

AGENDA ITEM NO.

COUNCIL MEETING

 APPROVED BY

 DEPARTMENT DIRECTOR

 CITY MANAGER

March 27, 2007

FROM: JON R. RUIZ, Interim Director
Public Works Department

RANDALL L. COOPER, Director
Parks, Recreation and Community Services Department

BY: SCOTT L. MOZIER, PE, Assistant Director
Public Works Department, Engineering Division

SUBJECT: APPROVE THE SALE OF 5.03 ACRES OF CITY LAND AT THE SOUTHWEST CORNER OF EAST CHURCH AVENUE AND SOUTH ORANGEWOOD DRIVE TO THE FRESNO UNIFIED SCHOOL DISTRICT

KEY RESULT AREA

One Fresno

RECOMMENDATION

Staff recommends that the City Council:

1. Approve the sale of 5.03 acres of land at East Church Avenue and South Oranewood Drive to the Fresno Unified School District for the market value price of \$740,000.
2. Authorize the City Manager to execute the Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions, to execute Grant Deed, and to direct staff to conclude the transaction through a third party escrow after the District completes its due diligence process. Authorization to make nonsubstantive changes to the Agreement and Grant Deed subject to final approval by the City Attorney is also given.

EXECUTIVE SUMMARY

With the City's acquisition of 47 acres of land at Peach Avenue and the California Alignment, the park site at East Church and South Oranewood Drive is no longer needed. The site, which is immediately east of Storey Elementary School, was acquired as two parcels in 1995. Contingent on a final feasibility review, the Fresno Unified School District (FUSD) has offered to purchase the 5.03 acre site for the appraised market value of \$740,000. Staff recommends that the City Council accept this offer.

KEY OBJECTIVE BALANCE

Customer Satisfaction would be achieved for FUSD as the district may be in a position to expand an existing school campus within an increasing enrollment area with the acquisition of a cleared site. Employee satisfaction is served by the disposition of land that is no longer needed by the City. Financial management goals are consistent with the independent appraisal process and by augmenting funds available for park construction projects.

BACKGROUND

In 1995 the City of Fresno acquired two parcels for a future neighborhood park site at the southwest corner of East Church Avenue and South Orangewood Drive. The parcels are adjacent to and immediately east of the Storey Elementary School. In 2005 the City learned it would receive title to the former United States Department of Agriculture (USDA) field station parcels consisting of 47 acres at Peach Avenue and the California alignment. As the USDA land is within a half mile of the Church and Orangewood parcels, it was concluded that these parcels would not be needed for neighborhood park purposes. It was also determined that the proceeds from the sale of the Church and Orangewood parcels could augment the funds for construction of the Al Radka Park near Belmont and Fowler Avenues and for other park purposes.

In June 2005, the Public Works Department advised local parks, housing and the school district agencies that the Church and Orangewood parcels may be sold as surplus. Responses were received from the Housing Authority, the City Housing Division and Fresno Unified School District. With the increase in new housing development in the area and the expected need for more classrooms in the neighborhood, negotiations were initiated with FUSD. An independent appraisal completed in August, 2005, established the market value of the property at \$740,000.

The proposed agreement with FUSD was discussed concurrently with two other transactions: specifically the City's purchase of land for the Transit Village Project at Kings Canyon and Willow and the acquisition of the former FUSD Maintenance Yard at Ventura Avenue and Eighth Street. On March 14, 2007, the Fresno Unified School Board approved the purchase of the Church and Orangewood parcels and the sale of the Ventura and Eighth land.

The District has 45 days from the effective date of the agreement to complete a Phase I site assessment for the Church and Orangewood parcels. Within that 45 day period, FUSD must provide the City with a Feasibility Notice approving the environmental condition of the property or the agreement will terminate. There should be no environmental problems with the property as a Phase I assessment was completed by the City prior to the acquisition of the parcels in 1995 and there has not been any development at the site since that time.

The proposed Agreement requires the City to pay for the CLTA policy of title insurance and for the preparation of the Grant Deed. The City Attorney's Office has reviewed the draft Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions. A categorical exemption has been filed under environmental Assessment No. PW-2007-04.

FISCAL IMPACT

The City is expected to receive net proceeds in the approximate amount of \$735,000. The funds will be used to reimburse expended funds for the construction of Al Radka Park.

JRR/RLC/SLM/DLB/eam
Apprv Sale SW Cor E Church & S Orangewood to FUSD 3-27-07
Revised 3-16-07 jk

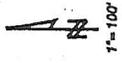
Attachments: Property Site Map
Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions

... NOTE ...
 This map is for Assessment purposes only.
 It is not to be construed as purporting
 legal ownership or division of land for
 purposes of zoning or subdivision law.

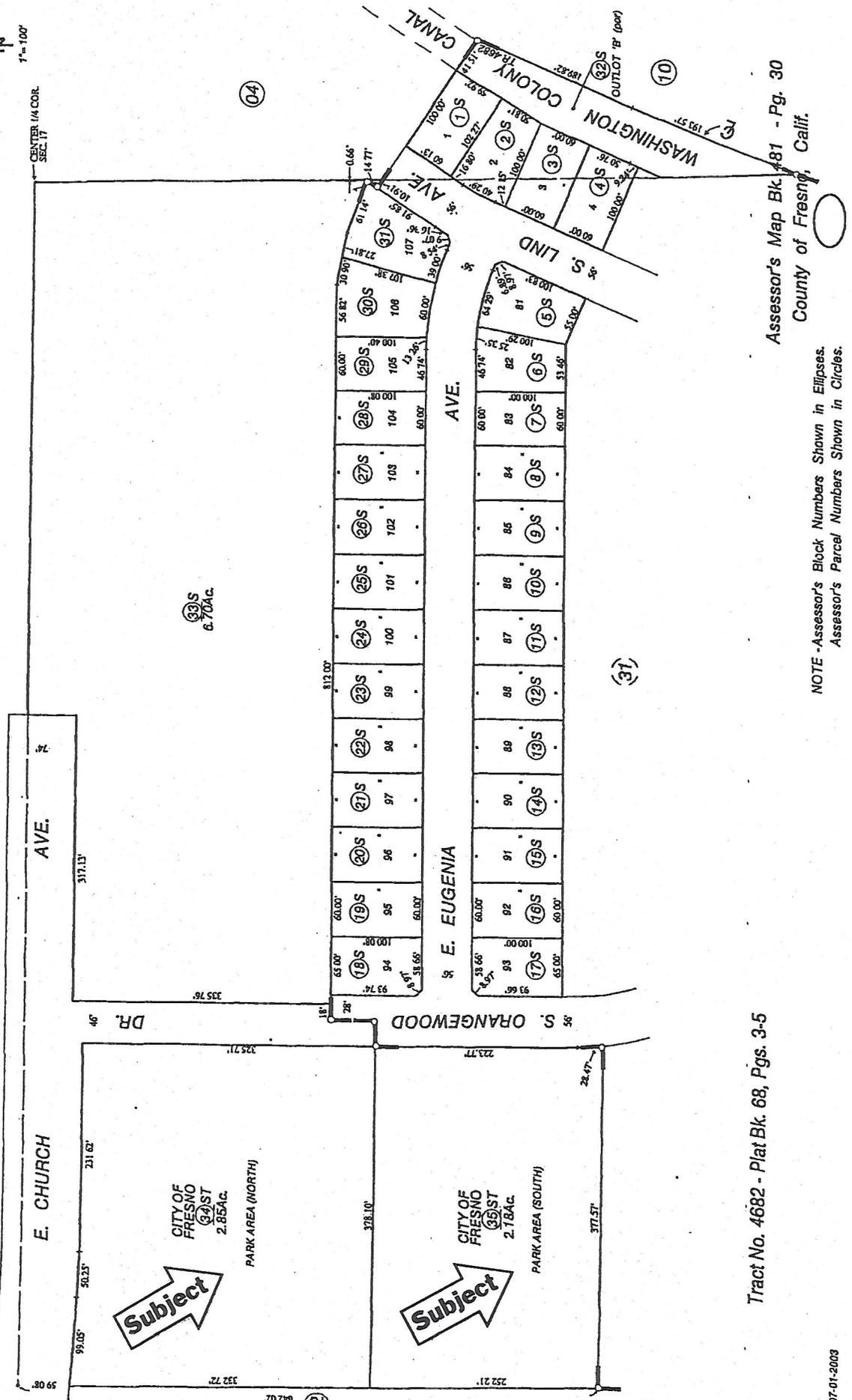
SUBDIVIDED LAND IN POR. SEC. 17, T.14 S., R.21 E., M.D.B.&M.

Tax Rate Area
 5-423
 5-443

481-30



CENTER 1/4 COR.
 SEC. 17



Tract No. 4682 - Plat Bk. 68, Pgs. 3-5

Assessor's Map Bk. 481 - Pg. 30
 County of Fresno, Calif.

NOTE - Assessor's Block Numbers Shown in Ellipses.
 Assessor's Parcel Numbers Shown in Circles.

**AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY
AND JOINT ESCROW INSTRUCTIONS**

**Land at Church Avenue and Oranewood Drive, , Fresno CA
APNs 481-300-34ST and 481-300-35ST**

This Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions (the "Agreement") is entered between the CITY OF FRESNO, a municipal corporation ("Seller") and FRESNO UNIFIED SCHOOL DISTRICT, a public school district ("Buyer"). For reference purposes this Agreement is dated _____, 2007 (the "Effective Date").

A. WHEREAS, Seller owns fee title to two (2) parcels of unimproved real property located in the City of Fresno, County of Fresno, State of California, APNs 481-300-34ST and 481-300-35ST, located at the southwest corner of East Church Avenue and South Oranewood Drive, Fresno California, as more completely described/depicted in Exhibit "A" attached hereto and incorporated herein ("Property"); and

B. WHEREAS, Seller's governing body has the authority to sell the property as provided herein; and

C. WHEREAS, Seller has offered to sell the Property to Buyer for a purchase price equal to Seven Hundred Forty Thousand Dollars (\$740,000.00).

NOW THEREFORE, in consideration of the above recitals, the covenants and promises herein and for other good and sufficient consideration hereby acknowledged the parties agree as follows:

1. **Purchase and Sale.** Seller will sell to Buyer and Buyer will purchase from Seller, the Property upon the terms and conditions of this Agreement.

2. **Purchase Price.** The total purchase price for the Property is Seven Hundred Forty Thousand Dollars (\$740,000.00) (the "Purchase Price"). The Purchase Price shall be paid by Buyer by depositing a check into escrow in time to meet the Title Company's requirements for immediately available funds.

3. **Title Review.**

a. **Permitted Exceptions.** Reference is made to that certain Preliminary Report for Order No. 06-273077-GW dated as of August 31, 2006 (the "PTR") issued by Fidelity National Title Company (the "Title Company"). Buyer approves all exceptions to title reflected in the PTR, all of which are referred to herein as "Permitted Exceptions",

b. **Title Policy.** Buyer's obligation to proceed to the Close of Escrow on the Property is conditioned upon the commitment by Escrow Holder to issue a CLTA Owner's Policy of Title Insurance (the "CLTA Policy") showing title to the Property vested in Buyer with

liability equal to the Purchase Price, subject only to the Permitted Exceptions. Buyer may choose to obtain an ALTA Owner's Policy of Title Insurance (the "ALTA Policy") instead of a CLTA Policy (the policy selected whether CLTA or ALTA is referred to herein as the "Title Policy"). Buyer shall pay the additional cost of obtaining such ALTA Policy.

4. **Feasibility Reviews.**

a. **Feasibility Period.** Buyer shall have the period commencing with the Effective Date and ending at 5:00 p.m. pacific time, forty-five (45) calendar days thereafter (the "Feasibility Period") to review, in Buyer's sole and absolute discretion, the suitability of the Property for Buyer's use and development, and the presence of "Hazardous Materials" (as defined in Exhibit "B" which is attached hereto and expressly incorporated herein).

b. **Completion of Updated Phase I Site Assessment.** Buyer covenants that it shall, during the Feasibility Period, complete a Phase I Environmental Site Assessment of the Property. In addition, Buyer shall provide Seller with copies of all environmental reports and test results conducted with respect to the Property by or on behalf of Buyer.

c. **Delivery of Feasibility Notice.** Prior to the expiration of the Feasibility Period, Buyer shall give written notice of Buyer's approval of the Property (the "Feasibility Notice"). If Buyer disapproves the Property based upon its feasibility review, or fails to give a timely Feasibility Notice, then this Agreement and the Escrow shall terminate, and the parties will have no further obligation to one another except as otherwise expressly provided herein.

d. **Seller's Review of Environmental Reports and Right to Terminate.** If any studies conducted by Buyer during its Feasibility Period (including the subsequent Phase I Environmental Site Assessment) provides evidence of any Hazardous Materials, then Seller shall have the option to terminate this Agreement by delivery of its written notice of termination to be issued not less than fifteen (15) business days following the delivery of such study by Buyer to Seller.

e. **Right of Buyer to Enter Property.** Seller hereby grants Buyer, or Buyer's agents, the right, upon twenty-four (24) hours notice, to enter onto the Property to conduct tests or investigations, as follows: (a) Buyer shall conduct tests or investigations at its sole cost and expense; (b) the tests or investigations shall not unreasonably interfere with Seller's possession; and (c) Buyer shall indemnify and hold Seller harmless from any costs or liability of any nature resulting from the tests or investigations and, if the escrow is canceled for a reason that is not the fault of Seller, for any damage to the Property resulting from conducting the tests or investigations.

f. **Buyer's Reliance on Buyer's Investigations.** Buyer shall rely solely on its own knowledge and investigation of the Property in determining whether to purchase the Property, including but not limited to determinations as to the suitability of the Property for Buyer's intended uses made during the Feasibility Period. Seller shall have no duty to inquire or investigate any matter related to or arising from Buyer's performance of its investigation of the Property or Buyer's analysis of its investigations or Buyer's decision as to the suitability of the

Property for Buyer's purposes. The purchase price reflects all defects, demolitions, and/or repairs required, other than the warranties set forth in Section 5. With the exception of the items described in the preceding sentence, **the Property is to be purchased with ALL FAULTS, in its AS-IS condition.**

5. **Seller's Warranties.** Seller represents and warrants that: (a) Seller owns the Property, subject only to the Permitted Exceptions; (b) Seller has no present knowledge of any pending litigation involving the Property; (c) Seller has no present knowledge of any violations of, or notices concerning defects or noncompliance with, any code, statute, regulation, ordinance, judicial order, or judicial holding concerning the Property. Except as expressly warranted herein, Seller makes no representation or warranty and has no affirmative duty to undertake any effort of any kind to determine the existence of any of the above noted conditions. These warranties shall survive the Closing and the recording of the grant deed.

6. **CEQA Compliance Closing Condition.** Notwithstanding any other term or provision of this Agreement, Seller's and Buyer's rights and obligation to purchase and sale of the Property, and the Close of Escrow, are conditioned upon compliance by both Seller and Buyer of their respective duties and obligations under the California Environmental Quality Act, and that the applicable statute of limitations to any challenge to such compliance activities shall expire without any legal challenge having been filed. Escrow Holder shall rely solely upon a written certification provided by each of Buyer and Seller confirming the satisfaction of the conditions precedent specified in this Section 6.0.

7. **Opening Escrow.** The parties will open an escrow (the "Escrow") with Fidelity National Title Company located at 1680 W. Shaw Ave., (559) 432-1680, to the attention of Bernadette Watson-Moran, Escrow Officer (the "Escrow Holder").

a. This Agreement, when signed by both parties and deposited with the Escrow Holder will be the parties' Joint Escrow Instructions. Buyer and Seller will sign any other form instructions required by Escrow Holder. Parties and each of them may submit supplemental escrow instructions.

b. Buyer and Seller will deposit all instruments, documents, money, and other items with the Escrow Holder that are: (i) identified in this Agreement; or (ii) required by the Escrow Holder to effect the Closing on the date specified below. Seller will deposit a recordable Grant Deed, substantially in the form attached as Exhibit "C", into the Escrow prior to the Close of Escrow.

c. The Escrow will be considered closed on the date that the Title Company is prepared to issue a standard CLTA owner's title insurance policy to Buyer insuring fee title in the condition set forth in Subsection 3(b) and records the Grant Deed (the "Closing", or "Close of Escrow", or the "Closing Date") not later than thirty (30) days following the expiration of the Feasibility Period.

d. Payment of said sums, less Seller's costs to clear title, if any, may be made to Seller only when Escrow Holder possesses and is in a position to deliver to the Buyer a fully executed and acknowledged and recorded grant deed to the subject property and when the Escrow Holder stands ready to issue to the Buyer the Title Policy described in Subsection 6(c) above.

e. Property taxes for the current fiscal year, if any, shall be prorated at the Close of Escrow. It is understood that Seller shall be responsible for the payment of all unpaid taxes, penalties, redemptions, and costs allocable to the subject property for all periods prior to Close of Escrow. Refund shall be made to Seller out of escrow, for taxes previously paid by Seller which are allocable to the part of the current fiscal year subsequent to the Close of Escrow.

f. Seller will pay the cost of the preliminary title report, any transfer taxes and the cost of preparing, executing, and acknowledging the Grant Deed and any/all other instruments. Seller also will pay and be responsible for the payment of all unpaid taxes, penalties, redemptions, and costs allocable to the subject property for all periods prior to Close of Escrow. Buyer and Seller will pay any other costs according to the custom in Fresno County.

g. Disbursements of the Purchase Price to be in the amounts, at the times, and in all respects in accordance with the terms and conditions and subject to the limitations of this Agreement.

h. It is agreed and confirmed by the Buyer and the Seller that notwithstanding other provisions in this Agreement, the right of possession and use of the Property by the Buyer shall commence upon Close of Escrow.

7. Miscellaneous Provisions.

a. Compliance with Government Code Section Requirements. The parties hereto acknowledge that Seller, as a California municipal corporation, must comply with the provisions of California Government Code Section 54222 et seq. in connection with the sale of its real property. Seller represents and warrants that it has satisfied Section 154222 et seq.

b. No Broker/Third Party Beneficiaries. Parties each represent to the other that each has had no dealings with any broker, finder, or other party concerning Buyer's purchase of the Property. Each party agrees to indemnify and hold the other harmless from all loss, cost, damage, or expense, including reasonable attorney fees, incurred by the other as a result of any claim arising out of the acts of the indemnifying party or others on that party's behalf, for a commission, finder's fee, or similar compensation made by any broker, finder, or any party who claims to have dealt with the indemnifying party. The representations and warranties contained in this section shall survive the Close of Escrow.

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

d. Integrated Agreement. Each of the Exhibits referred to in this Agreement is incorporated into and made a part of this Agreement. This Agreement is the entire agreement between the parties regarding the purchase and sale of the Property, and supersedes all prior discussions, negotiations, commitments or understanding, written or oral.

e. Modification/Cancellation. Buyer and Seller may amend or cancel this Agreement only by mutual written consent of the parties tendered into escrow, unless otherwise expressly provided herein.

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

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

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

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

j. Waiver. Any party's waiver of a breach of any provision herein will not be a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

k. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

l. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing any action regarding the enforcement or interpretation of this Agreement any rights and duties hereunder shall only be in the Superior Court of the County of Fresno.

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

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

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

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

SELLER: City of Fresno, a municipal Corporation

BUYER: Fresno Unified School District, a public school district

By: _____
Andrew T. Souza
City Manager

BY: _____
Ruth F. Quinto, Associate Superintendent
Chief Financial Officer

Date: _____

Date: _____

Address of Seller: :
2600 Fresno St., Room 4019
Fresno, CA 93721-3623

Address of Buyer
2309 Tulare St.
Fresno, CA 93721

|
APPROVED AS TO FORM
JAMES C. SANCHEZ
Buyer Attorney

By: _____
Deputy

Date: _____

ATTEST:
REBECCA E. KLISCH
Buyer Clerk

By: _____
Deputy

Date: _____

EXHIBIT "A"

Legal Description: APN _____

(insert/attach)

EXHIBIT "B"

DEFINITION OF HAZARDOUS MATERIALS

The term "Hazardous Materials" as used in this Agreement shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to those substances, materials or wastes regulated now or in the future under any of the statutes or regulations listed below and any and all of those substances included within the definitions of "hazardous substances", "hazardous materials", "hazardous waste", "hazardous chemical substance or mixture", "imminently hazardous chemical substance or mixture", "toxic substances", "hazardous air pollutant", "toxic pollutant" or "solid waste" in the statutes or regulations listed below. Hazardous Materials shall also mean any and all other similar terms defined in other federal state and local laws, statutes, regulations, orders or rules and materials and wastes which are, or in the future become, regulated under applicable local, state or federal law for the protection of health or the environment or which are classified as hazardous or toxic substances, materials or waste, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, and (vii) radioactive materials and waste.

In addition, Hazardous Materials shall include:

(1) a "Hazardous Substance", "Hazardous Material", "Hazardous Waste", or "Toxic Substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801, et seq., or the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.;

(2) an "Extremely Hazardous Waste", a "Hazardous Waste", or a "Restricted Hazardous Waste", under §§ 25115, 25117 or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to §§ 25140 or 44321 of the California Health and Safety Code;

(3) a "Hazardous Material", "Hazardous Substance", "Hazardous Waste", "Toxic Air Contaminant", or "Medical Waste" under §§ 25281, 25316, 25501, 25501.1, 25023.2 or 39655 of the California Health and Safety Code;

(4) "Oil" or a "Hazardous Substance" listed or identified pursuant to § 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321, as well as any other hydrocarbonic substance or by-product;

(5) listed or defined as a "Hazardous Waste", "Extremely Hazardous Waste", or an "Acutely Hazardous Waste" pursuant to Chapter 11 of Title 22 of the California Code of Regulations;

(6) listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to § 25249.8(a) of the California Health and Safety Code;

(7) a material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or public agency requires in order for the property to be put to any lawful purpose;

(8) any material the presence of which would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank;

(9) pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.;

(10) asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.;

(11) any radioactive material including, without limitation, any “source material”, “special nuclear material”, “by-product material”, “low-level wastes”, “high-level radioactive waste”, “spent nuclear fuel” or “transuranic waste”, and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq., the Nuclear Waste Policy Act, 42 U.S.C. §§ 10101 et seq., or pursuant to the California Radiation Control Law, California Health and Safety Code §§ 25800 et seq.

(12) industrial process and pollution control wastes, whether or not “hazardous” within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.;

(13) regulated under the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq., or the California Occupational Safety and Health Act, California Labor Code §§ 6300 et seq.; and/or

(14) regulated under the Clean Air Act, 42 U.S.C. §§ 7401 et seq. or pursuant to Division 26 of the California Health and Safety Code.

All other laws, ordinances, codes, statutes, regulations, administrative rules, policies and orders, promulgated pursuant to said foregoing statutes and regulations or any amendments or replacement thereof, provided such amendments or replacements shall in no way limit the original scope and/or definition Hazardous Materials defined herein.

EXHIBIT "C"

Grant Deed

Recording Requested by/
When Recorded Mail To:

Fresno Unified School District
Attention: _____
2039 Fresno Street
Fresno, California 93721

No Fee-Govt. Code Sections 6103 and 27383

APNs 481-300-34ST and
481-300-35ST

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, and subject to the covenants and restrictions set forth below, the City of Fresno, a California municipal corporation, GRANTOR, hereby GRANTS to the Fresno Unified School District, a public school district, GRANTEE, all that real property situated in the County of Fresno, State of California, described as follows:

APNs APNs 481-300-34ST
and 481-300-35ST

(Insert Legal Description)

Contains +/- 5.03 acres.

City of Fresno, a California municipal corporation

By: _____
Andy Souza, Its Chief Administrative Officer

(attach notary certificate of acknowledgement)

Date: _____

State of California

County of Fresno

On _____ before me, _____, a Notary Public, personally appeared **Andy Souza, Chief Administrative Officer of the City of Fresno, a California municipal corporation**, 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.

Signature _____ (Seal)