

MF	10	0261-1 0261-2	508-020-03ST
PROJECT SECTION	COUNTY CODE	PARCEL #	APN(s)

City of Fresno, a Municipal corporation

The parties to this agreement (AGREEMENT) are, City of Fresno, a Municipal corporation hereinafter referred to as OWNER, and State of California, acting by and through the State Public Works Board, with the consent of the California High-Speed Rail Authority (collectively, "STATE," or individually "PWB," and "Authority," respectively). The OWNER and STATE are hereinafter collectively referred to as the PARTIES.

RECITALS

- I. By this AGREEMENT OWNER sells to STATE, and STATE desires to purchase from OWNER certain interests in real property located at 5510 W. Barstow Avenue, State of California, and more particularly described in Document Nos. MF-10-0261-1 in the form of an Easement Deed and MF-10-0261-2 in the form of a Temporary Construction Easement Deed, copies of which are attached hereto and made a part hereof ("Property").
- II. Authority requires the Property for state high-speed train system purposes, and for public use in accordance with Public Utilities Code Section 185000, et seq., and PWB is authorized to acquire the Property in accordance with Government Code section 15853.
- III. Document Nos. MF-10-0261-1 in the form of an Easement Deed and MF-10-0261-2 in the form of a Temporary Construction Easement Deed covering the Property have been executed and delivered to the Authority for deposit into escrow.

In consideration of the foregoing recitals and the other considerations herein after set forth, the PARTIES agree as follows:

1. (A) The PARTIES have herein set forth the whole of their AGREEMENT. The performance of this AGREEMENT constitutes the entire consideration for the acquisition of the Property and shall relieve STATE of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.
- (B) The issuance of any escrow instructions shall be the sole responsibility of the Authority and shall govern the escrow. This transaction will be handled through an escrow with Fidelity National Title Company, 1375 Exposition Blvd., Suite 240, Sacramento, CA, their No. 01000464-010-PA-CDT.
- (C) Escrow shall be scheduled to close 90 days from when AGREEMENT is executed by PWB ("Close of Escrow"), subject to reasonable extension upon mutual agreement by the PARTIES. Title to the Property shall pass immediately upon Close of Escrow.
- (D) During the escrow period, should the Property be materially destroyed by fire, earthquake or other calamity without the fault of STATE, this contract may be rescinded by STATE; in such an event, Authority may reappraise the Property and make an offer thereon.

- (E) Authority requires the Property described in Document Nos. MF-10-0261-1 and MF-10-0261-2 for state high-speed train system purposes, a public use for which PWB has the authority to exercise the power of eminent domain under Government Code sections 15853 and 15854. OWNER is compelled to sell, and PWB is compelled to acquire the Property.
- (F) Both OWNER and STATE recognize the expense, time, effort, and risk to both parties in determining the compensation for the Property by eminent domain litigation. The compensation set forth herein for the Property is in compromise and settlement, in lieu of such litigation.
2. The Authority shall:
- (A) Pay the undersigned OWNER the sum of ONE THOUSAND DOLLARS AND NO CENTS (\$1,000.00) for the Property or interest conveyed by Document Nos. MF-10-0261-1 and MF-10-0261-2 when title to the Property vests in the State of California free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded) and taxes, except:
- 1) Item(s) 5, 6 and 7 of Fidelity National Title Company Preliminary Title Report No. 01000464-010-PA-CDT, dated September 14, 2016.
- (B) Pay all escrow and recording fees incurred in this transaction and, if title insurance is desired by the STATE, the premium charged therefor. These escrow and recording charges shall not, however, include documentary transfer tax.
- (C) Have the authority to deduct and pay from the amount shown in Clause 2(A) above, any amount necessary to satisfy and discharge any obligations which are liens upon the Property, including but not limited to those arising from bond demands, judgments, assessments, delinquent taxes, debts secured by deeds of trust or mortgages and/or to defray any other incidental costs other than those specified in Clause 2(B) above, to be borne by the Authority. Property taxes for the fiscal year in which this escrow closes, if unpaid, shall be paid by OWNER in escrow to and including the date of Close of Escrow. The payment shall be based on the most recent information applicable to the fiscal year and obtainable through the taxing agencies. STATE shall not be responsible for any tax refund.
- (D) Recognize its responsibility for consideration of relocation assistance pursuant to the Federal and State Relocation Assistance Acts, 42 U.S.C., Section 4601, et seq.; Government Code Section 7260, et seq., and Federal and State implementing regulations.
3. The OWNER shall:
- (A) On or before the date title vests in the State of California or such later date as shall be agreed to herein by the PARTIES, vacate and deliver the Property to the Authority in good order and condition without further notice.
- (B) Execute all instruments and documents and undertake diligently all actions that may be required in order to consummate the purchase and sale of the Property and use their best efforts to accomplish the Close of Escrow in accordance with the provisions of this AGREEMENT. The contract execution date will be the date that the PWB signs the AGREEMENT.
4. OWNER Represents and Warrants:
- (A) OWNER has full right, power and legal authority to enter into this AGREEMENT, to sell, transfer and convey the Property to the State of California under this AGREEMENT and to carry out OWNER's obligations under this AGREEMENT. Upon the Close of Escrow, the State of California will have good, marketable and insurable title to said Property.

- (B) The individuals executing this AGREEMENT and the instruments referenced herein on behalf of OWNER have the legal power, right and actual authority to bind OWNER to the terms hereof and thereof.
- (C) All requisite action (corporate, trust, partnership or otherwise) has been taken by OWNER in connection with the entering into of this AGREEMENT, the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, creditor, investor, judicial or administrative body, authority or other party is required.
- (D) Neither the execution and delivery of this AGREEMENT and documents referenced herein, nor the incurrance of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this AGREEMENT and the documents referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreements or instruments to which OWNER is a party or affecting the Property.
- (E) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending against the Property or pending against OWNER which could affect OWNER's title to the Property, affect the value of the Property, or subject an owner of the Property to liability.
- (F) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against OWNER.
- (G) OWNER has not entered into any other contracts for the sale of the Property, nor do there exist any rights of first refusal, reversions, or options to purchase the Property or any portion of the Property. OWNER is not party to nor subject or bound by any agreement, contract, or lease of any kind relating to the Property which would impose an obligation on STATE or otherwise affect marketability of title to the Property. Since the initiation of negotiations with Authority, OWNER has not entered into any agreements or leases with any person for use of the Property.
- (H) As of the Close of Escrow, there shall be no unrecorded leases, licenses or other agreements which would grant any person or entity the right to use or occupy any portion of the Property, including any improvements thereon, and there shall be no improvements on the Property that encroach upon the property of a third party.
- (I) OWNER will not hereafter enter into new leases or any other obligations or agreements affecting the Property without the prior written consent of STATE, which consent the STATE may withhold or grant in its absolute discretion.
- (J) OWNER will not subject the Property to any additional liens, encumbrances, covenants, conditions, easements, rights of way or similar matters after the date of this AGREEMENT that will not be eliminated prior to the Close of Escrow.
- (K) OWNER shall promptly notify a Deputy Director of the PWB and the Director of Real Property of the Authority of any event or circumstance that makes any representation or warranty of OWNER under this AGREEMENT untrue or misleading, or of any covenant of OWNER under this AGREEMENT incapable or less likely of being performed. It is understood that the OWNER's obligation to provide notice to PWB and Authority shall in no way relieve OWNER of any liability for a breach by OWNER of any of its representations, warranties or covenants under this AGREEMENT.



- (L) To the OWNER's knowledge during the period of their ownership of the Property, there have been no disposals, releases or threatened releases of hazardous substances or hazardous materials on, from, or under the Property, and OWNER has no knowledge of any disposal, release, or threatened release of hazardous substances or hazardous materials, on, from, or under the Property which may have occurred prior to OWNER taking title to the Property.
5. STATE Represents and Warrants:
- (A) PWB and Authority have the legal power, right and authority to enter into this AGREEMENT and the instruments referenced herein, and to consummate the transactions contemplated hereby.
- (B) The individuals executing this AGREEMENT and the instruments referenced herein on behalf of the STATE have the legal power, right and actual authority to bind the STATE to the terms and conditions hereof and thereof, subject to authorization by the PWB and approval by the California Department of General Services.
- (C) This AGREEMENT is, and all other instruments, documents and agreements required to be executed and delivered by the STATE in connection with this AGREEMENT are and shall be, duly authorized, executed and delivered by the PWB and Authority and shall be valid, legally binding obligations of and enforceable against the STATE in accordance with their terms.
6. The PARTIES Further Agree:
- (A) The acquisition price of the Property being acquired in this transaction reflects the fair market value of the Property without the presence of contamination. If the Property being acquired is found to be contaminated by the presence of hazardous waste which requires mitigation under Federal or State law, the STATE may elect to recover its cleanup costs from those who caused or contributed to the contamination.
- (B) This AGREEMENT has no force or effect and is not binding on the STATE until and unless it is approved by the California Department of General Services [Government Code section 11005] and authorized by the PWB [Government Code section 15853].
- (C) The Authority shall be provided with access to the Property as of the date this AGREEMENT is executed by PWB and be entitled to undertake, at Authority's sole expense, an inspection of the Property; a review of the physical condition of the Property, including but not limited to, inspection and examination of soils, environmental factors, hazardous substances, biological resources, archaeological information and water resources, if any, relating to the Property; and a review and investigation of the effect of zoning, maps, permits, reports, engineering data, regulations, ordinances and laws affecting the Property, if any.
- (D) Any obligation of STATE created by or arising from this AGREEMENT shall not impose a debt upon the STATE, but shall be payable solely out of funds duly authorized and appropriated by the California State Legislature.
- (E) Rents, if any, shall be prorated as of the Close of Escrow and all rents coming due after Close of Escrow shall be paid to Authority. If any rents have been or are collected by the OWNER for any period after Close of Escrow, OWNER shall refund such rents to the Authority. OWNER shall repay to the tenant(s) (or list the tenants by name), any cleaning, key or other deposits, excluding rents paid in advance, and indemnify and hold STATE harmless from any claim therefor.



- (F) This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
7. Notwithstanding other provisions in this AGREEMENT, STATE's right of possession and use of the property, including the right to remove and dispose of improvements, shall commence upon execution of this AGREEMENT by PWB and the amount shown in Clause 2(A) includes, but is not limited to, full payment for that possession and use, including damages, if any, from said date.
 8. (8.10.09.01) Authority shall without cost to OWNER and at the time of construction either protect in place or restore in kind any improvements, including but not limited to fencing, block fence/wall, and landscaping, located within the property.



CONTRACT – SIGNATURE SHEET
(4/2013)

In WITNESS WHEREOF, the PARTIES have executed this AGREEMENT.

OWNER

City of Fresno, a Municipal corporation

By: _____ Date: _____
Name: _____
Title: _____

By: _____ Date: _____
Name: _____
Title: _____

STATE OF CALIFORNIA
State Public Works Board

By: _____ Date: _____
Sally Lukenbill
Deputy Director
Director, High-Speed Rail Authority

By: _____ Date: _____
Name: _____
Title: _____

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED

Recommended for Approval:

By: _____ Date: _____
Christopher A. Krier
Supervising Right of Way Consultant

Approved:

Director, California Department of General Services

By: _____ Date: _____
Michael P. Butler, Chief
Real Property Services Section



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Sally Lukenbill
Deputy Director

Director, High-Speed Rail Authority

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Michael P. Butler, Chief
Real Property Services Section