

RESOLUTION NO. 2003-86

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
APPROVING AGREEMENTS TO ACQUIRE DRAINAGE CHANNELS AND PROVIDE
FOR SUPPLEMENTAL DRAINAGE FEE CREDITS AND REIMBURSEMENTS
IN THE EAST FRANKLIN SPECIFIC PLAN AREA**

WHEREAS, the City of Elk Grove (the "City") has adopted the Laguna South Public Facilities Fee Program (the "LSPFFP"), codified as Chapter 16.83 of the Elk Grove Municipal Code, which includes a supplemental fee for the acquisition of land for drainage channels serving the East Franklin Specific Plan area;

WHEREAS, the LSPFFP allows the City to provide credits against supplemental drainage fees (and reimbursement for excess credits) for land granted to the City on which drainage channels are to be constructed;

WHEREAS, land identified for acquisition for drainage channels is now owned or will be owned by the parties identified as "Owner" or "Developer" on Exhibit A attached hereto (each, together with its successors in interest, a "Landowner") and includes the properties identified by Assessor's Parcels Number on Exhibit A;

WHEREAS, drafts of the following proposed agreements or documents relating to the acquisition of land for drainage channels, which are incorporated herein by reference, have been presented to the City Council for its review and approval:

1. A Purchase and Sale Agreement and Joint Escrow Instructions ("Purchase and Sale Agreement"), which is to be entered into by and between each Landowner and the City, whereby the City agrees to purchase land for the drainage channel from the Landowner;
2. A Supplemental Drainage Fee Reimbursement Agreement ("Fee Reimbursement Agreement"), which is to be entered into by and between the City and certain Landowners, whereby the City will provide reimbursements in payment of the purchase price of the land acquired;
3. A Grant Deed ("Grant Deed"), which is to be made by each Landowner, and a Certificate of Acceptance by the City ("Certificate of Acceptance") attached thereto, whereby each Landowner will transfer and the City will accept title to the drainage channel land; and

WHEREAS, it appears to the City Council that the authorization, approval, execution, and delivery of the agreements or documents described above or contemplated thereby or incidental thereto and the acquisition of land for the drainage channels are desirable and in the best interests of the City;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Elk Grove that:


1. **Recitals.** Each of the above recitals is incorporated herein and is true and correct.

2. **Authorization of Officers to Execute and Deliver Documents.** The City Council hereby authorizes and directs the Mayor, the City Manager, the City Engineer, and the City Clerk, and each of them individually (the "Designated Officers"), for and in the name of and on behalf of the City, to prepare and complete with respect to each Landowner (and any other necessary party), as appropriate, and execute and deliver a Purchase and Sale Agreement, a Fee Reimbursement Agreement, a Grant Deed, and a Certificate of Acceptance in substantially the form of the drafts presented to this meeting, which agreements and documents are hereby approved, with such changes, insertions, revisions, corrections, or amendments (including the addition of other property identified as necessary for the drainage channels) as shall be approved by the Designated Officer or Officers executing the agreement or document for the City. The execution of an agreement or document by a Designated Officer or Officers of the City shall constitute conclusive evidence of such officer's or officers' and the City Council's approval of the agreement or document and any such changes, insertions, revisions, corrections, or amendments.

3. **General Authorization.** The Designated Officers and other officers of the City, and each of them individually, are hereby authorized and directed, for and in the name of and on behalf of the City, to do any and all things and take any and all actions that may be necessary or advisable, in their discretion, in order to effect the purposes of this resolution. All actions heretofore taken by officers, employees, and agents of this City that are in conformity with the purposes and intent of this resolution are hereby approved, confirmed, and ratified.

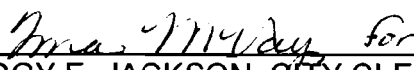
4. **Effective Date.** This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 30th day of April 2003.



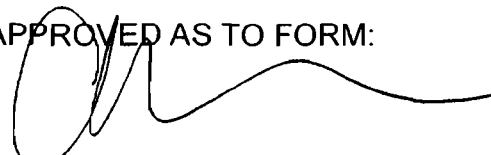
RICK SOARES, MAYOR of the
CITY OF ELK GROVE

ATTEST:



PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:



ANTHONY B. MANZANETTI,
CITY ATTORNEY

AYES: Soares, Scherman, Briggs, Cooper
NOES: None
ABSTAIN: None
ABSENT: Leary

EXHIBIT A

	Owner	APNs
1	Elk Grove Greens	132-0020-026, 032, 044, 045
2	Valley Hi JV (Fong)	132-0020-034
3	Jungkeit Dairy	132-0020-033
4	Cresleigh Ranch	132-0020-057
5	Park Meadows L.L.C.	132-0020-014, 015, 019
6	Franklin Meadows LP	132-0020-082, 083

**PURCHASE AND SALE AGREEMENT
AND
JOINT ESCROW INSTRUCTIONS
(East Franklin Specific Plan Drainage Channels)**

This Purchase and Sale Agreement and Joint Escrow Instructions ("Agreement") is made this ____ day of _____, 2003 ("Effective Date"), by and between _____ ("Seller"), and City of Elk Grove, a municipal corporation, ("Buyer") with reference to the following facts:

RECITALS

- A. Seller is the owner of the undivided one hundred percent (100.0%) interest in that certain real property located in the City of Elk Grove, County of Sacramento, State of California, legally described on Exhibit "A", attached hereto and made a part hereof ("Property").
- B. [North: East Franklin Implementation Group ("EFIG") has improved the Property with a portion of the East Franklin North Shed Drainage Channel and related appurtenances thereto ("Improvements");] [Central: Seller has improved the Property with a portion of the East Franklin Central Shed Drainage Channel and related appurtenances thereto ("Improvements");] it is the intent of the parties that the County of Sacramento shall acquire the Improvements pursuant to a separate agreement with [EFIG] [Seller].
- C. As a condition of entering into this Agreement, prior to the Effective Date, Seller shall obtain and deliver to Buyer a surveyor/engineer's map that legally describes and depicts, in detail, the Property as set forth in Exhibit "B", attached hereto and made a part hereof.
- D. As a municipal corporation, Buyer has the ability to acquire legal title to the Property by legal description alone without the requirements set forth in the Subdivision Map Act.
- E. Seller intends to sell the Property to Buyer, and Buyer intends to purchase the Property from Seller, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, and for other good and valuable consideration moving between the parties, Buyer and Seller agree as follows:

AGREEMENT

1. Purchase and Sale of Property. Subject to the terms and conditions in this Agreement, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the Property.
2. Purchase Price.

2.1 The purchase price for the Property shall be _____ and no/100 Dollars (\$ _____) ("Purchase Price"). [North: The Purchase Price shall be paid pursuant to the terms of that certain Acquisition Agreement dated as of October 15, 2002 (the

“Acquisition Agreement”), by and between the City of Elk Grove and the East Franklin Implementation Group, LLC (“EFIG”); in connection therewith, EFIG has submitted to the City a Request for Payment requesting that the City pay the Purchase Price to Seller.] [Central: A portion of the Purchase Price equal to \$_____ shall be paid pursuant to the terms of that certain Acquisition Agreement dated as of October 15, 2002 (the “Acquisition Agreement”), by and between the City of Elk Grove and the East Franklin Implementation Group, LLC (“EFIG”); in connection therewith, EFIG has submitted to the City a Request for Payment requesting that the City pay such portion of the Purchase Price to Seller. The balance of the Purchase Price shall be paid at the Close of Escrow in the form of rights to reimbursement from fees collected pursuant to the Laguna South Public Facilities Fee Program as evidenced by that certain Supplemental Drainage Fee Reimbursement Agreement, Laguna South Public Facilities Fee Program, entered into by Buyer and Seller, attached hereto as Exhibit “C” and made a part hereof (“Fee Reimbursement Agreement”).]

3. Escrow.

3.1 Seller shall open escrow with a copy of this Agreement within three (3) calendar days after full execution of this Agreement (“Escrow”). “Escrow Holder” shall be _____ located at _____. This Agreement shall, to the extent possible, act as escrow instructions. The parties agree to execute all further escrow instructions required by Escrow Holder, which further instructions shall be consistent with this Agreement, and shall provide that as between the parties, the terms of this Agreement shall prevail if there is any inconsistency. “Close of Escrow” is defined to be date of the recordation of the Grant Deed from Seller to Buyer for the Property, in the form attached hereto as Exhibit [“C”][“D”] and made a part hereof, which shall occur on or before one hundred eighty (180) calendar days following the full execution of this Agreement, or on such other date as the parties hereto shall mutually agree in writing.

4. Buyer’s Investigation.

4.1 Seller shall, within seven (7) calendar days following full execution of this Agreement, provide Buyer with copies of the following: relevant studies, documents, land surveys; any and all information that Seller has regarding environmental matters affecting the Property and regarding the condition of the Property, including, but not limited to, Phase I and/or Phase II Environmental Assessments, wetlands, structural, mechanical and soils conditions, the presence and location of asbestos, PCB transformers, other toxic, hazardous or contaminated substances, and underground storage tanks in, on, or about the Property; copies of leases and relative correspondence; and any and all other documents and matters relative hereto (collectively, “Seller’s Documents”).

4.2 Buyer shall review Seller’s Documents with thirty (30) calendar days from Seller’s delivery of Seller’s Documents (“Investigation Period”). In the event Buyer determines during the Investigation Period, in its sole discretion, and based upon its review of Seller’s Documents, further studies, environmental assessments, or investigations are required to fully investigate the Property, its value, zoning, entitlements, unrecorded encumbrances, its environmental condition, including, but not limited to, the presence of asbestos, hazardous materials and underground storage tanks, its suitability for Buyer’s intended use, and any other

matters Buyer determines relate to the Property, Seller shall be directly and solely responsible for the cost of such studies, environmental assessments, or investigations. In the event, Buyer pays for the cost of such studies, environmental assessments, or investigations, Buyer shall be reimbursed through the Escrow for such costs.

4.3 In the event that after Buyer's review of Seller's Documents and/or the conclusion of further studies, environmental assessments, or investigations, Buyer determines, in its sole discretion, that the Property is not acceptable to Buyer, Buyer shall provide Seller written notice of its disapproval of the Property. Seller, prior to the Close of Escrow, shall take such action or steps as necessary to make the Property acceptable to Buyer, including, but not limited to remediation of environmental conditions, at Seller's sole cost and expense. In the event Buyer pays for the cost of such action or steps necessary to make the Property acceptable to Buyer, Buyer shall be reimbursed through the Escrow for such costs.

4.4 Buyer, its assignees, employees, or contractors, as of the date of full execution of the Agreement, shall be allowed access to the Property for the purpose of conducting its due diligence investigation, including environmental studies potentially involving drilling bore holes and collecting soil samples. Buyer shall repair any damage done to the Property as a result of such investigations, and return the damaged portion of the Property to its condition immediately prior to such investigation. Buyer will hold Seller harmless for any personal injury or property damage caused by Buyer, its assignee, employees or contractor's negligence while conducting such investigation.

5. Title and Land Use. Within seven (7) calendar days following the full execution of this Agreement, Seller shall cause to be issued and delivered to Buyer a preliminary title report (the "Preliminary Report") for the Property, together with legible copies of all documents evidencing exceptions to title referred to therein issued by the Escrow Holder. Buyer shall have thirty (30) calendar days after receipt of the Preliminary Report and such exceptions to either approve the exceptions contained therein, or to notify Seller in writing, specifying any exceptions Buyer objects (the "Title Objection Notice"). Seller shall have fifteen (15) calendar days after Seller's receipt of the Title Objection Notice to remove, or agree to use its best efforts to remove, prior to the Close of Escrow, those exceptions to which Buyer has objected, and to inform Buyer of the same. Notwithstanding the above, Seller shall remove any monetary encumbrances at the Close of Escrow. Failure by Seller to remove, or agree to use its best efforts to remove prior to the Close of Escrow, all of the specified exceptions within the specified period shall be deemed to be a failure of this condition, and Buyer may terminate the Escrow and neither party shall have any further obligation to the other, unless Buyer withdraws its objections in writing prior to the Close of Escrow.

6. Representations and Warranties of Seller.

6.1 Seller, to the best of Seller's knowledge, hereby represents and warrants to Buyer the following:

6.1.1 Seller has the full power and authority to execute and enter into this Agreement and to consummate the transactions contemplated hereunder;

6.1.2 This Agreement constitutes a legal, valid and binding obligation of Seller enforceable in accordance with its terms;

6.1.3 There is no litigation or proceeding pending or threatened against or relating to the Property or any part thereof, nor does Seller know or have reason to know any basis for any such action;

6.1.4 There are no Hazardous Substances, or storage tanks containing Hazardous Substances, in, on, under, or about the Property;

6.1.5 Seller has not conducted or authorized the generation, transportation, storage, treatment, or disposal on the Property of any Hazardous Substance;

6.1.6 The Property is not in violation of any federal, State, or local law, ordinance, regulation, order, decree or judgment relating to environmental conditions on, under, or about the Property;

6.1.7 That at the Close of Escrow there will be no outstanding contracts or rights of possession relating to the Property which have not been fully paid and/or terminated by Seller. Seller has fully disclosed to Buyer the existence of all outstanding obligations of Seller with respect to the Property and Seller is the sole owner of (and Buyer will acquire hereunder) the entire right, title and interest in and to the Property. There are no other agreements, other than the agreement with the Sacramento County Water Agency relating to the Improvements, or understandings written or otherwise relating to the Property or title to the Property that are not reflected in the Title Report; and

6.1.8 There is no pending or threatened litigation or proceedings before any administrative agency; pending notice from any governmental agency, or employee or agent thereof; or communications, notices, or agreements with any governmental agency or private party, any of which relate in any way to the presence, release, threat of release, placement, generation, transportation, storage, treatment, or disposal of any Hazardous Substance on or about the Property.

“Hazardous Substance(s)” includes, but is not limited to, any hazardous or toxic substance, material or waste that is (i) regulated by any local governmental agency, the State of California or the United States Government (ii) defined as such in any federal, State, or local statute, ordinance, rule, or regulation applicable to the property, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25330-25395), and the Hazardous Waste Control Law (Health and Safety Code sections 25100-25250.25); (iii) asbestos, or asbestos containing material; (iv) radon gas; (v) petroleum or petroleum fractions; (vi) any explosive substances; and (vii) any radioactive material.

The Seller hereby agrees that it shall have full and complete responsibility for the costs of any and all remediation of Hazardous Substances existing on the Property prior to Closing. The Seller shall protect, defend, indemnify, and hold harmless Buyer and its officers, agents and

employees from any and all remediation costs or other claims, damages, losses, costs, expenses (including reasonable attorney's fees and all court costs) which directly or indirectly arise from or relate to the existence and/or remediation of Hazardous Substances on the Property. Notwithstanding anything in this Agreement to the contrary, the obligations of this Section shall survive the termination of this Agreement.

6.2 Seller represents and warrants that prior to the Close of Escrow. Seller shall, at its sole cost and expense, be responsible for the remediation of any and all existing environmental conditions and Hazardous Substances on the Property.

7. Representations and Warranties of Buyer.

7.1 Buyer hereby represents and warrants to Seller the following:

7.1.1 Buyer has the full power and authority to execute and enter into this Agreement and to consummate the transactions contemplated hereunder; and

7.1.2 This Agreement constitutes a legal, valid and binding obligation of Buyer enforceable in accordance with its terms.

8. Survival of Representations and Warranties. All of the representations and warranties of Seller and Buyer made in conjunction with or pursuant to this Agreement shall survive the Close of Escrow and the delivery of the Grant Deed, for a period of two (2) years after the Close of Escrow, and any claim made for a breach of any such warranty shall be made by written notice to the other party, served within such two (2) year period, except that any Hazardous Substance representations and the representations and warranties in Section 6 shall survive indefinitely.

9. Buyer's Conditions of Closing.

9.1 The Close of Escrow and Buyer's obligation to purchase the Property pursuant to this Agreement are expressly conditioned on each of the following:

9.1.1 The conveyance to Buyer of good and marketable title to such Property, as evidenced by the CLTA Policy of Title Insurance in the amount of the Purchase Price, issued by Escrow Holder, subject only to such liens or encumbrances as are not disapproved by Buyer as provided in Section 5 of this Agreement;

9.1.2 Seller having delivered into Escrow all funds, documents, or instruments, including funds to reimburse Buyer the costs Buyer incurred, if any, for environmental testing and/or remediation of the Property pursuant to Section 4.1 of this Agreement, required by this Agreement, and having complied with all other covenants and conditions to be performed or complied with by Seller;

9.1.3 The City of Elk Grove City Council's approval of the terms hereof;

9.1.4 [Central: Seller's delivery of executed duplicate original counterpart copies of the Fee Reimbursement Agreement to Escrow;

9.1.5 All the representations and warranties of Seller contained in this Agreement, including, but not limited to, the representations and warranties in Section 6 of this Agreement, being true on and as of the Close of Escrow as if the same were made on and as of such date;

9.1.6 As of the Close of Escrow, there shall be no unpaid bills or claims in connection with any work on the Property; and

9.1.7 At the Close of Escrow, Seller shall deliver the Property free of all Hazardous Substances.

9.2 Should any of the conditions to Buyer's obligation to close the Escrow and complete the purchase of the Property as specified in this Agreement fail to occur prior to the date established herein for the Close of Escrow, Buyer shall have the power, exercisable by giving written notice to the Escrow Holder and to Seller, to either waive the condition or cancel the Escrow and terminate this Agreement. The Escrow Holder shall be, and is hereby irrevocably instructed by Seller and Buyer, on any such failure of conditions and receipt of such cancellation and termination notice from Buyer, to immediately refund and deliver to Buyer all funds and documents or instruments deposited by Buyer in Escrow pursuant to this Agreement, and to refund and deliver to Seller all funds and documents or instruments deposited by Seller in Escrow pursuant to this Agreement. Buyer's cancellation of the Escrow pursuant to this Section shall not constitute a waiver of any other rights or remedies available to Buyer for breach of this Agreement by Seller.

10. Seller's Conditions of Closing.

10.1 The Close of Escrow and Seller's obligation to complete the sale of the Property to Buyer is conditioned on:

10.1.1 Buyer's payment of the [Central: portion of the] Purchase Price pursuant to the Acquisition Agreement;

10.1.2 [Central: Buyer's approval and delivery of executed duplicate original counterpart copies of the Fee Reimbursement Agreement to Escrow, which represents payment of the balance of the Purchase Price;]

10.1.3 The representations and warranties of Buyer contained in this Agreement being true on and as of the Close of Escrow as if the same were made on and as of such date;

10.1.4 Buyer having delivered into Escrow all funds as required by this Agreement and having complied with all other covenants and conditions to be performed or complied with by Buyer;

10.1.5 Buyer's adoption of a resolution approving this Agreement [Central: and the Fee Reimbursement Agreement].

10.2 Should any of the conditions to Seller's obligation to close the Escrow and complete the sale of the Property as specified in this Agreement fail to occur prior to the date

established herein for the Close of Escrow, Seller shall have the power, exercisable by giving written notice to the Escrow Holder and to Buyer, to cancel the Escrow and terminate this Agreement. The Escrow Holder shall be, and is hereby irrevocably instructed by Seller and Buyer, on any such failure of conditions and receipt of such cancellation and termination notice from Seller, to immediately refund and deliver to Seller all funds and documents or instruments deposited by Seller in Escrow pursuant to this Agreement, and to refund and deliver to Buyer all funds and documents or instruments deposited by Buyer in Escrow pursuant to this Agreement. Seller's cancellation of the Escrow pursuant to this Section shall not constitute a waiver of any other rights or remedies available to Seller for breach of this Agreement by Buyer.

11. Costs and Fees.

11.1 Charges and expenses incurred in this transaction are to be borne by the parties as follows:

11.1.1 Seller shall pay the following expenses:

11.1.1.1 Escrow fees and recording fees, if any;

11.1.1.2 Documentary transfer taxes;

11.1.1.3 Any miscellaneous costs; and

11.1.1.4 The cost of the standard form CLTA Owners Policy of Title Insurance in the amount of the Purchase Price ("CLTA Policy").

11.1.2 The Buyer shall pay the additional costs over the cost of the CLTA Policy for any endorsements or upgrade to ALTA coverage requested by Buyer.

11.1.3 Seller shall deliver into Escrow funds to reimburse Buyer at the Close of Escrow for the costs Buyer incurred, if any, for studies, environmental assessments, investigations, and for the costs Buyer incurred for performing any action or steps that were necessary to make the Property acceptable to Buyer, including, but not limited to remediation of environmental conditions, pursuant to Sections 4.2 and 4.3 of this Agreement.

11.2 All other charges and credits with respect to the Property, shall be prorated to the Close of Escrow on the basis of a thirty (30) day month. Because Buyer is exempt from real estate taxes pursuant to the California Constitution, ad valorem real property taxes on the Property shall be apportioned and paid as provided in California Revenue and Taxation Code Section 5086. If Seller has prepaid any of the ad valorem real property taxes that are cancelled pursuant to Section 5086, Seller shall seek any refunds to which it is entitled from such taxing agencies. Seller shall pay all ad valorem real property taxes up to the date of the Close of Escrow.

12. Items to be Delivered at Close of Escrow.

12.1 Seller shall execute in Escrow or deliver to Escrow Holder prior to the Close of Escrow for delivery to Buyer at Close of Escrow the following:

12.1.1 Duly executed and acknowledged Grant Deed conveying to Buyer a one hundred percent (100%) fee interest in the Property;

12.1.2 [Central: Seller's executed duplicate original counterpart copies of the Fee Reimbursement Agreement;]

12.1.3 All of Seller's costs pursuant to Section 11 and Section 4.1 of this Agreement payable in cash or immediately available funds;

12.1.4 An affidavit in form reasonably acceptable to Buyer certifying that Seller is not a "foreign person" within the meaning of Section 1445(e)(3) of the Internal Revenue Code of 1986, as amended; and

12.1.5 All other sums and documents required by Escrow Holder to carry out and close the Escrow.

12.2 Buyer shall deliver to Escrow Holder prior to the Close of Escrow for delivery to Seller at Close of Escrow the following:

12.2.1 The [Central: portion of the] Purchase Price, in cash, in accordance with the Payment Request from EFIG to Buyer pursuant to the Acquisition Agreement;

12.2.2 [Central: The balance of the Purchase Price represented by Buyer's executed duplicate original counterpart copies of the Fee Reimbursement Agreement; and]

12.2.3 All of Buyer's costs pursuant to Section 11 of this Agreement payable in cash or immediately available funds.

12.2.4 All other sums and documents required by Escrow Holder to carry out and close the Escrow.

12.3 Escrow Holder shall:

12.3.1 Obtain evidence of Buyer's acceptance of the Grant Deed;

12.3.2 Record the Grant Deed;

12.3.3 Cause the final Owner's Policy of Title Insurance to be issued and delivered to Buyer; and

12.3.4 [Central: Deliver to Buyer and Seller an executed duplicate original counterpart copy of the Fee Reimbursement Agreement.]

13. Indemnification.

13.1 From and after the Close of Escrow, Seller shall indemnify, protect, defend and hold harmless Buyer (and Buyer's officials, representatives, agents and employees) against and in respect of any and all claims, demands, damages, liabilities, losses, judgments, assessments,

costs and expenses (including reasonable attorneys' fees) of any kind or nature whatsoever, including, but not limited to, the following:

13.1.1 By reason of any act, omission, event or liability relating to the Property arising, incurred, or that occurred before the Close of Escrow; or

13.1.2 Based upon or related to a breach of any representation, warranty, or covenant made by Seller in this Agreement or in any exhibit, document, statement, schedule or certificate delivered pursuant to this Agreement.

14. Destruction. In the event of any damage or other loss to the Property prior to the Close of Escrow that materially and adversely affects Buyer's intended use of the Property or the value of the Property, excluding any such damage or loss caused by Buyer, Buyer may, without liability, terminate this Agreement or it alternatively may elect to accept the conveyance of title to such Property, or a portion thereof, in which case there shall be an equitable adjustment of the Purchase Price based on the change in circumstance.

15. Preservation of the Property. Seller agrees that the Property herein described shall remain as it now is until the Close of Escrow, and that Seller will prevent and refrain from any use of the Property for any purpose or in any manner that would adversely affect the value of the Property. After the Effective Date of this Agreement, Seller shall not transfer, lease, or encumber an interest in the Property. In the event of such actions, Buyer may, without liability, refuse to accept the Property.

16. Completion of the Improvements. Nothing in this Agreement shall waive or reduce [North: EFIG's] [Seller's] obligations under the Acquisition Agreement to complete the Improvements' "punch-list" items before and after the Close of Escrow.

17. Brokers' Commissions. Seller and Buyer each warrant to the other that no person or entity can properly claim a right to a commission, finder's fee, or other compensation with respect to the transaction contemplated by this Agreement. If any broker or finder makes any claim for a commission or finder's fee, the party through which the broker or finder makes such claim shall indemnify, defend and hold the other party harmless from all liabilities, expenses, losses, damages or claims (including the indemnified party's reasonable attorneys' fees) arising out of such broker's or finder's claims.

18. Assignment. Buyer may assign this Agreement without Seller's consent at any time prior to the Close of Escrow.

19. Entire Agreement. Other than the Acquisition Agreement and any agreement with the Sacramento County Water Agency relating to the Improvements, this Agreement constitutes the sole and only agreement between Buyer and Seller concerning the Property and their rights and duties in connection with the Property. Any prior or other agreements or representations between Buyer and Seller regarding those matters are null and void unless expressly set forth in this Agreement.

20. Time of Essence. Time is of the essence for each condition, term, and provision in this Agreement.

21. Waivers. No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party.

22. Severability. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to either party. Upon such determination that any term or provision illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the greatest extent possible.

23. Construction. Section headings are solely for the convenience of the parties and are not a part of and shall not be used to interpret this Agreement. The singular form shall include the plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to sections are to this Agreement.

24. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California.

25. Notices. All notices and demands of any kind that either party may be required or desires to serve upon the other party shall be in writing and shall be served upon such other party by (i) personal service, (ii) facsimile transmission with a copy mailed on the day of transmission, or (iii) by mailing a copy thereof, certified or registered mail, postage prepaid, addressed as follows:

If to Seller: _____

Facsimile: _____

If to Buyer: City of Elk Grove
8400 Laguna Palms Way
Elk Grove, CA 95758
Attn: City Engineer
Facsimile: (916) _____

With copy to: Kronick, Moskovitz, Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814-417
Attn: Cynthia L. Knighton, Esq.
Facsimile: (916) 321-4555

Service shall be deemed complete on the date of personal service, facsimile transaction or the actual delivery as shown on the addressee's return receipt, whichever is earlier. The addresses to which notices and demands shall be delivered or sent may be changed from time to time by notice to the other party.

26. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same agreement.

27. Joint Drafting. Buyer and Seller acknowledge that this Agreement was negotiated at arm's length, that independent counsel has represented each party and that this Agreement has been drafted by both parties and no one party shall be construed as the draftsman.

The parties have executed this Agreement as of the date first written above.

SELLER:

_____,
a California _____

By: _____

Name: _____

Title: _____

BUYER:

CITY OF ELK GROVE,
a municipal corporation

By: _____
John Danielson, City Manager

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT "A"

Legal Description of Property

EXHIBIT "B"

Map depicting the Property

EXHIBIT “C”

Fee Reimbursement Agreement

EXHIBIT ["C"] ["D"]

Grant Deed

CITY OF ELK GROVE

**SUPPLEMENTAL DRAINAGE FEE REIMBURSEMENT AGREEMENT
LAGUNA SOUTH PUBLIC FACILITIES FEE PROGRAM**

East Franklin Central Shed Drainage Channel
[identify property or owner]

This Agreement, dated _____, 2003, by and between the City of Elk Grove, a municipal corporation (the "City"), and _____, [type of entity] (the "Owner"),

WITNESSETH:

WHEREAS, the City has adopted the Laguna South Public Facilities Fee Program (the "LSPFFP"), codified as Chapter 16.83 of the Elk Grove City Code, which includes a supplemental fee for the acquisition of land for drainage channels serving the East Franklin Specific Plan area; and

WHEREAS, the LSPFFP allows the City to provide credits against supplemental drainage fees and reimbursement for excess credits for land granted to the City on which drainage channels are to be constructed; and

WHEREAS, pursuant to that certain Purchase and Sale Agreement and Joint Escrow Instructions between City as Buyer and Owner as Seller dated as of _____, 2003 (the "Purchase Agreement"), in exchange for payments pursuant to that certain Acquisition Agreement dated as of October 15, 2002 (the "Acquisition Agreement"), by and between the City and the East Franklin Implementation Group, LLC ("EFIG") and reimbursement pursuant to the terms of this Agreement from supplemental drainage fees collected by the City, the Owner has agreed to sell to the City fee title to certain property on which a portion of the East Franklin Central Drainage Channel has been constructed, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property");

NOW, THEREFORE, in consideration of the mutual promises contained herein, the City and the Owner agree as follows:

Section 1. Reimbursement. After satisfactory transfer to the City of title to the Property, but only when sufficient revenues are available in the East Franklin Central Shed account of the Laguna South Supplemental Drainage Facilities Fund, the City shall pay the Owner \$_____ (the "Outstanding Reimbursement"), which amount represents the difference between (a) the Purchase Price of the Property as agreed to in Section 2.1 of the Purchase Agreement and (b) the portion thereof paid to the Owner pursuant to the Acquisition Agreement.

Section 2. Indemnity. The Owner, by execution of this Agreement, specifically agrees to assume the defense of, indemnify and hold harmless the City and its officers, employees, consultants, and agents from and against all actions, damages, claims, losses, or expenses of every type and description to which they may be subjected or put, by reason of or

resulting from any false or materially inaccurate statement(s) made by the Owner in regard to this Agreement and to the conveyance of the Property.

Section 3. Notice. Any notice required or permitted by this Agreement to any party shall be deemed to have been received when personally delivered to any party or seventy-two (72) hours following deposit of the same into the United States mail, first class postage prepaid, addressed as follows:

City: City of Elk Grove
Public Works
8400 Laguna Palms Way
Elk Grove, CA 95758
Attn: City Engineer

Owner:

Any party hereto may, by notice given hereunder, designate a different address to which subsequent notices, payments, or instruments shall be delivered to it.

Section 4. Term. The term of this Agreement shall start on the day and year first above written and shall remain in effect until all the terms and conditions contained in this Agreement have been satisfied.

Section 5. Captions. Captions to Sections of this Agreement are for convenience purposes only and are not part of this Agreement.

Section 6. Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall remain in full effect as though such invalid or unenforceable provision had not been a part of this Agreement.

Section 7. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section 8. Governing Law; Venue. This Agreement is made under, and shall in all respects be interpreted, enforced, and governed by, the laws of the State of California. In the event of a dispute concerning the terms of this Agreement, the venue for any legal action shall be with the appropriate court in the County of Sacramento, State of California.

Section 9. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the matters contained herein and may be amended only by subsequent written agreement signed by all parties.

Section 10. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

IN WITNESS THEREOF, the parties have executed this Agreement on the day and year first above written.

CITY OF ELK GROVE

By: _____
Rick Soares, Mayor

ATTEST:

Peggy Jackson, City Clerk

APPROVED AS TO FORM:

Anthony Manzanetti, City Attorney

[NAME OF OWNER]

By: _____
Name:
Title:

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO
AND MAIL TAX STATEMENTS TO

NAME City of Elk Grove
ADDRESS 8400 Laguna Palms Way
CITY Elk Grove
STATE & ZIP CA 95758

TITLE ORDER NO.

ESCROW NO.

APN NO.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX
PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS
DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE
CALIFORNIA GOVERNMENT CODE.

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt and sufficiency is hereby acknowledged,

_____, **Grantor,**
hereby GRANT(s) to the

CITY OF ELK GROVE, a municipal corporation, Grantee,

the following described real property in the City of Elk Grove, County of Sacramento, State of California; as
described in Exhibit "A" and depicted in Exhibit "B."

Executed this ____ day of _____, 200__

GRANTORS:

_____,
a _____

By: _____

Name: _____

Title: _____

ACCEPTED BY GRANTEE:

CITY OF ELK GROVE
a municipal corporation

By: _____

Name: _____

Title: _____

Attest by City Clerk:

By: _____
Peggy Jackson, City Clerk

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in the real property conveyed by the Grant Deed dated _____, 200____, from _____, a _____, as Grantor, to the City of Elk Grove, a municipal corporation, as Grantee, is hereby accepted by the undersigned officers on behalf of the City Council of the City of Elk Grove, pursuant to authority conferred by Resolution No. 200__ - __ of the City Council of the City of Elk Grove adopted on _____, 200____, and the Grantee consents to the recordation thereof by its duly authorized officer.

Dated: _____, 200____

CITY OF ELK GROVE

By: _____

Exhibit "A"

Legal Description of Property

Exhibit "B"

Map depicting the Property