

**AGREEMENT FOR PURCHASE AND SALE OF A STREET EASEMENT  
AND ESCROW INSTRUCTIONS**

**Belmont Avenue Widening Between Clovis & Fowler Avenues  
APN 310-111-13 Residential    5785 E. Belmont Avenue  
City Project No.: PW 00754**

**E. & J. Gallo Winery a California Corporation**, hereinafter called the "Seller(s)," without regard to number or gender, hereby offers to sell to the CITY OF FRESNO, a municipal corporation, hereinafter called the "City," the hereinafter described street 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 and may hereinafter for convenience be referred to as the "subject property," being a street easement approximately 3,100 square feet in size and contained within Assessor's Parcel Number 310-111-13 and which is more particularly described as:

Exhibits "A" and "B" relative to a permanent street easement and by reference made a part of hereof.

2. The total purchase price for the subject property, including any cost to cure damages as detailed in the Appraisal Summary Statement dated August 8, 2016 shall be the sum of THIRTY FIVE THOUSAND ZERO HUNDRED AND 00/100 DOLLARS (\$35,000) as just compensation for this property.

3. Seller(s) acknowledge 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(s) 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 Sellers. Seller(s) waive all other defenses in said proceeding.

4. It is understood and agreed by and between the parties hereto that the easement described on Exhibit "A" and depicted on Exhibit "B", is a permanent easement and right of way for public street purposes.

5. It is agreed and confirmed by the City and Seller(s) that, notwithstanding other provisions of this Agreement, the right of possession and use of the subject properties by the City, including the right to remove and dispose of improvements within the permanent street easements, shall commence on close of escrows controlling these transaction, and the amount shown in Paragraph 2 above includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date.

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6. Seller represents and warrants that it has the authority to make the offer herein made, and that it holds fee title to said easement.

7. The sale shall be completed through an escrow to be opened at Fidelity National Title Company, 7485 North Palm Avenue, Suite 106, Fresno, California 93711 under Escrow Number 2011504297-BW. 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 sum 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 sum 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 easement 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, 2, 3, 4, 5, 6, 7 and 8 contained in the Preliminary Title Report No. 2011504297-BW dated October 29, 2015 from Fidelity National Title Company.
- c. The escrow fee, cost of policy of title insurance, recording fees (if any), and all other closing costs shall be paid by the City. City will also pay any cost to convey the title to the subject property in the condition described in 7.b above.
- d. 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.

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- 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 Sellers.

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

10. AS IS; As a material inducement to Seller's execution and delivery of the Agreement, the City acknowledges that the Property shall be conveyed in its AS IS condition, with all faults, including any hazardous substances or hazardous wastes that may be located on, under, or around the Property, whether known or unknown. THE CITY HAS AGREED TO ACCEPT POSSESSION OF THE PROPERTY ON THE CLOSING DATE ON AN "AS IS" BASIS. SELLER AND THE CITY AGREE THAT THE PROPERTY SHALL BE SOLD "AS IS, WHERE IS, WITH ALL FAULTS" WITH NO RIGHT OF SET-OFF OR REDUCTION IN THE PURCHASE PRICE, AND SUCH SALE SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, WARRANTY OF TITLE, USES, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), AND SELLER DISCLAIMS AND RENOUNCES ANY AND ALL REPRESENTATION OR WARRANTY. Buyer confirms that it is relying solely upon its investigation of the present condition of the Property and all governmental laws and ordinances that might affect its use and development.

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11. Exchange Transaction. City recognizes that Seller desires to effect a tax deferred exchange pursuant to Internal Revenue Code Section 1033 or a similar provision (an "**Exchange**"), and City at no cost to City shall cooperate with Seller in effecting the Exchange. However, the City shall not be responsible for any cost or expense, nor shall it incur any potential liability, associated with the Exchange.

12. 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 Sellers and City, their heirs, executors, administrators, successors in interest, and assigns.

**SIGNATURE PAGE TO FOLLOW**

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**Signature Page**


This Agreement is executed by the City of Fresno by and through the Public Works Director or his designee of the City of Fresno pursuant to authority granted by the Council of the City of Fresno on \_\_\_\_\_.

**RECOMMENDED FOR APPROVAL**

BY: \_\_\_\_\_  
J. A. "Pete" Caldwell  
Senior Real Estate Agent

Date \_\_\_\_\_

SELLER(S): E. & J. Gallo Winery, Corp

  
Douglas B. Vilas, Vice President  
and Chief Financial Officer

Date 2-10-2017

**CITY OF FRESNO**

BY: \_\_\_\_\_  
Andrew J. Benelli, Assistant Director,  
Public Works Department

Date \_\_\_\_\_

Address of City:

City of Fresno  
Public Works Department  
2600 Fresno Street, Room 4019  
Fresno, CA 93721-3623

Mailing Address of Seller:

P. O. Box 1130  
Modesto, CA 95353

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

BY:  Deputy

Date 2/28/17

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

BY: \_\_\_\_\_  
Deputy

Date \_\_\_\_\_



## EXHIBIT "A"

APN 310-111-13 (portion)  
Street easement

The south 20.00 feet of the following parcel of land:

The southwest quarter of the following described property:

A portion of Lot 8 in Block 3 of Nevada Colony, according to the map thereof recorded in Book 2 Page 7 of Plats, Fresno County records described as follows:

BEGINNING at a point 20.0 feet west and 30.0 feet north of the south quarter corner of Section 33, Township 13 South, Range 21 East Mount Diablo Base and Meridian, and running thence westerly parallel with the south line of said Section 33, a distance of 310.0 feet to a point; thence northerly parallel with the east line of the southwest quarter of said Section 33, a distance of 300.0 feet to a point; thence easterly parallel with the south line of Section 33, a distance of 310.0 feet to a point 20.0 feet west of the east line of the southwest quarter of Section 33; thence southerly parallel with the said east line, a distance of 300.0 feet to the POINT OF BEGINNING.

Contains an area of 3,100 square feet, more or less.



