

**AGREEMENT FOR PURCHASE AND SALE OF PERMANENT STREET
AND PUBLIC UTILITY EASEMENTS AND ESCROW INSTRUCTIONS
APN 479-050-04**

**MLK - Active Transportation Infrastructure Program
City Project No.: PW00842 Federal Project No.: CML 5060(360)**

This Agreement for a Permanent Street Easement and Public Utility Easement (“Agreement”) is entered into by and between Ruth McDonald, an unmarried woman, and Florine Parish, an unmarried woman (collectively “Owner”), without regard to number or gender, and the CITY OF FRESNO, a municipal corporation (“City”), for permanent street and public utility easements and right-of-way for public street purposes on the following terms and conditions.

1. The real property which is the subject of this Agreement, hereinafter “Subject Property”, is a Permanent Street Easement being approximately 3,357± square feet in size for public street easement, and a Public Utility Easement being approximately 99± square feet in size for public utility easement, to facilitate the Fresno and Browning Intersection Improvement Project (“Project”), situated in the City of Fresno, County of Fresno, State of California, , within Assessor’s Parcel Number 479-050-04, as described on Exhibits “A” and “C” depicted on Exhibits “B” and “D” attached hereto and incorporated herein by reference.
2. Owner agrees to grant to the City a permanent street easement and public utility easement and right of way (“Easements”) for public street and utility purposes over, under, through, and across the Subject Property, free and clear of all liens, encumbrances, and restrictions of record.
3. City shall pay just compensation of EIGHT THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$8,500.00) for the Easements, including cost to cure damages, benefits and/or severance damages to the remainder, if any, as indicated on Exhibit “E”, attached hereto and incorporated herein by reference, for the Subject Property.
4. Clause 3 above may include payment for the replacement of improvements such as fencing and/or irrigation facilities that are within the area being acquired for this project and must be replaced in order to proceed with the construction of the project. If Owner does not replace said items, City may install temporary fencing on Owner’s property lying immediately adjacent to the new right of way line, if necessary, to hold in livestock during construction of the road project, and/or plug the irrigation line(s) at Owner’s property line. Owner hereby agrees to allow the City, its agents, employees, authorized contractors and subcontractors and their employees access to their remaining property to perform said work and that the cost for said work shall be billed to and paid for by Owner.
5. The Effective date of this Agreement shall be upon its duly authorized execution by the City and the payment of EIGHT THOUSAND FIVE HUNDRED DOLLARS (\$8,500.00) just compensation to the Owner.
6. Owner represents and warrants that it holds fee title to the Subject Property, and has the authority to enter into the Agreement herein made.

7. Owner agrees to hold the City harmless and reimburse the City for any and all losses and expenses as to the Subject Property by reason of any change in ownership or Lease of said Subject Property held by any tenant of the Owner.
8. The transaction of the sale shall be processed by the City through an internal escrow at 2600 Fresno Street, Fresno, CA 93721. The contact is Colleen Karby at 559-621-8697.
 - a. The City shall pay the Owner the sums due directly by check.
 - b. Payment of said sums, less Owner's cost to clear title, if any, may be made to Owner only when the City possesses fully executed and acknowledged and recorded easement deeds to the Subject Property free and clear of all liens, encumbrances and restrictions of record.
 - c. The City reserves the right to accept title to the property interest to be acquired by City herein subject to certain defects in any or all matters of record title to the property. In consideration for Owner receiving the total sum as stated in Paragraph 3, the undersigned Owner covenants and agrees to indemnify and hold the City harmless from any and all claims and demands third parties may make or assert and causes of action third parties may bring which arise out of or are in connection with the foregoing defects in title to the property. The Owner's obligation herein to indemnify and hold harmless the City shall not exceed the amount paid to the Owner under specified in Paragraph 3.
 - d. It is understood that Owner shall be responsible for the payment of all taxes, penalties, redemptions, and costs allocable to the Subject Property.
 - e. The escrow fee, cost of policy of title insurance, recording fees (if any), shall be paid by the City.
 - f. Disbursements of the purchase price to be in the amounts, at the times, and in all respects in accordance with the terms and conditions and subject to the limitations of this Agreement.
9. Owner shall indemnify, hold harmless, and defend the City, its officers, agents, employees, and volunteers from any liability, loss, fines, penalties, forfeitures, claims, expenses, and costs, whether incurred by the Owner, City, or any other third party, arising directly or indirectly from the release, presence or disposal of any hazardous substances or materials (as now or hereafter defined in any law, regulation, or rule) in, on, or about the Property on or before the effective date of this Agreement. This indemnity shall include, without limitation, any claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), or any other federal, state or local law whether statutory or common law, ordinance, or regulation. Costs or losses covered will include, without limitation, consultants, engineering, investigator fees, clean up or disposal costs and attorneys' fees, and damages. The Owner's obligation herein to indemnify and hold harmless the City shall not exceed the amount paid to the Owner specified in Paragraph 3. This limitation

does not preclude the City from bringing a claim against Owner for a loss on the adjacent property.

10. Miscellaneous Provisions:

a. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provision 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.

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

c. 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.

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

e. 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 any party, but rather by construing the terms in accordance with their generally accepted meaning.

f. 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.

g. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment.

h. 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.

i. Exhibits and Attachments. Each Exhibit and Attachment referenced herein is by such reference incorporated into and made a part of this Agreement for all purposes.

j. 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 both the City and the Owner.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the Effective date of this Agreement as defined above.

OWNER

Ruth McDonald, an unmarried woman, and Florine Parish, an unmarried woman

Ruth McDonald

Date: _____

Florine Parish

Date: _____

CITY OF FRESNO, a California municipal corporation

By: _____ Date: _____
Scott L. Mozier, P.D.
Public Works Director

RECOMMENDED FOR APPROVAL:

By: _____ Date: _____
Nancy Bruno
Supervising Real Estate Agent

APPROVED AS TO FORM:
Andrew Janz, City Attorney

By: _____ Date: _____
Deputy

ATTEST:
Todd Stermer, City Clerk

By: _____ Date: _____
Deputy

Attachments:

1. Exhibit "A"
2. Exhibit "B"
3. Exhibit "C"
4. Exhibit "D"
5. Exhibit "E"