10:15am
11/1/12

EXCLUSIVE NEGOTIATION AGREEMENT

0.17 +/- Acres of Land with Improvements at 1544 Fulton Street, City of Fresno, California

APN: 466-145-07 ("Theatre 3")

CITY OF FRESNO
City Clerk's Office (Original)

THIS EXCLUSIVE NEGOTIATION AGREEMENT (this "Agreement") is made and entered into on November 13, 2012 ("Effective Date"), by and between the CITY OF FRESNO, a municipal corporation, ("CITY"), CITY OF FRESNO CULTURAL ARTS PROPERTIES CORPORATION, a nonprofit public benefit corporation ("COFCAP"), and REZA ASSEMI, an individual ("BUYER").

RECITALS

WHEREAS, COFCAP owns approximately 7,500 square feet of real property (Assessor Parcel Number 466-145-07) with improvements, as more particularly described in Exhibit "A", attached hereto and incorporated by reference herein, and which is hereinafter for convenience referred to as the "Property"; and

WHEREAS, BUYER has expressed interest and willingness to purchase the Property for purposes of development and operation of potential active uses such as food, drink, or entertainment on the ground floor and other potential uses such as residential, office, or commercial on the second floor of the Property ("Project"); and

WHEREAS, the Property contains the historic (HP #164) PG&E/"Theatre 3" building, and the CITY desires to enter this Agreement in furtherance of promoting development in Downtown Fresno and the rehabilitation and reuse of historic resources; and

WHEREAS, current and future owners of the Property are subject to CITY's Historic Preservation Ordinance, and bound by the Settlement and Order in *Citizens for the Protection of Fresno's Historic Resources v. City of Fresno re Fresno Metropolitan Museum, et al.*, Fresno County Superior Court Case No. 05CECG01947 (the "Settlement Agreement"); and

WHEREAS, the parties have had preliminary discussions regarding BUYER's purchase of the Property, which are described in Section 3(A) herein, and the parties mutually desire to negotiate exclusively with the goal of ultimately entering into a purchase and sale agreement, in accordance with the terms and conditions of this Exclusive Negotiation Agreement; and

WHEREAS, until such time a purchase and sale agreement is executed during the term of this Agreement, this Agreement expires, or is sooner terminated, CITY nor COFCAP shall neither negotiate nor sell the Property to a third-party; and

WHEREAS, the parties agree that any final agreement reached for the purchase of the Property shall be subject to final approval of COFCAP, CITY Council and the BUYER.

NOW, THEREFORE, in consideration of the foregoing, which are hereby incorporated by this reference, and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, the parties mutually agree as follows:

APPROVED BY CITY COUNCIL
Nov 1, 2012
By Sherrie L Badertscher
DEPUTY

1. Negotiation Period

The Parties will negotiate exclusively for six months (180 calendar days) from the date that the CITY and COFCAP execute this ENA (the "Negotiation Period"), unless negotiations are terminated sooner as provided herein. When the Negotiation Period expires, this ENA shall automatically terminate unless, before expiration of the Negotiation Period, COFCAP and the CITY Council determine that BUYER has made and is then making good faith efforts to timely complete all its obligations hereunder, and COFCAP and the CITY Council approve the extension of this ENA and the parties execute an amendment to this ENA to implement extending the Negotiation Period. The parties shall devote such personnel, consultants and resources as may be reasonably necessary to complete negotiations within that time limit.

If, on expiration of the Negotiation Period, including any extensions, COFCAP and the CITY Council has not made the requisite findings and approved a Purchase and Sale Agreement, then this ENA shall automatically terminate unless the Council has approved, and the parties have entered, a written extension of the term of this ENA. On termination of this ENA, COFCAP and CITY thereafter may deal with the Property and negotiate with others concerning the Property as COFCAP and the CITY in their sole and absolute discretion may determine.

Notwithstanding the foregoing, any party may terminate this ENA for cause in the event any other party is in default of this ENA for failure to negotiate in good faith. Any substantive breach of this ENA shall constitute a failure to negotiate in good faith. No party shall terminate this ENA unless the party seeking to terminate has first provided written notice of its intent to terminate the ENA to the other parties, specifying the cause, and the non-performing party(ies) fail(s) to cure the default or other cause within ten (10) days after receipt of such notice. In the event this ENA is terminated in accordance with this paragraph, no party shall have any further rights, obligations, or liability to any other party as a result of this ENA.

2. Assignment prohibited.

This Agreement is personal to BUYER and there shall be no assignment by BUYER of BUYER's rights or obligations under this Agreement without the prior written approval of the City Manager or designee thereof. Any attempted assignment by BUYER, its successors or assigns, shall be null and void unless approved in writing by the City Manager or designee thereof.

3. Negotiations.

(A) The parties shall negotiate diligently, exclusively and in good faith to complete the purchase agreement prior to the expiration of the Negotiation Period. During the Negotiation Period, the parties shall meet as frequently as may be necessary and diligently engage in such activities as may be necessary, to accomplish this end. The parties acknowledge that they have already conducted preliminary negotiations regarding BUYER's purchase of the Property. During these negotiations, CITY staff and BUYER have tentatively negotiated the following terms to include in a future Purchase and Sale Agreement:

(i) COFCAP will sell the Property to the CITY for nominal value, and CITY will sell Property to BUYER on the terms and conditions set forth in a Purchase and Sale Agreement to be approved by the CITY Council;

(ii) The purchase price for the Property shall be $177,000, the appraised value in a report issued to the CITY by James G. Palmer, MAI, on November 18, 2011;

(iii) The transfer of title to the Property shall occur via escrow with an escrow company acceptable to both parties; and

(iv) All parties shall agree to be bound by the terms and conditions of the Settlement Agreement.

However, this ENA is not a pre-commitment to these terms and final agreement on these terms cannot occur unless and until the CITY Council and BUYER have approved these terms as part of their approval of any Purchase and Sale Agreement which is contemplated by this Agreement. Each term identified herein is subject to further negotiation by CITY and BUYER. Nothing in this Agreement shall preclude the City Council and/or BUYER from exercising their independent discretion to enter into a Purchase and Sale Agreement that may include some or none of these terms.

(B) If the negotiations result in a proposed Purchase and Sale Agreement, COFCAP and CITY Council approval thereof may only occur after compliance, as may be required, with all applicable laws and ordinances including, without limitation, CEQA. An objective during the Negotiation Period is to establish a Project scope and description sufficient to include in any CEQA review determined by CITY staff to be necessary for the purchase and sale of the Property. Responsibility for the cost of CEQA compliance shall be the responsibility of BUYER. BUYER shall cooperate with CITY in preparation of the environmental documents by, among other things, timely supplying necessary technical data and other related information and/or plans concerning the Project in accordance with the terms of this ENA.

(C) During the Negotiation Period, BUYER may market the building to potential tenants. Before entering upon the Property, whether for site assessment, marketing or other due diligence, BUYER shall first obtain a right of entry from the CITY, which shall not be unreasonably denied.

(D) BUYER and CITY shall timely complete each activity or task set forth in the Project Performance Schedule attached hereto as Exhibit "B" and incorporated herein.

(E) This Agreement shall not prevent the CITY from providing any person or entity requesting information regarding the Property with any information that is a public record. CITY shall, to the extent permitted by law, not distribute or disclose information regarding the Property or BUYER which is of a confidential or proprietary nature.

4. Termination.

(A) This Agreement shall terminate in accordance with Section 1 herein, unless prior to such date:

(i) The parties have extended the term of this Agreement by written amendment; or

(ii) Any party has terminated this Agreement for cause.

(B) For purposes of this provision, any party may terminate this Agreement for cause in the event the other party is in default of this Agreement for failure to negotiate in good faith. Any substantive breach of this Agreement shall constitute a failure to negotiate in good faith.

5. Allocation of Entitlement Costs.

(A) During and after the Negotiation Period, CITY shall prepare, at its own cost, the CEQA documentation and related technical studies which CITY staff, in its sole determination, deems necessary for the purchase and sale of the Property.

(B) Any development and entitlement-related costs related to the Project other than those for CEQA documentation and related technical studies, as identified in paragraph (A) of this section, shall be the obligation of BUYER and shall not be reimbursable nor deducted from the Property purchase price.

(C) The payment of costs identified in paragraph (A) of this section shall be as described in the Project Performance Schedule, attached hereto as Exhibit "B" and incorporated by reference herein.

6. Agreement Limitations.

By its execution of this Agreement, neither the CITY nor COFCAP is committing to or agreeing to undertake: (a) any land acquisition or any disposition of land to BUYER; or (b) any other acts or activities requiring the subsequent independent exercise of discretion by COFCAP or CITY or any agency or department thereof. This Agreement does not constitute a disposition of property or exercise of control over property by the CITY or COFCAP. Execution of this Agreement by CITY and COFCAP is merely an agreement to enter into the exclusive Negotiation Period according to the terms hereof, reserving final discretion and approval by the CITY, COFCAP, and BUYER as to any purchase agreement and all proceedings and decisions in connection therewith.

7. CITY's Reservation of Authority.

The parties agree that: (a) the CITY reserves all of its police powers and/or statutory or other legal powers or responsibilities; and (b) this Agreement shall not be construed to limit the authority or obligation of the CITY or COFCAP to hold necessary public hearings, to limit the discretion of COFCAP or the CITY or any of its officers or officials with regard to rules, regulations, ordinances, laws, and entitlement of use which require the exercise of discretion by COFCAP, the CITY, or any of its officers or officials. This Agreement shall not be construed to

limit the obligation of COFCAP or the CITY to comply with CEQA, any other federal or state law, or the Settlement Agreement, attached hereto as Exhibit "C" and incorporated herein.

8. Miscellaneous provisions.

(A) Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, transmitted by electronic mail followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

(B) Compliance With Law. The parties shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

(C) Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

(D) Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

(E) Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

(F) Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

(G) Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

(H) Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing

party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

(I) Exhibits. Each exhibit and attachment referenced in this Agreement is, by reference, incorporated into and made a part of this Agreement.

(J) 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.

(K) No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

(L) Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by the parties.

(M) No Joint Venture. Neither the CITY nor COFCAP shall become or be deemed a partner or joint venturer with BUYER or associate in any such relationship with BUYER by reason of the provisions of this Agreement. BUYER shall not for any purpose be considered an agent, officer or employee of the CITY or COFCAP.

(N) No Discrimination. BUYER covenants and agrees that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry, age, or handicap, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall BUYER or any person claiming under or through BUYER, establish or permit any such practice or practices of discrimination or segregation in the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees of the Property.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, the day and year first-above written.

CITY OF FRESNO,
a municipal corporation

Mark Scott

MARK SCOTT
City Manager

Date: 11-6-12

REZA ASSEMI,
an individual

REZA ASSEMI

Date: 11/6/12

CITY OF FRESNO CULTURAL
ARTS PROPERTIES CORPORATION,
a nonprofit public benefit corporation

BRUCE RUDD, President

Date: 11/13/12

ATTEST:
YVONNE SPENCE
City Clerk

By: Stacy Luco
Deputy

Date: NOV. 13, 12

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: RJ Sahl
Deputy

Date: 10-19-12

Addresses:

CITY:

City of Fresno
Attention: Elliott Balch,
Downtown Revitalization Manager
2600 Fresno Street
Fresno, CA 93721

REZA ASSEMI:

Reza Assemi
1677 W. Shaw Ave. #101
Fresno, CA 93711

COFCAP:

City of Fresno Cultural Arts Properties Corp.
Attention: Bruce Rudd
2600 Fresno Street, Second Floor
Fresno, CA 93721

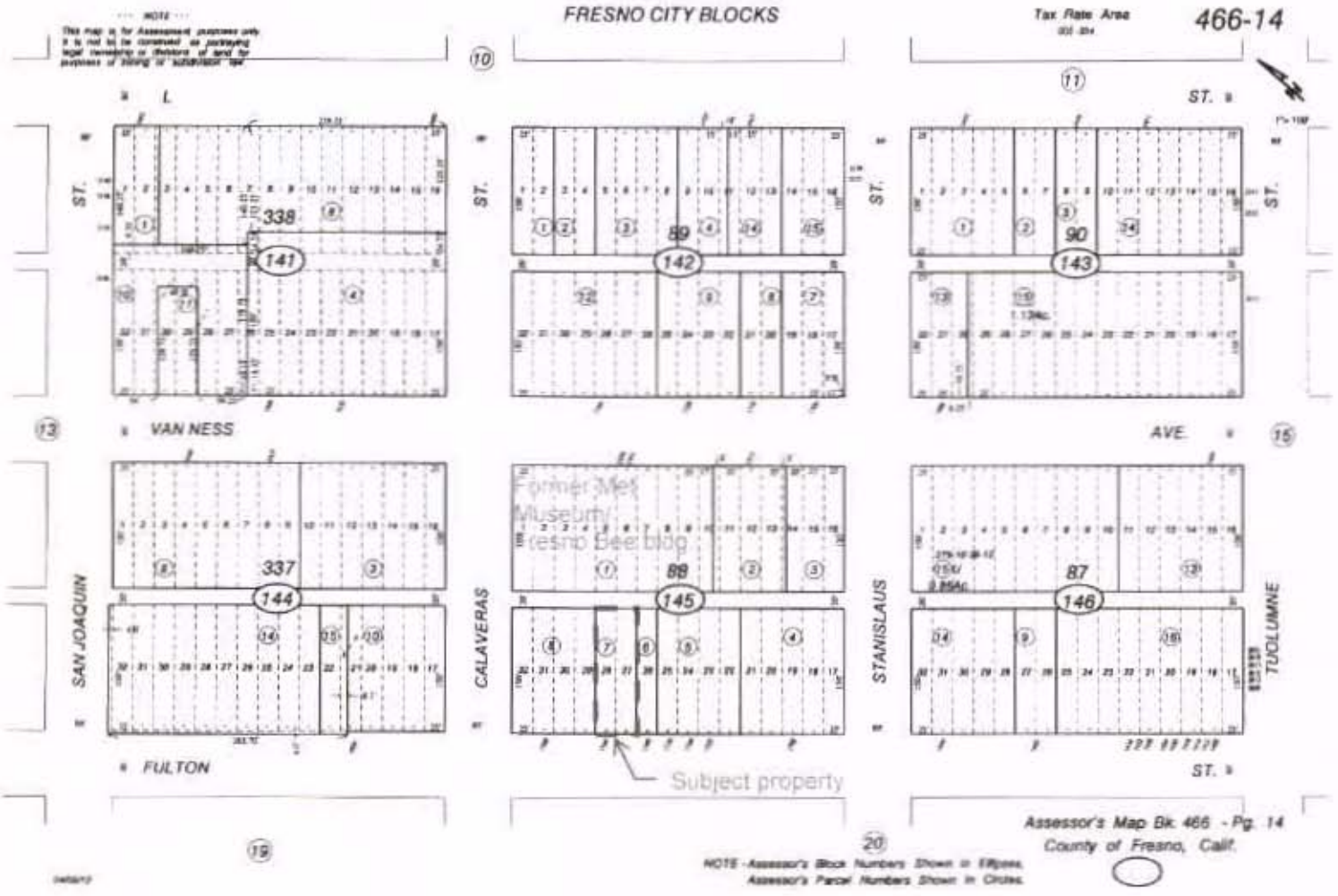
Attachments:

Exhibit "A": Map and Legal Description
Exhibit "B": Performance Schedule
Exhibit "C": Settlement and Order in Fresno Co. Superior Court Case No. 05CECG01947

EXHIBIT "A"
MAP AND LEGAL DESCRIPTION OF PROPERTY

Exclusive Negotiation Agreement between City of Fresno ("City")
City of Fresno Cultural Arts Properties, Inc. ("COFCAP")
and Reza Assemi ("Buyer")
Theater 3

MAP



LEGAL DESCRIPTION

Lots 27 and 28 of Block 88, City of Fresno, County of Fresno, State of California.

ASSESSOR'S PARCEL NUMBER

466-145-07, County of Fresno, State of California.

Exhibit "B"

PERFORMANCE SCHEDULE

During the exclusive Negotiation Period, and without limiting any other provision of this Agreement, BUYER and the CITY shall work cooperatively to define the Project to the best of their abilities, and complete the documentation for the purchase and sale of the Property, and the Project, required under the California Environmental Quality Act (CEQA). At various points the performance of one party's responsibilities shall be contingent on the other party's performance of its respective responsibilities, as follows:

(a) For purposes of preparing the necessary CEQA documentation, BUYER shall, within fifteen (15) days of the Effective Date of this Agreement, provide CITY as much information as BUYER knows about the possible Project at the Property following the purchase and sale, including, without limitation: (i) uses for the upper level, lower level, and basement of the existing structure and for any new structures envisioned to be built; (ii) a conceptual site plan to include site access, number of and type of structure(s), building setbacks, square footages, landscaping, and number and type of parking spaces; and (iii) identification of any potential Property area boundary modifications.

(b) CITY shall prepare the CEQA documentation and related technical studies which CITY staff, in its sole determination, deems necessary for consideration of the proposed purchase and sale by CITY's Historic Preservation Commission, Planning Commission, and City Council. CITY shall make best efforts to prepare such documentation within ninety (90) days of receipt of the above-referenced information from BUYER.

EXHIBIT "C"

SETTLEMENT AND ORDER
in
Citizens for the Protection of Fresno's Historic Resources v. City of Fresno
re Fresno Metropolitan Museum, et al.
Fresno County Superior Court Case No. 05CECG01947

[Insert Settlement and Order]

Richard L. Harriman, SBN 066124
LAW OFFICES OF RICHARD L. HARRIMAN
4321 North West Avenue, Suite 106
Fresno, California 93705-1450
Telephone: (559) 226-1818
Facsimile: (559) 226-1870
Email: harrimanlaw1@sbcglobal.net

Attorneys for Plaintiffs and Petitioners

FILED
AUG 03 2005
SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO
BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF FRESNO

CITIZENS FOR THE PROTECTION OF FRESNO'S HISTORIC RESOURCES, a non-profit public benefit unincorporated association, and, JEANETTE JURKOVICH, individually, Plaintiffs and Petitioners, vs. CITY OF FRESNO, a municipal corporation, and FRESNO CITY COUNCIL, a body politic, Defendants and Respondents. FRESNO METROPOLITAN MUSEUM OF ART, HISTORY AND SCIENCE, a non-profit California corporation, Real Party in Interest.	CASE NO. 05 CE CG 01947 **STIPULATION FOR ORDER DISMISSING ACTION WITH PREJUDICE AND RESERVATION OF JURISDICTION PURSUANT TO SETTLEMENT AGREEMENT AND CODE OF CIVIL PROCEDURE, SECTION 664.6; AND ORDER THEREON**

IT IS HEREBY STIPULATED, by and among the parties hereto, through their respective attorneys of record, that the above-captioned action has been settled by the parties hereto and that the parties hereby jointly request that the Court issue its Orders as follows:

1. The above-captioned action shall be dismissed with prejudice, as to all parties named herein, subject to the terms and conditions set forth in the executed Settlement Agreement between Petitioners and Real Party in Interest Fresno Metropolitan Museum Art, History and Science, a true copy of which is attached hereto and incorporated herein by reference;

2. The Court shall retain jurisdiction over the performance of the terms and satisfaction of the conditions of the executed Settlement Agreement by the parties signatory thereto, pursuant to Code of Civil Procedure Section 664.6;

3. The parties signatory hereto recognize and acknowledge that the City of Fresno is not a signatory to the executed Settlement Agreement and is not bound thereby; and

4. Except as expressly addressed in the executed Settlement Agreement attached hereto, each party shall bear its own attorney's fees and costs.

LAW OFFICES OF RICHARD L. HARRIMAN

Dated: July 23, 2005

RICHARD L. HARRIMAN
Attorney for Plaintiffs and Petitioners

Dated: 7-29-05

MICHAEL P. SLATER
Assistant City Attorney
Attorneys for Respondents

BAKER, MANOCK & JENSEN

Dated: July 22, 2005

By:
CHRISTOPHER L. CAMPBELL
Attorney for Real Party in Interest
Fresno Metropolitan Museum of Art,
History and Science

ORDER

The Court's having reviewed and considered the foregoing Stipulation of the parties, through their respective attorneys of record; and

Good cause appearing to the Court that the Stipulation should be approved and the Order issued,

IT IS SO ORDERED.

Dated: 8-3-05

JUDGE OF THE SUPERIOR COURT

SETTLEMENT AGREEMENT
(Fresno Metropolitan Museum-Valley Advocates)

This Settlement Agreement ("Agreement") is entered into this 18th day of July, 2005 by and between the Fresno Metropolitan Museum, a California non-profit corporation ("FMM"), Valley Advocates a California non-profit corporation, Citizens for the Protection of Fresno's Historic Resources, a California unincorporated association, and Jeanette Jurkovich, an individual. Valley Advocates, Citizens for the Protection of Fresno's Historic Resources, and Ms. Jurkovich are sometimes collectively referred to as the "Preservation Group".

RECITALS

A. FMM owns one city block in the Arts and Cultural District of Fresno, California. The block is bounded on the east by Van Ness Avenue, on the northwest by Calaveras Avenue, on the west by Fulton Street and on the southeast by Stanislaus Avenue, (the "FMM Block").

B. There are two buildings on the FMM block that have designated historical significance. Other buildings on the block, including a building that housed Fresno's first television station, have not been officially surveyed for historic significance. They are the Fresno Bee building on the southwest corner of Van Ness and Calaveras and the San Joaquin Power & Light building ("SJP&LB") on Fulton. The Bee building was originally constructed in 1922. Two major additions were made in 1936 and 1951. The 1951 addition and remodeling substantially changed the structure and appearance of the 1936 addition but did not alter the original 1922 facade. The Bee Building is on the National Register for reasons of its association with the development and expansion of communications/media industry and for its architectural significance. FMM currently operates its museum functions in the Bee building. The SJP&LB was originally built as the public bill paying building. It was subsequently used by Pacific Gas & Electric and, later, as a theater by the Theatre 3 Company. Theatre 3 is in the process of vacating the SJP&LB and no successor use is currently planned. The FMM recognizes and acknowledges that the City's historic resources are an important and finite part of Fresno's physical and aesthetic environment. FMM further recognizes and acknowledges that an important step that can be taken to ensure the protection of Fresno's historic resources is for landowners purposefully and intentionally to commit to the preservation of the historic resources within their ownership prior to making any decision or taking any action with regard to any proposed development plans.

C. In January, 2005, FMM submitted an application to the City of Fresno to perform extensive renovations to the interior of the Bee building. The proposed project involves construction of a "backpack" structure on the west side of the building to house stairways, elevators, HVAC, and fire suppression systems. The backpack will be approximately 23 feet deep and extend along the full 75 foot width of the original 1922 footprint of the Bee building. The backpack will be visually separated from the Bee building by light wells to differentiate the historic structure from the new

addition. FMM proposed to demolish both the 1951 and the 1936 additions to the building with the exception of the two story 1951 basement press room that will be retained for storage. The project description that was reviewed and approved by the City of Fresno also includes demolishing all other structures between the alley and Van Ness.

D. The City of Fresno referred the application to the City Historic Preservation Commission. The Historic Preservation Commission held two hearings on January 24, 2005 and March 28, 2005. Staff engaged in additional research of the integrity of the 1936 addition, and on March 24, 2005 the Planning and Development Department published a determination that the proposed project qualified for a Categorical Exemption under Article 19 of the California Environmental Quality Act (CEQA Guidelines, citing Section 15331/Class 31 and 15332/Class 32.

The information supporting the March 24, 2005 determination was presented to the Historic Preservation Commission at its March 28, 2005 public hearing. The Commission reviewed the Environmental Assessment for the FMM project and on a 4-1 vote endorsed the Department's findings that the proposed renovation plans comply with the Secretary of Interior's Standards for the Treatment of Historic Properties (as required by the City's Historic Preservation Ordinance) and will not result in a significant adverse change to the historic Fresno Bee building. The Commission also supported the Department's use of a Categorical Exemption.

E. Valley Advocates and Jeanette Jurkovich appealed the decision of the Historic Preservation Commission to the City Council. On May 17, 2005 the City Council considered the matter and voted 7-0 to uphold the decision of the Historic Preservation Commission and deny the appeal.

F. On June 22, 2005, the Preservation Group filed a Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief in Fresno County Superior Court [Case No. 05CECE01947] to challenge the City Council action; and, on July 7, 2005, an Amended Petition for Writ of Mandamus and Complaint for Declaratory Relief and Injunctive Relief was filed in the Superior Court and served on the Clerk of the City of Fresno.

G. Notwithstanding the approval by the City Council and the pending legal action, the parties desire to settle this matter to settle this matter and to avoid the need for litigation to resolve certain continuing disputes.

NOW THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

1. Dismissal of Judicial Challenge. In consideration of the promises and performance of the FMM set forth below, the Preservation Group agrees to dismiss with prejudice, Fresno County Superior Court Case No. 05CECG01947, their challenge to the action of the City Council in certifying a Categorical Exemption and approving the proposed renovation of the Bee Building. FMM acknowledges that this waiver is

particular to the signatories of this Agreement and does not bind other parties. Therefore, the parties to this Agreement further agree that they shall neither solicit, finance, support, or encourage other parties to file suit to challenge the City's actions on the Fresno Bee project.

2. No Impacts for Offsite Improvements. FMM agrees, and will to the best of FMM's ability, assure that any improvements off site from the FMM block that are developed to serve the FMM by providing parking or other infrastructure specifically to benefit FMM shall not adversely affect historic resources.

3. San Joaquin Power & Light Building.

(a) The FMM recognizes and acknowledges that the ("SJP&LB"), also known as "Theatre 3", is listed on the City of Fresno Local Register of Historic Places and that the publicly reviewed and adopted Fulton-Lowell Plan and Central Area Community Plans considered the SJP&LB worthy of preservation while both plans also support the proposed expansion plans for the FMM. Therefore, FMM agrees that it will not seek future entitlements, permits, demolition permits, and/or other development, construction, and/or demolition permits or other entitlements which would cause substantial adverse change (as defined below) to the SJP&LB.

(b) FMM will promptly commence a study of the SJP&LB to consider the feasibility of incorporating the façade and the exterior footprint into the design for a large museum building on the balance of the FMM Block. The study performed by FMM will also evaluate the feasibility of moving the SJP&LB from the FMM Block. The analysis of moving the SJP&LB will include options for potential sites that would provide the appropriate historical context for the SJP&LB.

(c) If FMM decides to incorporate the SJP&LB into the new museum structure, FMM will submit the specific incorporation proposal to the Historic Preservation Commission for review and public comment.

(d) If following the feasibility study FMM determines that moving the SJP&LB is the best option, FMM will submit the specific relocation proposal to the Historic Preservation Commission for review and public comment. FMM agrees that preservation in place is generally a preferable treatment and the most economical preservation choice for a historic resource; however, FMM may determine that it is beneficial and feasible to move the SJP&LB to a new location. Should FMM decide to relocate the SJP&LB, the standards set forth in this paragraph shall govern that relocation. Any relocation undertaken shall follow the U.S. Department of Interior Standards to ensure that no adverse impacts occur to the historical significance of the SJP&LB structure. Specifically, the FMM shall study and determine the appropriate Department of Interior Treatment Standard to be used by the FMM for the SJP&LB by first

taking into the following factors into account: 1) its importance in Fresno's history; 2) its physical condition; 3) the proposed use; and 4) the mandated code requirements. Upon the determination of the appropriate Standard, any relocation shall adhere to all the Standards guiding the selected Treatment, and no action shall be taken within the selected Treatment that is inconsistent with the Department of Interior's Guidelines. For the purpose of this paragraph, the term inconsistent actions shall include actions listed in the Guidelines as "Not Recommended."

(e) Should it be feasible to move the SJP&LB from the FMM Block utilizing the standards set forth above and the proposal is approved by the Historic Preservation Commission, the Preservation Group will work with FMM and other groups in the community to obtain the resources necessary to acquire the relocation site, move the SJP&LB and restore it; provided, however, that nothing in this paragraph or elsewhere in this Settlement Agreement shall excuse the FMM from its duty under this Agreement to preserve the SJP&LB, whether the FMM decides to relocate the SJP&LB or not.

4. Standards for Preservation of the SJP&LB.

(a) "Substantial adverse change" means the demolition, destruction, relocation, or alteration of the SJP&LB resulting in the historical significance of these resources being materially impaired.

(b) The significance of the SJP&LB shall be deemed to be "materially impaired" if the physical characteristics that convey its historical significance or justify its designation as an historical resource are demolished or materially and adversely altered. The simple, rectangular historic SJP&LB was not originally a theater and its designation as a local historic resource is not based upon its adaptive use to a theater. Therefore, alteration of the SJP&LB's interior to adapt to a new use a will not constitute a material impairment of its historical significance. In addition, the SJP&LB was intended as a zero-lot-line building with adjacent buildings constructed on both sides. Therefore, the construction of buildings adjacent to the either or both sides of the SJP&LB shall not constitute a material impairment. The retention of the precise physical location is preferable in any preservation project; and, CEQA defines relocation of a historic resource as a significant adverse impact, unless the relocation is accomplished in a manner consistent with the Department of Interior Standards, as agreed to herein.

(c) For the purposes of this agreement, retention of just the SJP&LB façade alone is a substantial adverse change and shall not be undertaken, pursuant to the terms of this Agreement.

(d) Pending the restoration of the SJP&LB, the FMM shall maintain and preserve the structure and shall preserve and protect its condition from being further degraded by environmental factors and/or human activities,

including, without limitation, unauthorized entry, fire, vandalism, demolition, and/or other forms of neglect. Specifically, FMM shall not take actions inconsistent with the Secretary of the Department of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstruction Historic Buildings, Kay D. Weeks and Anne E. Grimmer, 1995.

5. Continuing Covenant. The FMM shall not sell, transfer, convey, and/or hypothecate the SJP&LB to another party without written covenants and assurances that the SJP&LB shall be preserved as described herein. This Agreement shall run with the SJP&LB, wherever it may be located, and shall be binding upon the heirs, successors, and assigns of FMM.

6. Event of Default. In addition to all defaults and events of default as defined and/or described in this Settlement Agreement, other than as herein expressly described in the recital paragraphs, Each party agrees that each of the following events shall constitute an event of default for purposes of this Agreement ("Event of Default"):

(a) Either party shall commit any breach or default of any covenant, term, or condition contained in this Agreement;

(b) Any representation or warranty made by each party shall prove to have been false or misleading.

7. Enforcement Procedure. The parties agree that the Superior Court of Fresno County shall retain jurisdiction to enforce this Settlement Agreement in the same manner as a Stipulated Judgment of the Court. The parties agree that following reasonable notice to the other party and opportunity to cure the breach action to enforce the covenants, terms, and/or conditions of this Settlement Agreement may be initiated on shortened time by an application for Order to Show Cause re Contempt and/or an application for a Temporary Restraining Order or other appropriate motion or application for order. The parties agree that the normal notice and opportunity to cure a default shall be thirty (30) days although the parties acknowledge that in the event of a willful default or an emergency a shorter period may be reasonable.

8. Survival. All releases, reaffirmations, waivers, warranties, and representations of each party or its agent, servant, or employee pursuant to this Agreement shall survive the termination of this Agreement, if for any reason, including, without limitation, any termination or cancellation as a result of any failure of condition or Event of Default, and shall be deemed to be and remain in full force and effect thereafter.

9. Warranty of Volitional Agreement. The parties hereto warrant and represent that this Agreement is freely and voluntarily executed by them after having been apprised of all of the relevant information. The parties further warrant and represent

that they have not relied on any inducements, promises or representations made by any party or its representative, or any other person, except for those expressly set forth herein.

10. Warranty of Understanding. Each party warrants and represents that it/he/she has read this Agreement (or has had this Agreement read to him/her) and has had the terms used herein and the consequences hereof explained to it/him/her by its/his/her attorneys. Each party expressly understands that the other parties admit no liability of any sort and have made no representations as to any liabilities or obligations and have made no agreements or promises to do or admit to do any act or thing not set forth herein.

11. Warranty of Performance. Each party hereto agrees to promptly and as expeditiously as possible carry out and perform its responsibilities under the terms of this Agreement and to execute any and all documents which may be necessary from time to time in the future to implement the terms of this Agreement.

12. Warranty of Right. Each party warrants that no other person or entity has or had or claims to have had any interest in the claims, demands, causes of action, obligations, damages or liabilities described herein; that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any claim, demand, cause of action, obligation, damage or liability covered herein.

13. Notices. Except as otherwise expressly provided in this Agreement, all notices, requests, demands, and other communications required under this Agreement shall be in writing and shall be deemed to have been given (i) on the date of service, if served personally on the person to whom notice is to be given, (ii) on the date of receipt, if sent by telecopier to the person to whom notice is to be given at the telecopier number set forth below, or (iii) on the third day after mailing, if mailed to the person to whom notice is to be given, by first class mail, postage prepaid, and properly addressed as follows:

To Fresno Metropolitan Museum at:	1515 Van Ness Avenue Fresno, California 93728
To Richard Harriman for the Preservation Group at:	Richard L. Harriman, Esq. 4321 North West Avenue, Suite 106 Fresno, CA 93705-1450
To Jeanette Jurkovich:	1130 West Roberts Avenue Fresno, CA 93711

Any party or designated recipient may change his address for purposes of this Paragraph 29 by giving written notice of such change to the other party or parties and/or designated recipients in the manner provided for in this Paragraph 29.

14. Time. Time is expressly declared to be of the essence of this Agreement.

15. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the successor owners, tenants, or other occupants of the SJP&LB..

16. Attorney's Fees. In any action or proceeding relating to the interpretation or enforcement of this Agreement, or any documents relating to this Agreement, or with respect to any collateral, the prevailing party shall be entitled to recover from the other party reasonable expenses, attorneys' fees and costs.

17. Waiver. The waiver of any breach of this Agreement by any party hereto shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or another provision of this Agreement.

18. Headings. The paragraph headings contained herein are for the purpose of convenience only and shall not be considered in construing this Agreement.

19. Amendment. The terms, covenants, and conditions of this Agreement may not be altered, changed or modified except by a writing signed by all parties hereto.

20. Severability of Provisions. If any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or any remaining provisions of this Agreement.

21. Governing Law. This Agreement and all documents provided for herein and the rights and obligations of the parties hereto shall be governed by and construed under the laws of the State of California.

22. Professional Advice. Each party acknowledges and agrees that he has obtained independent advice from his own advisors as to the business, legal, and tax impacts of this Agreement, the other documents and instruments required herein, and he has not relied on any other party or those parties advisors for any business, legal, tax, or other advice whatsoever.

23. Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one instrument and may be transmitted via facsimile transmissions, with faxed signatures having full legal force and effect as original signatures.

24. Upon the execution of this Settlement Agreement by all parties and a Dismissal With Prejudice having been transmitted to the FMM in care of its attorneys, Baker, Manock & Jensen, FMM shall reimburse the Preservation Group's attorney's fees

in the sum of $3,000.00 in the form of a Cashier's Check, Bank Check, or Baker, Manock & Jensen Client Trust Account Check within three (3) business days.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

"FMM"

FRESNO METROPOLITAN MUSEUM, a California Non-Profit Corporation.

By _____

By _____

"Preservation Group"

VALLEY ADVOCATES, a California Non-Profit Corporation.

By _____
President

By _____
Secretary

CITIZENS FOR THE PROTECTION OF FRESNO'S HISTORIC RESOURCES, a California unincorporated association

By _____
Jeanette Jurkovich, Chair 7-18-05

JEANETTE JURKOVICH, individually 7-18-05

in the sum of $3,000.00 in the form of a Cashier's Check, Bank Check, or Baker, Manock & Jensen Client Trust Account Check within three (3) business days.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

"FMM"

FRESNO METROPOLITAN MUSEUM, a California Non-Profit Corporation.

By_____

By_____

"Preservation Group"

VALLEY ADVOCATES, a California Non-Profit Corporation.

By_____
President

By_____
Secretary

CITIZENS FOR THE PROTECTION OF FRESNO'S HISTORIC RESOURCES, a California unincorporated association

By_____
Jeanette Jurkovich, Chair

_____
JEANETTE JURKOVICH, individually

[illegible]

in the sum of $3,000.00 in the form of a Cashier's Check, Bank Check, or Baker, Manock & Jensen Client Trust Account Check within three (3) business days.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

"FMM"

FRESNO METROPOLITAN MUSEUM,
a California Non-Profit Corporation.

By_____

By_____

"Preservation Group"

VALLEY ADVOCATES, a
California Non-Profit Corporation.

By_____
President

By_____
Secretary

CITIZENS FOR THE
PROTECTION OF FRESNO'S
HISTORIC RESOURCES, a
California unincorporated
association

By_____
Jeanette Jurkovich, Chair

_____
JEANETTE JURKOVICH,
individually

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PROOF OF SERVICE
CCP §§ 1011, 1013, 1013a, 2015.5
FRCP 5(b)

STATE OF CALIFORNIA, COUNTY OF FRESNO

I am employed in the County of Fresno, State of California. I am over the age of 18 and not a party to the within action; my business address is 2600 Fresno Street, Fresno, CA 93721-3602.

On **July 29, 2005**, I served the document described as **STIPULATION FOR ORDER DISMISSING ACTION WITH PREJUDICE AND RESERVATION OF JURISDICTION PURSUANT TO SETTLEMENT AGREEMENT AND CODE OF CIVIL PROCEDURE SECTION 664.6; AND ORDER THEREON** on the interested parties in this action ☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list: ■ by placing ☐ the original ■ a true copy thereof enclosed in sealed envelopes addressed as follows:

Richard L. Harriman
Law Offices of Richard L. Harriman
4321 North West Avenue, Suite 106
Fresno, CA 93705-1450
(Attorney for Petitioners)

Christopher L. Campbell
Baker, Manock & Jensen
5260 N. Palm Avenue, Suite 421
Fresno, CA 923704
(Attorney for Real Party in Interest)

■ BY MAIL ☐ I deposited such envelope in the mail at Fresno, California. The envelope was mailed with postage thereon fully prepaid.

■ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Fresno, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.
☐ (BY FAX) I caused the above-referenced document to be transmitted by fax to the addressee(s) at the fax number(s) shown.
☐ (BY OVERNIGHT COURIER) I caused the above-referenced envelope(s) to be delivered to an overnight courier service for delivery to the addressee(s).

Executed on 29, **2005,** at Fresno, California.

■ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Cindy Sauceda

The foregoing instrument is a correct copy of the original on file in this office.

ATTEST: JUN 2 7 2012

TAMARA L. BEARD, Superior Court Clerk
State of California, County of Fresno
By _____ DEPUTY