

**AGREEMENT FOR PURCHASE AND SALE OF PROPERTY EASEMENT
AND ESCROW INSTRUCTIONS AND
TEMPORARY CONSTRUCTION EASEMENT**

**Pump Station 250A
WC00016**

This Agreement for Purchase and Sale of Property Easement and Escrow Instructions ("Agreement") is entered into this 6th day of May 2015, by the City of Fresno, a municipal corporation ("City") and Frances L. Barigian, a single woman ("Seller").

Seller, without regard to number or gender, hereby agrees to sell to City the hereinafter described property easement on the following terms and conditions:

1. The real property which is the subject of this Agreement is situated in the County of Fresno, State of California ("Subject Property") being a permanent property easement and Temporary Construction Easement ("TCE") within of Assessor's Parcel Number 427-171-25, and which is more particularly described as:

Exhibit "1A" relative to a permanent property easement and
Exhibit "1B" for a Temporary Construction Easement attached hereto, and
by reference made a part of hereof.

2. The City shall pay to Seller the total purchase price of Fifteen Thousand dollars (\$15,000) ("Purchase Price") as just compensation for the permanent easement. The terms of the Temporary Construction Easement shall not merge with the deed for the permanent property easement, and shall survive recordation of the permanent property easement.

3. It is understood and agreed by and between the parties hereto that the Temporary Construction Easement granted to the City in this transaction is for the purpose of allowing the City or its authorized contractor to enter upon the remaining property of Seller, where necessary, within the temporary construction easement area, and to use equipment and materials thereon, for the purpose of relocating an existing service water connection. Said easement imposes upon the City the obligation to exercise such rights where required by the construction project and to leave Seller's remaining property in like condition as found, or better. The City's use of the Temporary Construction Easement shall commence upon issuance of a Notice to Proceed to the City's contractor to start construction, and shall terminate when the City provides written notice to Seller that the use of the Temporary Construction Easement is no longer necessary.

4. Seller acknowledges that the City has the power to acquire the subject property for public purposes by eminent domain. If title does not pass to the City within

the time provided by this Agreement, the City may begin eminent domain proceedings to acquire such possession or title. The parties agree and stipulate that the net sum payable to Seller hereunder shall be conclusively deemed to be the total just compensation payable in such proceedings, and this Agreement may be filed with the court as stipulation upon which judgment may be entered in the eminent domain proceeding as to the just compensation to be paid to Seller. Seller waives all other defenses in said proceeding.

5. It is agreed and confirmed by the City and the Seller that notwithstanding other provisions in this Agreement, the right of possession and use of the permanent property easement by the City, including the right to remove and dispose of improvements within the permanent property easement, shall commence on June 30, 2015, or the close of escrow controlling this transaction whichever occurs first. The Purchase Price and TCE, includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date.

6. Seller represents and warrants that it has the authority to make the offer herein made, and that it holds fee title to said real property and can convey the subject property free and clear of all liens, encumbrances, and restrictions of record except for the title exceptions noted in 7.b below.

7. The sale shall be completed through an escrow to be opened at Chicago Title Company, 2540 W. Shaw Lane, Fresno, California, 93711 (Escrow Officer: Judy Robinson). Said escrow shall be opened upon the following terms and conditions, and the Seller and City by their signature to this Agreement make this paragraph their escrow instructions:

- a. The City shall deposit the sums specified in Paragraphs 2 of this Agreement and the closing costs in escrow upon receipt of a demand and statement from said title company therefor.
- b. Payment of said sums, less Seller's cost to clear title, if any, may be made to Seller only when escrow holder possesses and is in a position to deliver to the City a fully executed and acknowledged and recorded grant deed to the subject property, and when said escrow holder stands ready to issue to the City a standard title insurance policy guaranteeing a title to said property in the City free and clear of all liens, encumbrances, and restrictions of record, except for Items 1-6 of Schedule B contained in the Preliminary Title Report No. FWFM-4501501688-JR dated April 6, 2015, from Chicago Title Company.
- c. It is understood that Seller shall be responsible for the payment of all taxes, penalties, redemptions, and costs allocable to the subject property. It is further Seller's responsibility to apply to the County Tax Collector for any refund or decrease in taxes which may be granted.
- d. The escrow fee, cost of policy of title insurance, recording fees (if any), and all other closing costs shall be paid by the City. Seller will pay any

cost to convey the title to the subject property in the condition described in 7.b above.

- e. 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.

8. 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 in 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 Seller.

9. Time is of the essence of each and every term, condition and covenant hereof.

10. Environmental Indemnity. Seller shall indemnify, hold harmless, and defend the Buyer, its officers, agents, employees, and volunteers from any liability, loss, fines, penalties, forfeitures, claims, expenses, and costs, whether incurred by the Seller, Buyer, 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 Closing. 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. Upon written notice from the Buyer, the Seller, at Seller's sole cost and expense, shall immediately assume the defense of any claims, suit or action brought against the City by any public body, individual, partnership, corporation or other legal entity, relating to any matter covered by this paragraph. Seller's obligations under this indemnity shall survive the close of escrow and the recording of the grant deed.

11. It is understood and agreed that as a condition precedent hereto, this Agreement shall have no force and effect until approved by the Council for the City of Fresno. This Agreement is to remain open for one hundred and twenty (120 days) from the date hereof, and that upon its duly authorized execution within said time by the City, this Agreement shall become a contract for the purchase and sale of subject property binding upon Seller and City, their heirs, executors, administrators, successors in interest, and assigns.

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SIGNATURES APPEAR ON NEXT PAGE.**

Signature Page

IN WITNESS WHEREOF the Seller and Buyer have signed this Agreement on the dates and in the year set forth below.

RECOMMENDED FOR APPROVAL

SELLER:

BY _____
Michael Carbajal
Division Manager
Department of Public Utilities

Frances L. Barigian

Date _____

Date 5/6/2015

Address of Seller

4834 N. Maroa Avenue
Fresno, CA 93704

BUYER:
CITY OF FRESNO:
a municipal corporation

Thomas C. Esqueda,
Director
Department of Public Utilities

Date _____

Address of City

City of Fresno
Water Division
1910 E. University Avenue
Fresno, CA 93703-2927

ATTEST:
Yvonne Spence
City Clerk

APPROVED AS TO FORM:
Douglas T. Sloan
City Attorney

By _____
Deputy

By _____
Deputy

Attachments:
Exhibit 1A: Permanent property easement
Exhibit 1B: Temporary construction easement
Exhibit 1C: Preliminary Title Report