

File No.: ACQ- 02-04-06
Project: Shasta Park (PN/WO: LV41/207678)
Parcel No.: 117-0201-009
Escrow #: 05-5001927
Title Company: Fidelity National Title Company
Date of Preliminary Title Report: 10/7/2005

Grantor: Mustafa Sharif, a married man as his sole and separate property

Grantee: CITY OF SACRAMENTO, a Municipal Corporation

AGREEMENT FOR ACQUISITION OF REAL PROPERTY IN FEE

WHEREAS, the above-named Grantor(s) (hereafter referred to as the "Grantor") owns the property (hereafter referred to as the "Property") described in the deed attached hereto as Exhibit "A" (hereafter referred to as the "Deed"); and

WHEREAS, Grantor desires to convey and the City of Sacramento (hereafter referred to as the "City") desires to acquire fee title to the Property, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the payment and other obligations set forth below, Grantor and City mutually agree as follows:

1. **Execution and Delivery of Deed.** City shall open an escrow with the title company identified above (hereafter referred to as the "Escrow Holder). Upon execution of this Agreement by both parties, Grantor shall execute and deliver the Deed to the Escrow Holder.

2. **Payment.**

A. **Purchase Price.** Upon execution of this Agreement by both parties, City shall tender payment to the Escrow Holder in the amount of **THREE HUNDRED SIXTY-FOUR THOUSAND DOLLARS (\$364,000)**, which is specifically agreed by the parties to be the full amount of compensation due and owing to Grantor for conveyance of the fee title to the City.

3. **Fee Title Free of Encumbrances.** Grantor agrees and covenants that fee title to the Property shall be conveyed to City free and clear of all rights, restrictions, easements, impediments, encumbrances, liens, assessments or other security interests of any kind

(hereafter collectively referred to as "Encumbrances"), and that Grantor at Grantor's expense shall take all actions necessary to remove any and all Encumbrances prior to, and as an express condition precedent to, the close of escrow, except as follows:

- A. Taxes for the fiscal year in which the escrow closes shall be cleared and paid for in the manner required by Section 4986 of the Revenue and Taxation Code. As a deduction from the amount shown in section 2, above, the City shall be authorized to pay any delinquent taxes due in any fiscal year, except the fiscal year in which this escrow closes, together with penalties and interest thereon; and
- B. Grantor shall not be required to remove: (1) easements or rights-of-way for public roads or public utilities, if any; and (2) items specifically identified on Exhibit "B" attached hereto, if any.

4. Title Insurance. City may obtain a CLTA extended coverage owner's policy of title insurance insuring that clear title to the Property is vested in City upon recording of the Deed.

5. Escrow. Unless extended by the mutual agreement of both parties, the escrow shall close **forty-five (45) days** after execution of this Agreement by both parties, or ten (10) days after the expiration of the Due Diligence Period described in section 7, below, or ten (10) days after expiration of the Cure Period described in section 7, below, whichever occurs later; provided that if a Resolution or Resolutions of Necessity are required in order to condemn any property required for the above-named Project, the escrow shall not close prior to the adoption of the Resolution(s) of Necessity by the City Council. If a Resolution or Resolutions of Necessity are required and the City Council does not adopt the Resolution(s), this Agreement may, at City's election, be deemed cancelled and of no force and effect, in which event both parties shall be released from any and all liability to each other of any sort or nature relating to this acquisition or the project, and all amounts deposited in escrow by City shall be returned forthwith to City by the Escrow Holder.

The Escrow Holder may expend any or all monies payable under this Agreement and deposited into escrow to discharge any obligations which are liens upon the Property, including, but not limited to, those arising from judgments, assessments, delinquent taxes for other than the fiscal year in which the escrow closes, or debts secured by deeds of trust or mortgages, and/or to defray any other incidental costs other than those specified in section 6 hereof to be borne by the City. The Escrow Holder shall release payment to Grantor, return any credited amounts to City, and record the Deed in the Recorder's Office for Sacramento County upon the close of escrow. Title to the Property shall pass to City immediately upon close of escrow.

This Agreement may serve in whole or in part as escrow instructions. The issuance of any further escrow instructions shall be the sole responsibility of City. The Grantor agrees to execute such additional documents as may be reasonably necessary to consummate the purchase and sale herein contemplated.

6. **Fees.** The City shall pay all escrow, recording and title insurance fees incurred in this transaction.

7. **Due Diligence Period.** City shall have a total of **thirty (30) days** from the date this Agreement is approved by both parties as its due diligence period ("Due Diligence Period"), in which to disapprove of any physical or environmental conditions or aspects of the Property, or any other matter affecting City's decision to purchase the Property, which arise or become known to City during the Due Diligence Period. The Due Diligence Period may be extended by the mutual agreement of both parties. City may enter upon the Property at any time during the Due Diligence Period to perform environmental site assessments, testing, monitoring or any other form of inspection or investigation to ascertain the physical or environmental conditions or aspects of the Property. City shall repair any damage caused by its assessment, testing, monitoring or other inspection or investigation activities on the Property, and the City's indemnification and defense obligations under section 15.B. of this Agreement shall apply to such activities.

If, at any time within the Due Diligence Period, City delivers to Grantor written notice of its disapproval of any physical or environmental conditions or aspects of the Property or any other matter affecting City's decision to purchase the Property, Grantor shall have 30 days from and after the delivery of such notice (unless such time is extended by the mutual agreement of both parties) within which to correct all such disapproved matters ("Cure Period"). If Grantor does not correct such disapproved matters to the satisfaction of the City within the Cure Period, City's exclusive remedies shall be as follows: At City's election, either (1) terminate the Agreement, without any liability on the part of either party and with City receiving a refund of all amounts deposited in escrow, less the City's share of escrow costs and fees, or (2) purchase the Property in accordance with the terms of this Agreement without a reduction in the purchase price and without any liability on the part of Grantor for said disapproved matters. City shall provide Grantor with written notice of City's election to terminate the Agreement or purchase the Property in accordance with this Agreement, as the case may be, not later than five (5) days after the expiration of the Cure Period.

If City does not deliver any written notice of disapproval to Grantor, as specified above, during the Due Diligence Period, City shall purchase the Property in accordance with the terms of this Agreement.

8. **Possession and Use of the Property.** The City shall have the right of possession and use of the Property including the right to remove and dispose of improvements and construct the above-named project commencing on the date that this Agreement is approved by both parties; provided that City makes no representation that the project shall be constructed, and no liability or obligation whatsoever shall be incurred by City by reason of any failure to construct the project for any reason. If the Property subsequently is not acquired by City for any reason, City shall restore the Property to the condition existing prior to the City's possession or use hereunder, unless otherwise agreed by the parties.

9. Eminent Domain.

A. It is mutually understood that the acquisition of the Property by City is for a public purpose, and therefore, the Property is otherwise subject to taking by the power of eminent domain. The acquisition by and through this Agreement is in lieu of City's exercise of the power of eminent domain.

B. If any eminent domain action that includes the Property, or any portion thereof, has been filed by the City, Grantor hereby agrees and consents to the dismissal of such action. The Grantor waives any and all claims to any money that may have been deposited in the Superior Court or with the State Treasurer in any such action and waives any and all claims for damages or costs, including attorney's fees, arising by virtue of the abandonment of the action pursuant to Section 1268.510 of the California Code of Civil Procedure.

10. Amendment. This agreement may be modified, changed, or rescinded only by an instrument in writing executed by the parties hereto.

11. Just Compensation. Grantor agrees that performance of this Agreement by City, including the payment recited in section 2, above, shall constitute full and fair compensation and consideration for any and all claims that Grantor may have against City by reason of the acquisition, improvement, possession or occupancy of the Property, and Grantor hereby waives any and all such claims, including claims for severance or taking compensation or damages on account of the acquisition of the Property or the location, establishment, construction or operation of the above-named project on the Property. The foregoing waiver shall include any and all rights or claims that Grantor may have under Article 1, section 19 of the California Constitution, the Eminent Domain Law, or any other law or regulation; provided that this section shall not apply to claims for relocation assistance, if any, to which Grantor may be entitled pursuant to applicable sections in Chapter 16 of Division 7 of Title 1 of the California Government Code.

12. No Leases. Grantor warrants that there are no leases, except as disclosed on Exhibit "C" attached hereto, on all or any portion of the Property, and the Grantor further agrees to hold the City harmless and reimburse the City for any of its losses and expenses occasioned by reason of any lease of said Property, other than as disclosed on Exhibit "C."

13. Grantor's Representations. Grantor makes the following representations and warranties:

A. Grantor certifies that it owns full legal title to the Property, and has full power and authority to convey all property rights described herein to City.

B. To the best of Grantor's knowledge there is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the

Property, or any portion thereof, or pending or threatened against Grantor which could (1) affect Grantor's title to the Property, or any portion thereof, (2) affect the value of the Property, or any portion thereof, or (3) subject an owner of the Property, or any portion thereof, to liability.

C. To the best of Grantor's knowledge there are no uncured notices which have been served upon Grantor from any governmental agency notifying Grantor of any violations of law, ordinance, rule or regulation which would affect the Property or any portion thereof.

D. Grantor has no knowledge of the production, storage, disposal, presence, observance or release of any Hazardous Substances (as defined below) in, upon, about or below the Property.

E. To the best of Grantor's knowledge, there are no notices or other information giving Grantor reason to believe that any conditions existing on the Property or in the vicinity of the Property subject or could subject an owner of the Property to potential liabilities under any Environmental Law (as defined below).

F. Grantor has no knowledge of any violation of any Environmental Law arising out of Grantor's ownership or use of the Property, nor of any legal, administrative or other action or proceeding, pending or threatened, affecting the Property and relating to environmental compliance.

G. To the best of Grantor's knowledge there is no license, permit, option, right of first refusal or other agreement, written or oral, which affects the Property or any portion thereof.

H. To the best of Grantor's knowledge conveyance of the property rights described herein will not constitute a breach or default under any agreement to which Grantor is bound and/or to which the Property is subject.

Each of the above warranties and representations is material and is relied upon by City. Each of the above representations shall be deemed to have been made as of the date that the Deed is recorded, and shall survive the recording of the Deed by a period of two years following the date that the Deed is recorded. If, before the recording of the Deed, Grantor discovers any information or facts that would materially change any of these warranties and representations, Grantor shall immediately give notice to City of such facts and information. If any of the foregoing warranties and representations cease to be true before the recording of the Deed, Grantor shall be obligated either to remedy the problem before the recording of the Deed or deduct from the payments required by Section 2, above, as a credit to City, the amount reasonably required to remedy the problem.

14. Hazardous Substances.

A. **Liability for Hazardous Substances.** The parties acknowledge, understand and agree that any liability associated with the presence of any Hazardous Substances, as defined below, on or adjacent to any portion of the Property shall be governed by the provisions of section 15 below, regardless of whether any inspection, examination, sampling, testing, assessment or other investigation is conducted by City.

B. Definitions.

(1) As used herein, the term "Hazardous Substances" means:

(a) Those substances included within the definitions of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste, or pollutant or contaminant under any Environmental Law, as defined below;

(b) Those substances listed in the United States Department of Transportation Table [49 CFR § 172.101], or by the Environmental Protection Agency, or any successor agency, as hazardous substances [40 CFR Part 302];

(c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state or local laws or regulations; and

(d) Any material, waste, or substance that is

- 1) a petroleum or refined petroleum product,
- 2) asbestos,
- 3) polychlorinated biphenyl,
- 4) designated as a hazardous substance pursuant to 33 USCS §1321 or listed pursuant to 33 USCS §1317,
- 5) a flammable explosive, or
- 6) a radioactive material.

(2) As used herein, the term "Environmental Law" means all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to environmental conditions on, under, or about any of the properties described in this Agreement, as now or may at any later time be in effect, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)

[42 USCS §§9601 *et seq.*]; the Resource Conservation and Recovery Act of 1976 (RCRA) [42 USCS §§6901 *et seq.*]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) [33 USCS §§1251 *et seq.*]; the Toxic Substances Control Act (TSCA) [15 USCS §§2601 *et seq.*]; the Hazardous Materials Transportation Act (HMTA) [49 USCS §§1801 *et seq.*]; the Insecticide, Fungicide, Rodenticide Act (7 USCS §§136 *et seq.*]; the Superfund Amendments and Reauthorization Act [42 USCS §§6901 *et seq.*]; the Clean Air Act [42 USCS §§7401 *et seq.*]; the Safe Drinking Water Act [42 USCS §§300f *et seq.*]; the Solid Waste Disposal Act [42 USCS §§6901 *et seq.*]; the Surface Mining Control and Reclamation Act [30 USCS §§1201 *et seq.*]; the Emergency Planning and Community Right to Know Act [42 USCS §§11001 *et seq.*]; the Occupational Safety and Health Act [29 USCS §§655 and 657]; the California Underground Storage of Hazardous Substances Act [Health and Safety Code §§25280 *et seq.*]; the California Hazardous Substances Account Act [Health and Safety Code §§25100 *et seq.*]; the California Safe Drinking Water and Toxic Enforcement Act [Health and Safety Code §§24249.5 *et seq.*]; the Porter-Cologne Water Quality Act [Water Code §§13000 *et seq.*], together with any amendments of or regulations promulgated under the statutes cited above, and any other federal, state or local law, statute, ordinance or regulation now in effect or later enacted that pertains to the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

15. Indemnification.

A. By Grantor

Grantor agrees and covenants to indemnify, defend (with counsel acceptable to City), and hold City, and City's officers, employees and agents, harmless from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments arising by reason of any death, bodily injury, personal injury, property or economic damage, violation of any law or regulation, or damage to the environment, including ambient air, soil, soil vapor, groundwater, or surface water, and resulting from or in any way connected with:

- (1) any acts or omissions related to the performance of this Agreement by Grantor, its officers, employees, agents, engineers, contractors or subcontractors, or any other person or entity employed by or acting on their behalf;
- (2) any breach of this Agreement by Grantor, its officers or employees;

(3) the use, storage, treatment, transportation, release, or disposal of Hazardous Substances, as defined above, on or about any portion of the Property by any person or entity (except for the City and persons or entities acting on City's behalf or under City's control), and which has occurred or will occur at any time before the Property is conveyed to City as provided herein.

B. By City

City agrees and covenants to indemnify, defend (with counsel acceptable to Grantor), and hold Grantor, and Grantor's officers, employees and agents, harmless from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or Grantor's in-house attorney), causes of action, claims, or judgments arising by reason of any death, bodily injury, personal injury, property or economic damage, violation of any law or regulation, or damage to the environment, including ambient air, soil, soil vapor, groundwater, or surface water, and resulting from or in any way connected with:

(1) any acts or omissions related to the performance of this Agreement by City, its officers, employees, agents, engineers, contractors or subcontractors, or any other person or entity employed by or acting on their behalf;

(2) any breach of this Agreement by City, its officers or employees;

(3) the use, storage, treatment, transportation, release, or disposal of Hazardous Substances, as defined above, on or about any portion of the Property by any person or entity (except for the Grantor and persons or entities acting on Grantor's behalf or under Grantor's control), and which occurs at any time after the Property is conveyed to City as provided herein.

C. The parties further agree and understand as follows: a party does not, and shall not be deemed to, waive any rights against the other party which it may have by reason of the aforesaid indemnity and hold harmless agreements because of any insurance coverage available; the scope of the aforesaid indemnity and hold harmless agreements is to be construed broadly and liberally to provide the maximum coverage in accordance with their terms; no specific term or word contained in this Section 15 shall be construed as a limitation on the scope of the indemnification and defense rights and obligations of the parties unless specifically so provided.

D. The provisions of this Section 15 shall survive the recording of any deeds hereunder.

16. Attorney Fees. Either party may bring a suit or proceeding to enforce or require performance of the terms of this Agreement, and the prevailing party in such suit or proceeding shall be entitled to recover from the other party reasonable costs and expenses, including attorney's fees.

17. Notices. Any notice that either party may or is required to give the other shall be in writing, and shall be either personally delivered or sent by regular U.S. Mail, to the following address:

To City

Real Estate Services
City of Sacramento
5730 24th Street, Building 4
Sacramento, CA 95822
Attn: Supervising Real Property Agent

To Grantor

Mustafa Sharif
2400 Dinwiddie Way
Elk Grove, CA 95858
(916) 715-0974

18. Recording. Either party may record this Agreement in the Recorder's Office for Sacramento County.

19. Binding on Successors. This Agreement shall be binding on and shall inure to the benefit of the City and Grantor, and their respective successors, assigns, and their past, present and future officers, employees and agents; provided that this Agreement may only be assigned with the written consent of both parties, and any attempt to assign this Agreement without such consent shall be void.

20. Special Provisions. The Special Provisions attached hereto as Exhibit "D," if any, are hereby incorporated and made a part of this Agreement by this reference. In the event of any conflict or inconsistency between this Agreement and the Special Provisions, the terms of the Special Provisions shall prevail.

21. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

22. Entire Agreement. The parties have herein set forth the whole of their Agreement. All prior oral discussions, representations, and/or agreements, if any, are specifically superseded by this Agreement, which is intended by the parties to contain all of the terms and conditions agreed to by them with regard to acquisition of the Property by City.

23. Authority. Each individual executing this Agreement on behalf of an entity represents and warrants that he or she has been authorized to do so by the entity on whose behalf he or she executes this Agreement and that said entity will thereby be obligated to perform the terms of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

Grantor(s):
Mustafa Sharif, a married man as his
sole and separate property

By: _____
Print Name: Mustafa Sharif
Title: Owner

Date: 5/22/2006

Grantee:
CITY OF SACRAMENTO,
a Municipal Corporation

By: _____
Print Name: _____
Title: _____

For Ray Kerridge, City Manager

Date: _____

RECOMMENDED FOR APPROVAL

By: _____
Supervising Real Property Agent

By: _____
Real Property Agent

APPROVED AS TO FORM:

By: _____
City Attorney

ATTEST:

By: _____
City Clerk

S:\Facilities\Real Estate\Work Group Projects\Bruce\LV41-297678 Shasta Park\Musta & Sharif\ACQ AGREE - FEB (12-26-00) Musta & Sharif.doc

***Note:** If Grantor is a corporation, the following two signatures are required: (1) the first signature by either the Chairman of the Board, the President or any Vice President of the corporation; and (2) the second signature by either, the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer of the corporation.

Exhibit "A"

Grant Deed

RECORDING REQUESTED BY
AND FOR THE BENEFIT OF
CITY OF SACRAMENTO
NO FEE DOCUMENT
Govt Code 6103
WHEN RECORDED MAIL TO
CITY OF SACRAMENTO
Real Estate Services
5730 24th Street, Building 4
Sacramento, California 95822

COPY

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ACO-02-04-06
RES File

05-5001927
Escrow

117-0201-009
APN

Agreement #

GRANT DEED

Mustafa Sharif, a married man as his sole and separate property

hereby grant(s) to the CITY OF SACRAMENTO, a Municipal Corporation, the real property in the City of Sacramento, County of Sacramento, State of California, described as follows:

SEE ATTACHED LEGAL DESCRIPTION MARKED EXHIBIT 'A'

Dated: _____

Mustafa Sharif, a married man as his sole and separate property:

By: _____
Mustafa Sharif

COPY

"Approved as to form - City Attorney"

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

All that portion of Lot 1 of Lucern Meadows, according to the official plat thereof, filed in the office of the Recorder of Sacramento County, California, on March 1, 1911, in Book 12 of Maps, Map No. 4, described as follows:

Commencing at a point on the South line of said Lot 1 and in the center of a 25 foot road as shown on said plat from which the Southwest corner of said Lot 1 bears West 100 feet; thence from said point of commencement parallel to the West line of said Lot 1 a distance of 150 feet; thence West parallel to the South line of said Lot 1, a distance of 100 feet to the West line of said Lot 1; thence Northerly along the West line of said Lot 1 a distance of 118 feet; thence Easterly parallel with the South line of said Lot 1 a distance of 175 feet; thence Southerly parallel with the West line of said Lot 1 a distance of 268 feet to the South line of said Lot 1, in the center line of said 25 foot road; thence Westerly along the South line of said Lot 1 and on the center line of said 25 foot road 75 feet to the point of beginning.

EXCEPTING THEREFROM the following described property:

Commencing at a point on the West line of said Lot 1 distant thereon 150 Feet North of the Southwest corner of said Lot 1, said Southwest corner being in a center of a 25 foot road known as Shasta Road, running thence North along the West line of said Lot 1 a distance of 118 feet; thence East, parallel with the South Line of said Lot 1 a distance of 100 feet; thence South parallel with the West line of said Lot 1 a distance of 118 feet; thence West parallel to the South line of said Lot 1 a distance of 100 feet to the point of beginning and the West line of said Lot 1.

APN: 117-0201-009-000

Exhibit "B"

Title exceptions that will not be removed:
Item 5 Only
as shown in Fidelity National Title Insurance Company
Preliminary Title Report # 05-5001927, dated October 7, 2005

Exhibit "C"

Leases, if any

NONE

Exhibit "D"

Special Provisions, if any

NONE