written consent of all of the parties hereto.

Section 3.17. Sole Agreement. This Agreement, including Exhibit A hereto, constitutes the sole agreement of the parties and supersedes all oral negotiations and prior writings with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written above.

CITY OF FRESNO, a City in Fresno County,
California,

By _____
City Manager

ATTEST:

By _____
City Clerk

APPROVED TO FORM:

By _____
City Attorney

CALIFORNIA STATEWIDE COMMUNITIES
DEVELOPMENT AUTHORITY, a joint powers
authority created by the California Legislature in
1988,

By _____
Member of the Commission of the Authority

ATTEST:

By _____
Authority Secretary

FANCHER CREEK PROPERTIES, LLC. , a
limited liability company

By _____
Managing Member

EXHIBIT A

DESCRIPTION OF ACQUISITION IMPROVEMENTS, ELIGIBLE PORTIONS
AND ESTIMATED ACTUAL COST

[INSERT]

EXHIBIT B

**DISBURSEMENT REQUEST FORM
(Acquisition Improvement or Eligible Portion)**

To: [Authority Trustee]

Attention: _____

Fax: _____

Phone: _____

Re: CSCDA (Fresno Fancher Creek) Community Facilities
District Financing

The undersigned, a duly authorized officer of the City of Fresno hereby requests a withdrawal from the City of Fresno Fancher Creek Project Community Facilities District Acquisition and Construction Fund, as follows:

Request Date: [Insert Date of Request]
Name of Developer: Fancher Creek Properties, LLC
Withdrawal Amount: [Insert Acquisition Price]
Acquisition Improvements: [Insert Description of Acquisition Improvement(s)/Eligible Portion(s) from Exhibit A]
Payment Instructions: [Insert Wire Instructions or Payment Address for Developer or Developer's designee as provided by the Developer]

The undersigned hereby certifies as follows:

The Withdrawal is being made in accordance with a permitted use of the monies pursuant to the Acquisition Agreement and the Withdrawal is not being made for the purpose of reinvestment.

None of the items for which payment is requested have been reimbursed previously from the Acquisition Account.

If the Withdrawal Amount is greater than the funds held in the Acquisition Account, the Authority Trustee is authorized to pay the amount of such funds and to pay remaining amount(s) as funds are subsequently deposited in the Acquisition Account.

CITY OF FRESNO

By:

Title:

EXHIBIT C

BIDDING, CONTRACTING AND CONSTRUCTION REQUIREMENTS FOR ACQUISITION IMPROVEMENTS

With respect to construction contracts for improvements not completed prior to the adoption, by the California Communities Statewide Development Authority of its Resolution of Formation of the Community Facilities District, bids for construction shall be solicited from at least three (3) qualified contractors, provided at least three (3) qualified contractors are reasonably available. The Developer may also directly solicit bids. The bid package may consist of preliminary plans and specifications.

The bidding response time shall be not less than ten (10) working days.

An authorized representative of the City shall be provided a copy of the tabulation of bid results upon request.

Contract(s) for the construction of the public Acquisition Improvements shall be awarded to the qualified contractor(s) submitting the lowest responsible bid(s), as determined by the Developer.

The contractor to whom a contract is awarded shall be required to pay not less than the prevailing rates of wages pursuant to Labor Code Sections 1770, 1773 and 1773.1. A current copy of applicable wage rates shall be on file in the Office of the Fresno City Clerk, as required by Labor Code Section 1773.2. The Developer, not 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, and Government Code; The Fresno City Charter; and the Fresno Municipal Code. The City makes no representations regarding the applicability of any such laws to this Acquisition Agreement, the City Improvements, or the parties' respective rights or obligations hereunder including, without limitation, payment of prevailing wages, competitive bidding, subcontractor listing, and other matters. The City shall not be liable or responsible, in law or equity, to any person for the Developer's failure to comply with any such laws, whether the City knew or should have known of the need for the Developer to comply, or whether the City failed to notify the Developer of the need to comply. The Developer is referred to the City of Fresno, Department of Public Works, Construction Management Division, to obtain the current prevailing wage rates, to the extent said rates are applicable to the construction of any of the City Improvements.