

AGENDA ITEM NO. 9:30am E
COUNCIL MEETING May 21, 2009
APPROVED BY _____

May 21, 2009

DEPARTMENT DIRECTOR _____

CITY MANAGER 

FROM: GARY WATAHIRA, Deputy City Manager

BY: BRUCE BARNES, Project Manager 
Planning Division

SUBJECT: APPROVE THE CONSIDERATION OF A RIGHT OF ENTRY (ROE) PERMIT
RELATED TO THE FRESNO VETERAN'S HOME PROJECT AND EXECUTION OF
RELATED DOCUMENTS

Presented to City Council

Date 5/21/09

Disposition _____

KEY RESULT AREA

One Fresno

RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to sign the Right of Entry (ROE) Permit between the City of Fresno and the State of California related to Fresno Veteran's Home. Should the Council approve the this Right of Entry Permit, the City will be responsible for the construction of the "standard" street improvements along California Avenue in front of the site, as would have been expected of any developer. The City will install an Asbestos/Concrete (AC) dike along South Marks Avenue to direct surface storm water southward to the on-site pond, which the State has indicated this would be acceptable.

EXECUTIVE SUMMARY

The Veteran's Home, to be constructed at the southeast corner of California and Marks Avenues, is in the early stages of the design/build selection process. The State Department of General Services (DGS) is requesting a ROE Permit to allow the City to access the property for the purpose of maintaining a temporary onsite drainage basin. Per the original agreement with the State, the City of Fresno is obligated to supply all utility services, including storm drainage. According State officials, the commencement of construction could occur as soon as spring of 2010. Prior to selecting the design/build contractor, the State has requested that the City enter into this ROE Permit. Providing storm drainage under the original agreement would involve installing pipes, as well as the purchase and completion of a ponding basin at an estimated cost of \$2 million. Completion within the State's project timeline is not possible. The State has verbally agreed to temporarily forego requiring the permanent drainage facilities through execution of the proposed Right of Entry (ROE) agreement.

In the proposed ROE, the State has agreed to build a temporary five acre ponding basin on the project site and give the City eight years to connect the site to permanent drainage facilities. Within eight years, the City would then fill in the pond and connect the site to permanently installed drainage facilities. In return for the State's allowing the City eight years to provide permanent drainage facilities, the City will agree to provide street improvements on West California Avenue. The City estimates that the standard street improvements could cost as much as \$1.3 million which will be due in FY 2012 based on the estimated 2 years to complete the Veterans Home project. Although recent bids for street work have been coming in 30-40% below the engineers estimate, it is difficult to predict what costs will be two years from now. It is important to note that the 27 feet of street right-of-way along California Avenue and Marks Avenue was re-conveyed to the City for planned street improvements prior to conveyance of the parcel to the State.

REPORT TO THE CITY COUNCIL

APPROVE THE CONSIDERATION OF A RIGHT OF ENTRY (ROE) PERMIT RELATED TO THE FRESNO VETERAN'S HOME PROJECT AND EXECUTION OF RELATED DOCUMENTS

Page 2

At the time of the original agreement with the State, the Running Horse development was in progress and would have provided all infrastructure improvements at no cost to the City. The development filed for bankruptcy in 2007 and there is no other development conditioned with the requirement to install the necessary drainage facilities. The ROE is not a formal amendment to the original contract and the City is still obligated under that Agreement to provide permanent facilities. The State has agreed to include language in the ROE that the City's commitments under the ROE related to temporary and permanent drainage facilities constitutes compliance with the original agreement.

The State, through its design/build contractor, has agreed to provide the City with \$150,000 for design services for the project. The ROE Permit will require the City to maintain the temporary retention basin for storm water drainage during the terms of its use. Prior to the end of eight years, the City must connect the storm drains to a permanent pipeline and restore the site to its original condition.

BACKGROUND

On July 29, 2003, the City Council authorized the City Manager to sign an "Agreement for the Conveyance and Acceptance of Real Property" with the State of California, Board of Public Works, for the benefit of the Department of Veteran's Affairs (Exhibit C). Per the agreement, "The City warrants that infrastructure for all utilities, including water, electricity, natural gas, sewer, telephone and storm drains are installed to the boundary of the Property, or will be prior to State's commencement of construction of the property, and available in sufficient capacity for use by the State in the development of the Project". Water and sewer installation will cost \$904,000 which is currently budgeted and will continue to be budgeted in FY 2010. The City also agreed to provide for the installation of gas, electric and telephone services at a cost of \$300,000, which is currently budgeted and will continue to be budgeted in FY 2010. Through properly coordinated and timed efforts, most of this cost will be rebated by utility companies to the City of Fresno as the Veteran's Home begins to consume these services. The storm drainage system will involve installing pipes, as well as the purchase and completion of a ponding basin at an estimated cost of \$2 million. Completion within the State's project timeline is not possible. The State has agreed to build a temporary five acre ponding basin on the project site and allow the City to defer installation of a permanent drainage system. The Right of Entry (ROE) Permit also requires the City of Fresno to maintain the temporary pond at an estimated cost of \$500 to \$1,000 per year, commencing FY 2012.

The State DGS is currently soliciting bids from "design-build" firms and intends to award a contract for the \$125 million, 300-bed Veteran's Home on the basis of "best value" in early 2010. The City of Fresno Department of Public Utilities has budgeted for, and intends to install the necessary water and sewer lines in the late summer or fall 2009, in advance of the design-builder's arrival at the site. The final Environmental Impact Report (EIR) is currently being completed. The EIR indicates that 452 permanent, full-time jobs will be created by the project, in addition to the several hundred temporary construction jobs.

The State will provide \$150,000 to the City of Fresno Public Works Department to design the necessary bid documents (plans and specifications), inspection of construction work and to administer the construction contract. The cost of construction is estimated to be \$1.3 million and is estimated to be constructed in FY 2012.

REPORT TO THE CITY COUNCIL

APPROVE THE CONSIDERATION OF A RIGHT OF ENTRY (ROE) PERMIT RELATED TO THE FRESNO VETERAN'S HOME PROJECT AND EXECUTION OF RELATED DOCUMENTS

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FISCAL IMPACT

The fiscal impact of the ROE will be the cost of street, sidewalk and curb and gutter improvements at an estimated cost of \$1.3 million which will require funding in FY 2012, the annual cost of maintaining the retention basin upon completion at a cost of \$ 500-1,000. An estimated \$10,000 will be needed to restore the site. Connecting the future 48" inch storm drain line in South Marks Avenue, purchasing the land and constructing the required portion of the storm drainage system will cost an estimated \$2 million by fiscal year 2018.

Per the staff report dated July 29, 2003, the construction expenditures will generate \$244,000 in sales taxes directly to the City. And ongoing operations of the facility will generate an estimated \$206,000 in sales tax over the first five year period. Over the 40 year life of the project sales tax revenue to the City will exceed \$1.6 million. These estimates were based on a \$62 million construction project and the creation of 300 permanent jobs. The project cost has increased to \$125 and projected to create 452 jobs

- Attachments:
- Right of Entry Permit and attachments
 - Exhibit A: Map illustrating area for street improvements
 - Exhibit B: Description of area for street improvements
 - Exhibit C: Staff Report – July 29, 2003

RIGHT OF ENTRY PERMIT

STORM WATER CONTROL MEASURES

Agency: Department of Veterans Affairs

Project: Fresno New Home Veterans Site

File: TR08 041-G ABMS 118643

This RIGHT OF ENTRY PERMIT is made and entered into this _____ day of _____, 2009, between the STATE OF CALIFORNIA, acting by and through its Director of the Department of General Services, with the approval of the California Department of Veterans Affairs, hereinafter called STATE, and the CITY OF FRESNO, its officers, employees, agents and contractors, hereinafter called CITY.

STATE hereby gives permission to CITY to enter upon that real property located within the STATE'S land located at the southeast corner of South Marks Avenue and West California Avenue, City of Fresno, County of Fresno, APN 477-021-22T, as shown on the attached Exhibit A and as described in the attached Exhibit B, for the purposes of maintaining the retention pond, to be located at the southwest corner of the said property, in addition to maintenance of the storm water and pipes.

The City's obligations in this agreement related to a temporary flood control basin and future obligations to connect permanent flood facilities to the Site are interpreted by State representatives to meet the City's obligations pursuant to Section 3 of the August 30, 2005 Agreement for Conveyance and Acceptance of Real Property for flood control and drainage facilities.

This Right of Entry is subject to the following terms and conditions:

1. This Right of Entry is subject to existing contracts, leases, licenses, encumbrances and claims which may affect said property.
2. CITY waives all claim against STATE, its officers, agents and employees, for loss or damage caused by, arising out of, or in any way connected with the exercise of this Right of Entry, and CITY agrees to protect, save harmless, indemnify, and defend STATE, its officers, agents and employees from any and all loss, damage or liability including, without limitation all legal fees, expert witness or consultant fees and expenses related to the response to, settlement of, or defense of any claims or liability which may be suffered or incurred by STATE, its officers, agents and employees caused by, arising out of, or in any way connected with exercise by CITY of the rights hereby granted, except those arising out of the sole negligence of STATE.
3. STATE reserves the right to use said real property in any manner, provided such use does not unreasonably interfere with CITY'S rights herein.
4. This Right of Entry shall be for three years from the start of construction on January 1, 2010, with an option to renew for five years until December 31, 2018
5. CITY shall furnish to STATE at the time of execution of this Right of Entry a certificate of Insurance, with STATE'S issued to the State of California, Department of Veterans Affairs, with the amount of Commercial General Liability being at least ONE MILLION DOLLARS (\$1,000,000) per occurrence, and naming the STATE as an additional insured. Said certificate of insurance shall be in effect for full term of this Right of Entry and shall be issued by an insurance company which is acceptable with the Department of General Services, Office of Risk and Insurance Management or be provided through partial or total self-insurance acceptable to DGS. It is agreed that STATE shall not be liable for the payment of any premiums or assessments on the insurance coverage required by this provision. Permittee agrees that the insurance herein provided for shall be in effect at all times during the term of this Right of Entry.
6. CITY agrees to conform to the following requirements:
 - a. Prior to any entry upon said land for any of the purposes hereinabove set forth, CITY shall notify STATE by written or oral notice to the authorities in charge of the new Fresno Veterans Home.

RIGHT OF ENTRY PERMIT
STORMWATER CONTROL MEASURES

Agency: Department of Veterans Affairs
Project: Fresno New Home Veterans Site
File: TR08 041-G

7. For the above consideration, the following apply:

- a. CITY agrees to pay all costs of the construction and installation of curbs, gutters, paving, and sidewalks along West California Avenue in front of the proposed Veterans Home Site and any necessary transition paving. In addition, CITY will install an Asbestos/Concrete (AC) dike along the eastern edge of South Marks Avenue to direct storm water southward to the temporary basin.
- b. The Contractor to the STATE is to pay a fee of \$150,000 to the CITY of design of the street improvement project at West California Avenue.
- c. CITY agrees to install the proposed street improvement plans within 6 months of the estimated completion and operation of the Veterans Home, whenever that maybe.
- d. STATE agrees to pay all costs of the construction and installation of the on-site underground storm drain pipes, the 5-acre retention pond of approximately 10 feet in depth, and the security fence with gate within the above referenced property.
- e. CITY is responsible for the maintenance of the retention pond, and storm runoff from the storm drains located in the streets, to include, but not limited to, pumping of excess water. In addition, the CITY will clear the storm lines on-site as necessary to prevent backup of storm water.
- f. STATE to control natural drainage on site. Commencement point for natural gravity and flow of storm water shall be at the northeast corner of the property.
- g. Upon installation of the City of Fresno's proposed infrastructure and storm drain system along South Marks Avenue, the CITY will tie into any existing lines thereby diverting storm water to the CITY'S new system, and fill the existing pond to grade with soil adequate for landscaping and match the surrounding area.
- h. Key control to the fence surrounding the retention pond to be provided to the CITY and the Chief of the Plant of the Fresno Veterans Home.

STATE OF CALIFORNIA
Department of General Services

CITY OF FRESNO

By: _____
MICHAEL SALYER

By: _____
ANDREW T. SOUZA

Title: Senior Supervising Real Estate Officer

Title: Fresno City Manager

CONSENT: Department of Veterans Affairs

APPROVED AS TO FORM:
JAMES C. SANCHEZ, CITY ATTORNEY

By: _____

By:  5/13/09

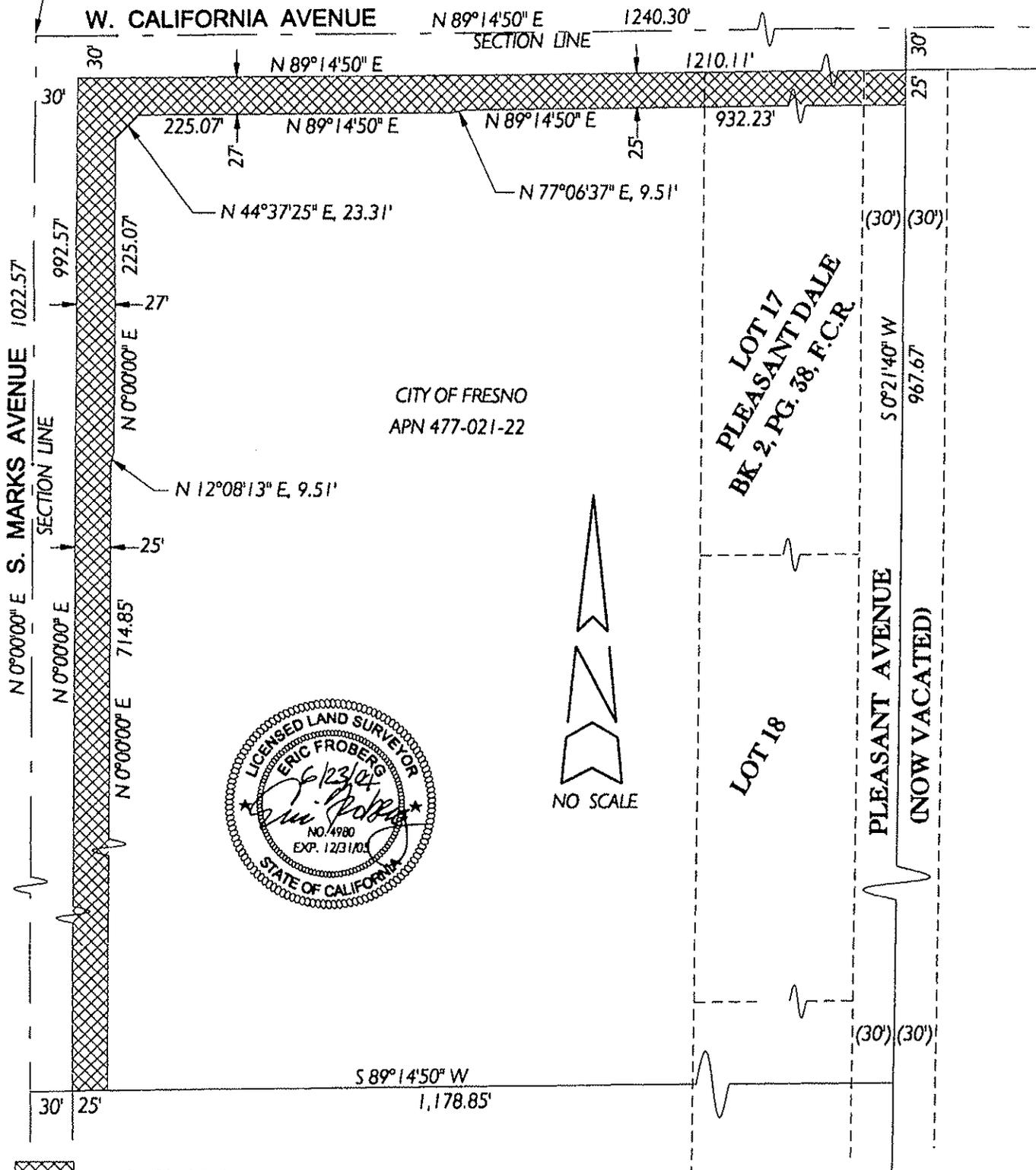
Title: Secretary, Department of Veterans Affairs

Title: Senior Deputy

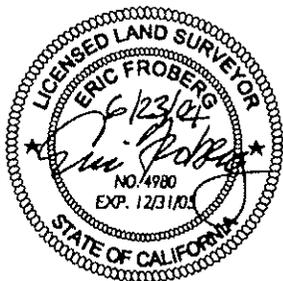
Date

EXHIBIT "A"

NW CORNER
SEC. 18, 14/20



CITY OF FRESNO
APN 477-021-22



INDICATES AREA TO BE DEDICATED
55,574 S.F. ± 1.276 Acres ±

D:\DATA\DCad\Draw\Vets home dedications.dcd

REF. & REV. 2004-108 PLAT NO. 2950	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS		PROJ. ID. _____
	DEDICATION OF CITY-OWNED PROPERTY AS AN EASEMENT AND RIGHT-OF-WAY FOR PUBLIC STREET PURPOSES		FUND NO. _____
			ORG. NO. _____
		DR. BY _____ DMC	SHEET NO. _____
		CH. BY _____ AJ	OF _____ SHEETS
		DATE JUNE 17, 2004	15-A-7709
		SCALE NO SCALE	

APN 472-022-14
Street Easement

EXHIBIT "B"

That portion of the northwest quarter of Section 18, Township 14 South, Range 20 East, M.D.B. & M., and a portion of Lot 17 of Pleasant Dale Tract, according to the map thereof recorded in Book 2 of Plats at Page 38, Fresno County Records, more particularly described as follows:

COMMENCING at the northwest corner of the northwest quarter of said Section 18; thence N 89°14'50" E, along the north line of said northwest quarter, a distance of 1,240.30 feet, more or less, to the intersection of said north line with the centerline of Pleasant Avenue, now vacated, as said Pleasant Avenue is shown on said map of said Pleasant Dale Tract; thence S 0°21'40" W, along said centerline, a distance of 30.00 feet to a point on the south right-of-way line of West California Avenue, said point being the TRUE POINT OF BEGINNING of this description; thence S 89°14'50" W, parallel with and 30.00 feet south of said north line of said northwest quarter, a distance of 1,210.11 feet; thence S 0°00'00" W, parallel with and 30.00 feet east of the west line of said northwest quarter, a distance of 992.57 feet; thence N 89°14'50" E, parallel with said north line of said northwest quarter, a distance of 25.00 feet; thence N 0°00'00" E, parallel with and 55.00 feet east of the west line of said northwest quarter, a distance of 714.85 feet; thence N 12°08'13" E, a distance of 9.51 feet; thence N 0°00'00" E, parallel with and 57.00 feet east of the west line of said northwest quarter, a distance of 225.07 feet; thence N 44°37'25" E, a distance of 23.31 feet; thence N 89°14'50" E, parallel with and 57.00 feet south of said north line of said northwest quarter, a distance of 225.07 feet; thence N 77°06'37" E, a distance of 9.51 feet; thence N 89°14'50" E, parallel with and 55.00 feet south of said north line of said northwest quarter, a distance of 932.23 feet to said centerline of Pleasant Avenue; thence N 0°21'40" E, along said centerline, a distance of 25.00 feet to the TRUE POINT OF BEGINNING.

Contains an area of 55,574 square feet, more or less.

2004-108
15-A-7709
Plat-2950



5



REPORT TO THE CITY COUNCIL

AGENDA ITEM NO. 9:30 am
COUNCIL MEETING 7/29/03

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

July 29, 2003

FROM: NICK P. YOVINO, Director
Planning and Development Department

BY: BRUCE BARNES, Project Manager *BB*
Planning and Development Department

SUBJECT: CONSIDERATION OF PURCHASE AND CONVEYANCE OF PROPERTY LOCATED AT THE SOUTHEAST CORNER OF SOUTH MARKS AND WEST CALIFORNIA AVENUES TO THE STATE OF CALIFORNIA FOR A HOME FOR AMERICAN MILITARY VETERANS

RECOMMENDATION

It is recommended that the City Council:

1. Approve the acquisition of the Hayashi Property (hereinafter the "Property," Exhibit 1).
2. Authorize the City Manager to execute a purchase agreement on the terms set forth in the Letter of Intent dated July 24, 2003 (Exhibit 2).
3. Find that the \$756,250 purchase price for the property is appropriate based on the public benefit identified in the Economic Impact Summary (Exhibit 3).
4. Upon transfer of the Property to the City, authorize the City Manager to enter into an agreement substantially in the form identified in the "Agreement for Conveyance and Acceptance of Real Property" (Exhibit 4) between the City and the State of California, State Board of Public Works.

EXECUTIVE SUMMARY

- The State of California will build a \$62 million Veterans Home in Fresno County in the next several years.
- Nine local sites were reviewed by local veterans and State officials over the past two years and eight were rejected. The subject site was determined to be the preferred site; it is located adjacent to the proposed Running Horse Project. Although not currently in the City, the site can be annexed.
- The Veterans Home will generate an annual payroll of \$14 million for 300 employees with an average annual salary and benefits of \$46,700 per employee. The Veterans Home will also generate annual purchases of \$7 million in local goods and services.
- The State of California will only accept donated land for the facility (at least 20 acres) and the donor must provide all utilities to the site. The Veterans have asked the City to purchase the land for donation. Because of the project's overall and substantial service and economic benefits, the City should provide the site.

Presented to City Council
Date 7/29/03
Disposition Staff. Res.
approved; 7/29/03 - 246
accepted

REPORT TO THE CITY COUNCIL

Purchase and Conveyance of Property for Veterans Home

July 29, 2003

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- City staff has met with the owners (Hayashi family) of the property and negotiated a price and terms specified in Exhibit 2. The price (\$756,250) is approximate to an option amount agreed to between the Hayashi family and the developer of the Running Horse Project. The developer has agreed to let the City pursue the property 's purchase.
- The total cost to purchase, prepare, and service the site would range between \$800,000 and \$1.3 million. Other future development in the area, for example the installation of waterlines by other developers, would help keep this cost in the lower end of the range. Applying this cost range to the creation of 300 jobs indicates that the cost per permanent job ranges from \$2,662 to \$4,253. Federal guidelines typically allow for the expenditure of federal funds of up to \$35,000 per permanent job created.
- The City will pay more than fair market value for site, however, due to the creation of 243 construction jobs and 300 permanent facility jobs, the additional cost is offset and justified by increased revenue to the City through sales taxes and other revenue sources (see Exhibit 3).
- Existing and incoming revenue from the City's Rental Rehabilitation Revolving Revenue Program account are available to purchase the site.
- It is recommended that the City Manager be directed to implement the negotiated terms with the Hayashi family, purchase the site and then convey it to the State.

BACKGROUND

Approximately \$62 million dollars is available in State and Federal funds for the construction of a 300-bed Veterans Home in Fresno County. Funding is based on a 35 percent State share and a 65 percent Federal share. The annual operating budget is estimated to be \$21 million. This includes \$14 million in payroll for 300 employees and \$7 million for purchases of goods and services. The average annual salary and benefits per employee is \$46,700. Approximately two years ago the Governor appointed a Veterans Home Site Selection Committee. The Committee and its successor, the Central California Veterans Home Support Foundation, Inc., investigated nine sites. Upon completion of this process, the Hayashi property was recommended (Exhibit5).

The State will only accept sites which are donated and which have or will have all infrastructure to the site. No State or Federal funds are available for site acquisition and construction of infrastructure. State officials indicated that August 11, 2003, is the deadline for securing a site and entering into an Agreement between the City and the State to meet the Federal deadline for application ranking and rating.

Based on the recommendation from the local Veterans, and in light of the impending deadline, the City ordered an appraisal and a Phase I Environmental Site Assessment of the Property. The appraisal indicates a fair market value of approximately \$18,500 per acre. The City now proposes to only purchase 27.50 acres. Under the terms of the purchase, the City will need to offer \$247,500 more than the appraised value.

The City has no legal authority to exercise eminent domain on territory outside its City limits in this particular circumstance. Absent current eminent domain authority, the City is left with seeking a voluntary land acquisition. Given the benefits of a \$62 million construction project, coupled with the on-going \$21 million operating budget once the home is built and occupied, the economic benefits to the City far outweigh the added costs and justify the negotiated price. As shown in the Economic Impact Summary, the construction of the Veterans Home will support an estimated 472 jobs (direct and indirect) and generate an estimated

\$244,000 in sales tax revenue directly to the City. The ongoing operations of the facility will support an estimated 372 jobs (direct and indirect) and generate an estimated \$206,000 in sales tax revenue directly to the City over the next five years. Therefore, within five years of the start of construction in the summer of 2005, sales tax revenue to the City is estimated to be \$450,000. Over the 40 year life of the project, sales tax revenue directly to the City will exceed \$1.6 million.

The purchase and sale and any project approvals are subject to compliance with all applicable laws, including environmental reviews under the California Environmental Quality Act.

The total estimated cost of the project is as follows:

Purchase of land	\$756,250
Flood Control	42,350
Water line	455,000 *
Relocate tenant	22,500
Gas/Electric	-0-
Total	\$1,276,100

* If a 58-unit subdivision at Madison and Marks Avenues is approved and built, this cost would be reduced by \$100,000. The Veterans Home Project can become a catalyst for new additional development that would largely payback the City for its costs. In addition, if the Running Horse Project was approved and built, this would not be a cost at all. Finally, water would not have to be available until April of 2005, allowing additional time for the City to plan for this expenditure, if necessary.

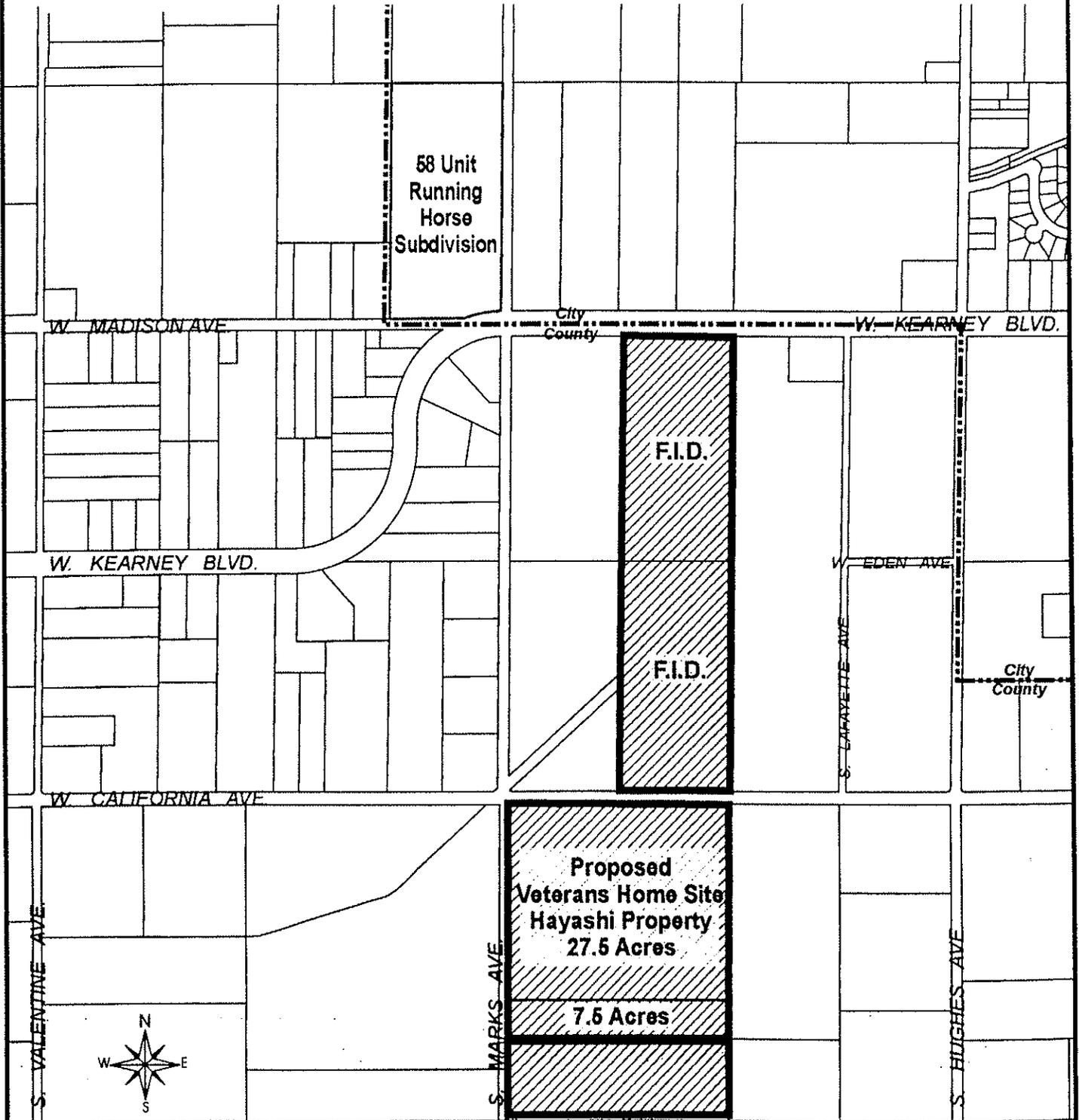
bbj|A:\Veterans Home RCC 7-29-03.wpd

Attachments: Exhibit 1 - Vicinity Map of Property
Exhibit 2 - Letter of Intent dated July 24, 2003
Exhibit 3 - Economic Summary
Exhibit 4 - Agreement for Conveyance and Acceptance of Real Property
Exhibit 5 - Letter from Charles Parnell, Central California Veterans, dated July 21, 2003

Veterans Home Project: Proposal to Prezone and Annex Parcels

LEGEND

 Prezone to R-1/UGM
and Annex Parcels



Vicinity Map



Exhibit 2

Daniel G. Hobbs
City Manager

July 24, 2003

Masao and Hanako Hayashi, Trustees
and Shiego and Kinuko Hayashi, Trustees
1348 South Marks Avenue
Fresno, CA 93706

RE: LETTER OF INTENT TO OFFER TO PURCHASE 27.50 ACRES OF LAND AT
CALIFORNIA AND MARKS AVENUE, FRESNO AND RELATED MATTERS

Dear Property Owners:

In our letter to you of June 11, 2003, from Daryl L. Balch, Supervising Real Estate Agent, we explained that the City of Fresno needs to acquire land for a new veterans home to be located in the vicinity of West California and South Marks Avenues. The property you own at the southeast corner of that intersection has been determined to be the best location for such a facility.

Staff will recommend to the City Council at our July 29, 2003, meeting scheduled for 9:30 A.M. that an offer to purchase 27.50 acres of your 35.74-acre parcel for a total purchase price of \$756,250 subject to all of the following conditions:

1. City Council approval.
2. City Attorney approval.
3. Results of an appraisal and any subsequent modifications.
4. Economic Benefit Analysis which is favorable and justifies the purchase price of the property.

It is also mutually understood that staff will recommend to the City Council that they authorize staff to:

City of Fresno
City Hall • 2600 Fresno Street • Fresno, California 93721-3601
(559) 621-7770 • FAX (559) 621-7776 • www.fresno.gov



Masao and Hanako Hayashi, Trustees
and Shiego and Kinuko Hayashi, Trustees
July 24, 2003
Page 2

1. Prepare and process a rezoning application for the subject parcel and the adjoining southerly parcel at no cost to you. The rezoning designation shall be R-1/UGM.
2. Prepare and support an annexation application on same parcels at no-cost to you.
3. Prepare a grant deed and legal description which will create a 27.5 acre parcel for the City and the remainder parcel shall be retained in your name.
4. In consideration of items 2 and 3 above of this section, Hayashi Trustees to agree to sign an option in favor of the City to purchase remainder for a period of one year from the date City closes on the 27.50 acre parcel.
5. The City will pay for all escrow, recording, and title insurance costs. With a sale to a public agency, such as the City of Fresno, there are tax code provisions that may allow you to defer capital gains. Your accountant or tax specialist should be able to assist you in these matters. With you concurrence, we will prepare a grant deed for your signatures.

This project is considered very important to the Fresno region as well as the many deserving veterans who will live there. We look forward to working with you to make this project a tremendous success.

Sincerely,

Daniel G. Hobbs
City Manager

Terms accepted:

Masao Hayashi Date

Shiego Hayashi Date

Kinuko Hayashi Date

Masao and Hanako Hayashi, Trustees
and Shiego and Kinuko Hayashi, Trustees
July 24, 2003
Page 3

cc: Mayor Autry
City Council Members
City Attorney
City Finance Director
City Planning Director

Exhibit 3

Economic Impact Summary¹ California Veterans Home, Fresno

JOBS AND SALES TAX REVENUE TO THE CITY OF FRESNO OVER FIVE YEARS
ATTRIBUTABLE TO THE CONSTRUCTION AND OPERATION OF A
STATE VETERANS HOME IN THE CITY OF FRESNO.

CONSTRUCTION

<u>Impact</u>	<u>Jobs</u>	<u>Fiscal ²</u>
Direct	243	\$226,217
Indirect ³	229	\$17,883
<i>Total</i>	472	\$244,100

OPERATIONS

<u>Impact</u>	<u>Jobs</u>	<u>Fiscal ⁴</u>	<u>Five-Year Cumulative Fiscal</u>
Direct	300	\$33,499	\$176,431
Indirect ³	72	\$5,659	\$29,807
<i>Total</i>	372	\$39,158	\$206,238

Construction and Operations Five-Year Total Fiscal	\$450,338
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Notes:

- (1) Amounts derived from the IMPLAN Economic Impact Model based upon 300 permanent jobs.
- (2) Sales tax revenue to the City of Fresno from construction and construction. Other potential revenue sources not included.
- (3) The Indirect impact is the spin off effect of additional employment and from the goods and services purchased initially.
- (4) Sales tax revenue to the City of Fresno from goods and services purchased. Other potential revenue sources not included.

Exhibit 4

AGREEMENT FOR CONVEYANCE AND ACCEPTANCE OF REAL PROPERTY

THIS AGREEMENT FOR CONVEYANCE AND ACCEPTANCE OF REAL PROPERTY ("Agreement") is entered into by and between the City of Fresno, Planning and Development Department, a public body corporate and politic, ("City"), the State of California ("State"), acting by and through the State Public Works Board ("SPWB"), with the approval of the Department of General Services ("DGS") and the California Department of Veterans Affairs ("CDVA"), for the conveyance by the City and acceptance by the State, pursuant to Government Code Section 11005-11005.2, of certain real property hereinafter set forth, and is made on the basis of the following facts, intentions, and understandings.

WITNESSETH:

WHEREAS, the City is the present owner of that certain interest in real property ("Property") located in the city of Fresno California and more particularly described in Exhibit A ("Legal Description") which is attached hereto and incorporated herein by reference; and

WHEREAS, pursuant to Section _____ of the California _____ Code, the City is authorized, with the approval of (list authorization for conveyance) dated _____ 2003, as _____ (Action/Consent) Calendar Item # ___ on _____, 2003, to execute this "Agreement for Conveyance and Acceptance of Real Property." (Copy attached as Exhibit C); and

WHEREAS, the parties hereto desire to effectuate the City's transfer of the Property to the State at no cost, for the construction of a Veteran's Home Project ("Project") pursuant to Section (code to be inserted upon funding approval), Military and Veterans Code.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. Approvals. Acceptance by the State of this conveyance of real property is contingent upon approvals by the SPWB, the Director of the State Department of Finance, the DGS, and the CDVA. This Agreement has no force and effect, and

is not binding on the State of California, unless it is authorized and approved by the State Public Works Board and the Director of the State Department of Finance.

2. Representations and Warranties of the DGS The State makes the following representations and warranties to the City as of the date of the execution of this Agreement:

(a) The SPWB has full legal right, power, and authority to enter into this Agreement on behalf of the State of California contingent upon approvals by the DGS, the Director of the Department of Finance, and CDVA; and

(b) The SPWB, DGS, and CDVA officers executing this Agreement are duly and properly holding their respective offices and are fully authorized to execute this Agreement.

3. Representations and Warranties of the City The City makes the following representations and warranties to the State as of the date of the execution of this Agreement:

(a) The City is the owner of the Property and has full right, power, title and lawful authority to enter into this Agreement and to convey the Property at no cost as provided herein and, except as disclosed in writing by the City to the State, the City has not entered into or executed any agreement or document which would transfer all or part of the City's interest in the Property to any third party; and

(b) Until the closing of escrow, the City shall not do anything which would impair the City's title to any of the Property; and

(c) To the best of the City's knowledge, neither the execution of this Agreement nor the performance of the obligations herein will conflict with, or breach any of the provisions of any bond, note, evidence of indebtedness, contract, lease, or other agreement or instrument which affects the Property; and until the close of escrow, the City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 3 not to be true as of closing, immediately give written notice of such fact or condition to the State; and

(d) The City warrants that infrastructure for all utilities, including

water, electricity, natural gas, sewer, telephone, and storm drain are installed to the boundary of the Property, or will be prior to State's commencement of construction of the Project, and available in sufficient capacity for use by the State in the development of the Project.

- (e) The City gives no warranties or representations as to the condition of the Property, except that the City represents that it knows of no condition of the Property, including the existence of hazardous materials, or prior activities on or impacting the Property regarding hazardous materials, which would impair the Property's value or use.
- (f) The representations and warranties set forth in this Section 3 shall survive the close of escrow.

4. Interests to be Conveyed. At no cost to the State, the City shall convey to the State, and the State shall accept from the City, all of the City's right, title and interest in and to the Property described in Exhibit A attached, subject to the covenants and agreement set forth herein.

5. City's Obligations. Subject to the terms and conditions set forth herein, the City agrees as follows:

- (a) At no cost to the State, the City agrees to pay, waive, or otherwise arrange for the payment or waiver of (i) any and all development impact fees and permit processing fees imposed against the Project, (ii) any and all water district or City development impact or permit processing fees lawfully imposed against the Project, (iii) any and all school fees lawfully imposed against the Project, and (iv) any other development impact or processing fees that could be imposed by a public utility or agency against the Project.
- (b) The City staff shall cooperate, in good faith, with the DGS and the CDVA staff in order to facilitate the State development of the Project.
- (c) At no cost to the State, the City agrees to provide mitigation, including but not limited to the purchase of lands as compensation if necessary, for impacts from the Project to biological resources, wildlife, or other habitat on the Property held protected by, and to the satisfaction of, the U.S. Fish & Wildlife Service, California Department of Fish and Game or any public agency, or identified in any environmental document

(i.e. Mitigated Negative Declaration or Environmental Impact Report)

- (d) At no cost to the State, the City agrees to provide mitigation and/or indemnity to the State for impacts from the Project on archeological or anthropological sites that may exist on the Property, which mitigation obligations or costs are imposed by any public agency, state or federal, or identified in any environmental document (i.e. Mitigated Negative Declaration, or Environmental Impact Report).
- (e) The Property is located within the City of Fresno's "Sphere of Influence" (a planning area that is someday expected to be in the City), but is not currently within the City limit boundaries. The conveyance of title of the Property to the State contemplated herein is contingent upon the City of Fresno's annexation of the subject property within the City limits prior to the transfer of title to the State.

6. State Obligations. The State agrees that on or prior to seven (7) years from the date of initial conveyance, the State shall commence construction of the Project on the Property. In connection therewith, the State agrees to submit plans and specifications to the City for review thereof. The City agrees that it will not unreasonably delay review. The State will consider comments by the City but has no obligation to implement comments provided by the City.
7. Reconveyance. The State acknowledges and agrees that the City's sole interest in conveying the Property to the State is for the State to complete development of the Project thereon. In the event construction of the Project is not commenced within seven (7) years, in accordance with the terms of this agreement, the City, at its option, upon written notice to the State, may request that the State transfer title to the Property back to the City. In this event, the State agrees to take any and all steps necessary to effectuate the transfer of the State's interest in the Property back to the City as provided hereunder.
8. Waste and Hazardous Materials. Neither the City nor the State shall knowingly commit, suffer or permit any deposit of waste, any nuisance or acts at the Property in violation of applicable laws. The City acknowledges with respect to the Property that, except as specifically provided in this Agreement, to the best of the City's knowledge, Hazardous Materials as that term is defined herein

("Hazardous Materials") were not used, generated, stored, released, discharged or disposed of on, under, in, or about the Property or transported to or from the Property.

The City represents with respect to the Property, that neither the City nor any other person or entity under the control of, or with the knowledge of the City will cause or permit the use generation, storage, release, discharge, or disposal of any Hazardous Materials on, under, in, or about the Property. As used in this Agreement the term "Hazardous Materials" shall mean any substance, material, or waste which is or becomes, prior to the date of execution and delivery hereof, regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95.

The City agrees, at its sole cost and expense, to indemnify, protect, defend and hold harmless the State of California and its officers, employees and agents, from and against any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, cause of action, judgments, suits, proceedings, costs and expenses (including, without limitation, attorneys' fees, court costs, administrative procedural costs and experts' fees) of any kind or nature whatsoever which may at any time be imposed upon, incurred or suffered by, or asserted or awarded against, the State of California relating to or arising from (i) all consequential damages, directly or indirectly arising out of the presence, use, handling, generation, storage, release or disposal of Hazardous Materials by the City or the City's lessees, or any prior owner or operator on, under or about the Property, (ii) the cost of any required or necessary remediation, repair, cleanup or detoxification and the preparation of required

plans as a result of the presence, use, generation, storage, release, threatened release or disposal of Hazardous Materials by any person on the Property prior to transfer of title thereto to the State, (iii) the use on or before the close of escrow of the Property by any third party, including, without limitation, any invitee or licensee of the City, with respect to the Property prior to the transfer of title to the Property to the State. For the purpose of this Section, Hazardous Materials shall include, without limitation, substances defined as "hazardous substances," "hazardous wastes," or stated to be known to cause cancer or reproductive toxicity, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U. S. C. Section 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1317 et seq.; Sections 25115, 25117, 25122.7, 25140, 25249.5, 25249.8, 25281, 25316 or 25501 of the California Health & Safety Code; or any substances so defined or stated in any of the regulations adopted and publications promulgated pursuant to said laws as they may be amended from time to time.

9. Recordation. After receipt of the City's executed Agreement and Grant Deed, the DGS shall request approvals for this Agreement and acceptance of the Property by the State Public Works Board at the next available regularly scheduled meeting and by the State Department of Finance. Within thirty (30) days after obtaining the State Public Works Board and the State Department of Finance approvals, the DGS shall deposit this Agreement and the Grant Deed for recording with Fidelity National Title Company, 1680 W. Shaw Ave, Suite # 101, Fresno, CA 93711 Order No. 242128-A. The City shall pay escrow fees and title insurance charges incurred in this transaction. The issuance of any escrow instructions shall be the sole responsibility of the DGS.

10. General Provisions.

10.1 Assignment.

- (a) This Agreement shall be binding upon and shall inure to the benefit of the State of California, the DGS, the CDVA and the City and their respective heirs, personal representatives, successors and assigns.
- (b) The State shall not assign this Agreement or any interest or right

under this Agreement to any person or entity other than the City or department of the State of California without obtaining the prior written consent of the City. The City may not assign any of its rights pursuant to this Agreement without the written consent of the DGS. In no event shall any assignment relieve the assigning party of any of its obligations under this Agreement.

(c) The CDVA agrees to comply with the terms of this Agreement should transfer of control and possession and/or jurisdiction be made by the DGS to the CDVA.

10.2 Attorneys' Fees. In any action between the parties to interpret, enforce, award, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to damages, injunctive relief, or any other relief to which it might be entitled to, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorney's fees.

10.3 Approvals and Notices. Any approval, disapproval, demand, document or other

notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice. Any Notice given under this paragraph, whether personally or by mail, shall be deemed received only upon actual receipt by the intended party.

To City: City of Fresno
Planning and Development Dept
Attention: Nick Yovino, Planning Director
2600 Fresno Street, Room 3076
Fresno, CA 93721-3605

To State: California Department of Veterans Affairs
Attention: The Secretary
1227 O Street
Sacramento, CA 95814 and

State of California, Department of Finance
Attention: The Director
915 L Street
Sacramento, CA 95814 and

California Department of General Services
Real Estate Services Section
Attention: Assistant Chief
707 Third Street, Fifth Floor
West Sacramento, CA 95605

- 10.4 Jurisdiction and Venue. This Agreement shall be construed under the laws of the State of California in effect at the time of the signing of this Agreement. The parties consent to the jurisdiction of the California courts with venue in Fresno County.
- 10.5 Titles and Captions. Titles and captions are for convenience of reference only
and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. References to section numbers are to sections in this Agreement, unless expressly stated otherwise.
- 10.6 Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties.
- 10.7 No Waiver. A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.
- 10.8 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

- 10.9 Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.
- 10.10 Offer. Any delivery of unsigned copies of this Agreement is solely for the purpose of review by the party to whom delivered, and neither the delivery nor any prior communications between the parties, whether oral or written, shall in any way be construed as an offer by the State, nor in any way imply that the State is under any obligation to enter the transaction which is the subject of this Agreement. The signing of this Agreement by the City constitutes an offer that shall not be deemed accepted by the State unless and until the State has fully executed this Agreement.
- 10.11 Right of Access Prior to the close of escrow, the DGS and its representatives, agents, employees, contractors and designees shall have the right of access to the Property at all reasonable times for the purpose of making necessary and appropriate inspections, tests, borings, samplings, surveys, etc. The DGS shall save and protect the City against any liability and/or claims resulting from such access or use of the Property undertaken pursuant to this Section (10.11). The State shall first be entitled to possession of the Property on and after the date of the close of escrow.
- 10.12 Computation of Time The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Zone time.
- 10.13 Legal Advice Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement; they

do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

10.14 Time of Essence. Time is expressly made of the essence with respect to the performance by the State and the City of each and every obligation and condition of this Agreement including, without limitation, the closing of the escrow.

10.15 Cooperation Each party agrees to cooperate with the other in the closing of this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

11. Agreement in Total

11.1 Entire Understanding This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. There are no prior or contemporaneous agreements, understandings, representations and statements, oral or written, regarding this contemplated transaction.

11.2 Counterparts This Agreement may be signed in any number of counterparts, provided each of the hereto executes at least one counterpart; each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

11.3 Exhibits Incorporated by Reference All exhibits attached to this Agreement are incorporated in this Agreement by this reference. This Agreement is executed in three duplicate originals, each of which is deemed to be an original. This Agreement includes nine (9) pages plus three (3) exhibits: Exhibit A (Legal Description of Property to be

Conveyed), Exhibit B (Form of Grant Deed), Exhibit C (Authorization).

IN WITNESS WHEREOF, this Agreement for Conveyance and
Acceptance of Real Property has been executed by the parties hereto as of

_____, 2003.

GRANTEE: STATE OF CALIFORNIA STATE PUBLIC WORKS BOARD By IRENE
T. ANDERSON Assistant Administrative Secretary APPROVALS: DIRECTOR,
DEPARTMENT OF GENERAL SERVICES By DWIGHT V. WEATHERS Assistant
Chief Real Estate Services Section GRANTOR: CITY OF FRESNO,
PLANNING AND DEVELOPMENT DEPARTMENT, a public body, corporate and politic.
By NICK YOVINO, Planning Director By

DEPARTMENT OF VETERANS AFFAIRS	By <u>K. MAURICE JOHANNESSEN</u>
Secretary	

EXHIBIT A
Legal Description of Property to be Conveyed

**EXHIBIT B
Form of Grant Deed**

WHEN RECORDED MAIL TO

STATE OF
CALIFORNIA
Department of General
Services
Real Estate Services
Division - Acquisition Unit
707 Third Street,
5th Floor
West
Sacramento, CA
95605

OFFICIAL STATE
BUSINESS-EXEMPT
FROM RECORDING
FEES
PURSUANT TO GOVT.
CODE SECTION 27383
AND DOCUMENTARY
TRANSFER TAX
PURSUANT TO
REVENUE AND
TAXATION CODE
SECTION 11922

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Grant Deed

Agency: California Department of

Veterans Affairs Project: Fresno Veterans Home Parcel: DVA- , DGS Parcel 10123

APN: 477-021-15 (Portion), Fresno County

CITY OF FRESNO, PLANNING AND DEVELOPMENT DEPARTMENT a Public Body,
Corporate and Politic, hereby GRANTS to, the STATE OF CALIFORNIA, on behalf of the
Department of Veterans Affairs of the State of California, all that real property in the County of
Fresno, State of California described on the attached Exhibit A (Legal Description) according to
the terms contained in attached Exhibit B (Agreement for Conveyance and Acceptance of Real
Property) and by this reference made a part hereof. This Deed is being recorded pursuant
to Government Code Section 11005. Dated _____

GRANTOR: By: _____ CITY OF FRESNO,
PLANNING AND DEVELOPMENT DEPARTMENT, Nick Yovino, Planning Director

STATE OF CALIFORNIA } COUNTY OF__ On __, 20__ before me, __personally appeared__

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)
whose name(s) is/are subscribed to the within Instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument. WITNESS my hand and official seal. _ NOTARY PUBLIC IN AND FOR THE STATE OF
CALIFORNIA

EXHIBIT C
City of Fresno, Planning and Development Department Authorization