

**AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY
AND ESCROW INSTRUCTIONS
APN: 438-022-21
4461 E. Dakota Avenue**

This Agreement for Purchase and Sale of Real Property (Agreement) is entered into by and between the WON K. LEE AND SANG D. LEE (Seller) and the CITY OF FRESNO, a municipal corporation (City).

RECITALS

- A. Seller is the owner of an approximately 3.39 acre parcel of property located in the City of Fresno known as 4461 E. Dakota Avenue, Assessor's Parcel Number (APN) 438-022-21.
- B. City desires to purchase Seller's property more particularly defined in Section 1 below (the Subject Property) for the development of a City park.
- C. On September 30, 2021, City provided Seller with a Letter of Intent to purchase the Subject Property and the parties have been engaged in active negotiations for the purchase and sale of the Subject Property.
- D. City has agreed to purchase the Subject Property as-is.
- E. City now wishes to purchase from Seller and Seller now wishes to sell to City the Subject Property subject to the terms and conditions contained herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

- 1. **Subject Property.** The Subject Property known as APN 438-022-21 and is situated at 4461 E. Dakota Avenue in the City of Fresno, County of Fresno, State of California, being approximately 3.39 acres in size, which includes any improvements located on the property and all rights, privileges, and appurtenances including any permits and easements. A legal description of the Subject Property is described in Exhibit "A" and depicted on Exhibit "B", attached hereto and incorporated herein by reference.
- 2. **Fee Title.** Seller shall grant the Subject Property to City in fee, free and clear of all liens, encumbrances, leasehold and restrictions of record.
- 3. **Purchase Price.** City shall pay Seller ONE MILLION ONE HUNDRED SIXTY FIVE THOUSAND SIX HUNDRED EIGHTY FIVE and No/100 Dollars (\$1,165,685.00) (Purchase Price) for the Subject Property.
- 4. **Effective Date.** The Effective date of this Agreement shall be upon its duly authorized execution by the City.
- 5. **Right to Sell.** Seller represents and warrants that it holds fee title to the Subject Property, that such property is free of all liens and encumbrances, and that it has the authority to enter into this Agreement. Seller 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 Seller.

6. **Escrow Instructions.** The sale shall be completed through an External Escrow to be opened at Fidelity National Title Company (Attn: Bernadette Watson, Escrow Officer). 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. **Deposits.** The City shall deposit the sums specified in Paragraph 3 of this Agreement and the closing costs in escrow upon receipt of a demand and statement from said title company as follows:

- i. **Initial Deposit.** Within seven days of the Effective Date, City shall deposit with Escrow Holder the sum of Ten Thousand and No/100 Dollars (\$10,000) (Initial Deposit). The Initial Deposit shall be applied to the Purchase Price at Close of Escrow.
- ii. **Balance of Purchase Price.** City shall pay the balance of the Purchase Price, less the Initial Deposit to Seller, in good funds through Escrow, not later than the close of business on the day before the Close of Escrow. Escrow Holder will forward to both City and Seller a separate accounting of all funds received and disbursed for each party, and copies of all signed and recorded documents deposited into Escrow, with the recording and filing date and information endorsed thereon.

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 deed to the Subject Property free and clear of all liens, encumbrances and restrictions of record.

- b. **Feasibility Period.** City shall have the right to examine the feasibility of the Subject Property for a period of up to 90 days after the parties have executed this Agreement (the Feasibility Period). City, in its sole and absolute discretion, shall have the authority to waive all, or any portion of the Feasibility Period at any time prior to expiration of the Feasibility Period by providing written notice to Escrow Holder and Seller.

- i. **Access.** City shall have the right to access the Subject Property, at all times following execution of this Agreement by the parties, for the purpose of conducting all studies, inspections, evaluations, tests or surveys of the Subject Property that City elects to have performed, upon reasonable notice to Seller. City agrees to indemnify and hold Seller free and harmless from any and all liability, loss, cost, damage or expense that Seller may sustain or incur by reason of or in connection with such entry, studies, inspections, evaluations, tests or surveys conducted by City during the Feasibility Period.

- ii. **Feasibility Package.** Seller shall deliver to City a feasibility package within ten days of execution of this Agreement. The following shall be included as due diligence in the package:
 - 1. Any documents relating to special assessment or bonds;
 - 2. All known current litigation affecting the Subject Property;
 - 3. All environmental reports;
 - 4. Copy of all fees paid; and
 - 5. All Plans and any history on repairs/maintenance
- iii. **Expiration of Feasibility Period.** If City has not given notice of termination and cancellation on or before the expiration of the Feasibility Period, the Initial Deposit shall be non-refundable and released and paid to Seller by Escrow Holder on the next business day immediately following the expiration of the Feasibility Period without need for further instructions, notice, or demand from either party.
- iv. **Termination and Cancellation of Agreement.** If City, in its sole and absolute discretion, decides to terminate and cancel this Agreement by timely delivery of a termination and cancellation notice on or before expiration of the Feasibility Period, then the entire Initial Deposit, and any accrued interest thereon, shall be immediately refunded to City by Escrow Holder without the need for further instruction, notice, or demand from either party.
- c. **Defects in Title.** 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 Subject Property. In consideration for Seller receiving the total sum as stated in Paragraph 3, the undersigned Seller 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 Subject Property. The Seller's obligation herein to indemnify and hold harmless the City shall not exceed the amount paid to the Seller under specified in Paragraph 3.
- d. **Financial Liabilities.** It is understood that Seller shall be responsible for the payment of all taxes, penalties, redemptions, and costs allocable to the Subject Property.
- e. **Costs.** The escrow fee, cost of policy of title insurance, transfer tax and recording fees (if any) shall be paid by the City.
- f. **Disbursement.** Disbursements of the Purchase Price shall 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.

- g. **Close of Escrow.** Close of Escrow for the purchase and sale of the Subject Property shall occur no later than 30 days from the expiration of the Feasibility Period. The following Conditions of Sale must be met prior to Close of Escrow:
- i. City's approval of contents of preliminary title report and exceptions;
 - ii. City's approval of any engineering reports;
 - iii. No pending litigation against Subject Property and no notices of violation of law;
 - iv. City's approval of Preliminary title report approval;
 - v. City's approval of physical inspection of the Subject Property;
 - vi. City's completion and approval of the Feasibility Study;
 - vii. Approval of this Agreement by the City Council of the City of Fresno prior to execution by City.
 - viii. Escrow Holder is in possession of a good and sufficient grant deed, duly executed by Seller, in the form attached hereto as Exhibit C.
7. **Possession.** Sole and exclusive possession of the Subject Property shall be delivered to City on the Closing Date, free of all claims from Seller or any third persons under leases or otherwise.
8. **Conditions and Inspection of Subject Property.** Notwithstanding any other provision of this Agreement to the contrary, Seller has not expressly or impliedly made any representations, guaranties, promises, statements, assurances, or warranties of any kind concerning the Subject Property. Seller has not conducted any investigation regarding the condition of the Subject Property, and the Subject Property is sold as-is, where is, with all faults, and there is no warranty, express or implied, regarding the condition of the Subject Property.
9. **Defaults and Remedies.**
- a. **City's Default.** IF CLOSE OF ESCROW SHALL FAIL TO OCCUR BECAUSE OF THE BUYER'S DEFAULT UNDER THIS AGREEMENT, SELLER'S SOLE AND EXCLUSIVE REMEDY SHALL BE TO RETAIN THE BUYER'S INITIAL DEPOSIT TOGETHER WITH ALL ACCRUED INTEREST THEREON.
 - b. **Seller's Default.** IF THE CLOSE OF ESCROW SHALL FAIL TO OCCUR BECAUSE OF SELLER'S DEFAULT UNDER THIS AGREEMENT, CITY MAY (1) TERMINATE THIS AGREEMENT, IN WHICH EVENT THE ENTIRE INITIAL DEPOSIT PREVIOUSLY MADE BY CITY AND ALL OTHER FUNDS DEPOSITED BY CITY SHALL BE RETURNED TO CITY AND THE PARTIES SHALL THEREAFTER HAVE NO OBLIGATIONS UNDER THIS AGREEMENT OR ADDITIONAL LIABILITY TO ONE ANOTHER; (2) MAINTAIN THIS AGREEMENT IN EFFECT AND PURSUE AN ACTION FOR SPECIFIC PERFORMANCE; OR (3) PURSUE ANY

OTHER REMEDIES THAT MAY EXIST IN LAW OR EQUITY, INCLUDING, BUT NOT LIMITED TO AN ACTION FOR DAMAGES.

10. **Notices.** All notices, demands, consents, requests or other communications required to or permitted to be given pursuant to this Agreement shall be in writing, shall be given only in accordance with the provisions of this Section, shall be addressed to the parties in the manner set forth below, and shall be conclusively deemed to have been properly delivered: (a) upon receipt when hand delivered during normal business hours (provided that, notices which are hand delivered shall not be effective unless the sending party obtains a signature of a person at such address that the notice has been received); (b) upon receipt when sent by facsimile if sent before 5:00 p.m. on a business day to the number set forth below with written confirmation of a successful transmission by the sender's facsimile machine; (c) upon the day of delivery if the notice has been deposited in an authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested (provided that, the sender has in its possession the return receipt to prove actual delivery); or (d) one (1) business day after the notice has been deposited with either Golden State Overnight, FedEx or United Parcel Service to be delivered by overnight delivery (provided that, the sending party receives a confirmation of actual delivery from the courier). The addresses of the parties to receive notices are as follows:

TO SELLER:

Won K Lee & Sang D. Lee
9405 York Road
Monterey, CA 93940
Telephone: (831) 393-1600

TO CITY:

CITY OF FRESNO
Attention: City Manager
2600 Fresno Street
Fresno, CA 93721
Telephone: (559) 621-8000

TO ESCROW HOLDER:

Fidelity National Title Company
7475 N. Palm Avenue, Suite 107
Fresno, California 93711
Attention: Bernadette Watson
Telephone: (559) 261-8929
Facsimile: (559) 451-0701

Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this Section, and that any person to be given notice receives such notice. If any notice is refused, the notice shall be deemed to have been delivered upon such refusal. Any notice delivered after 5:00 p.m. (recipient's time) or on a non-business day shall be deemed delivered on the next business day. A party may change or supplement the addresses given

above, or designate additional addressees, for purposes of this Section by delivering to the other party written notice in the manner set forth above.

11. **Indemnity.** Seller 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 Seller, 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 Subject 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 Seller's obligation herein to indemnify and hold harmless the City shall not exceed the amount paid to the Seller specified in Paragraph 3.
12. **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. **Non-Material Changes.** The City Manager of the City, or designee, may execute any supplemental escrow instructions and may make minor modifications to this Agreement, the exhibits, and the documents referenced herein, provided such modifications do not constitute a material change to this Agreement.
- k. **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.

[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.

CITY OF FRESNO,
a California municipal corporation

WON K. LEE AND SANG D. LEE

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

By: [Signature] 8.12.2022
Won K. Lee Date

RECOMMENDED FOR APPROVAL:

By: [Signature] 8/12/22
Sang D. Lee Date

By: [Signature] 8/30/22
Colleen Karby Date
Senior Real Estate Agent

By: [Signature] 9/3/22
Scott Tyler Date
Public Works Manager

APPROVED AS TO FORM:
RINA M. GONZALES
Interim City Attorney

By: [Signature]
Tracy N. Parvianian Date
Senior Deputy City Attorney

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Deputy Date

Attachments:

1. Exhibit A – Legal Description
2. Exhibit B – Exhibit Map
3. Exhibit C – Grant Deed

EXHIBIT "A"

APN 438-022-21
Grant Deed

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

PARCEL C OF PARCEL MAP NO. 2002-13, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 62, PAGE 14 AND 15 OF PARCEL MAPS, FRESNO COUNTY RECORDS.

Containing an area of 3.39 acres, more or less.

2021-196
15-A-10034
FA00007
PLAT 1960

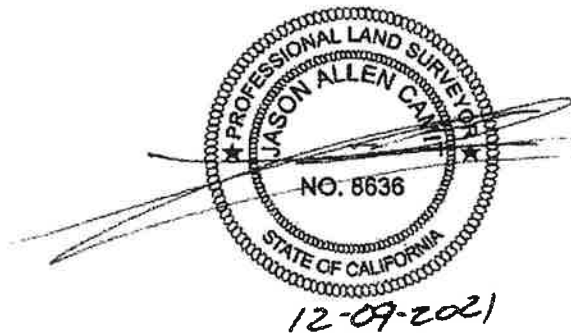
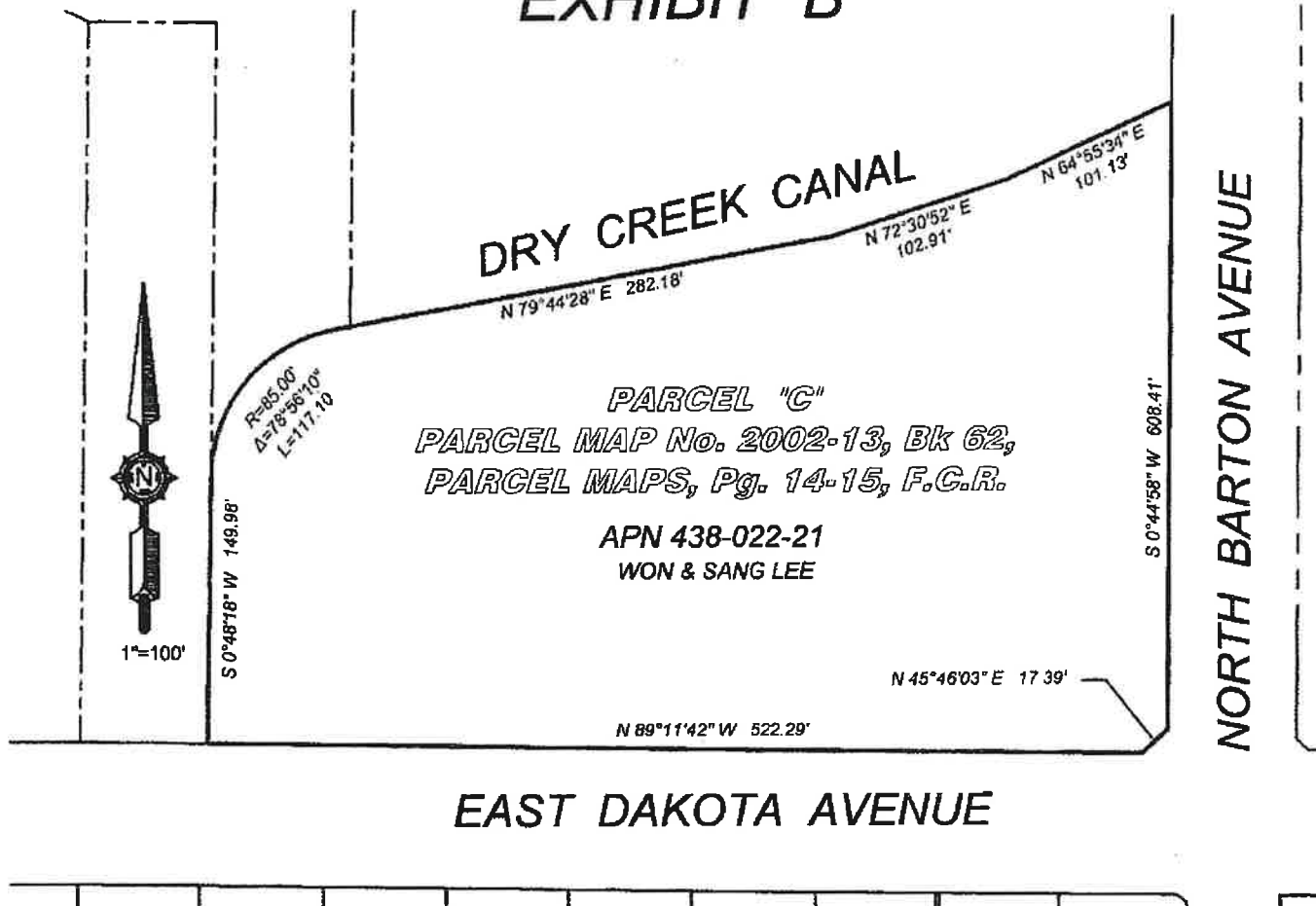


EXHIBIT "B"



☐ INDICATES PARCEL TO BE ACQUIRED IN FEE TITLE BY THE CITY OF FRESNO, CONTAINING AN AREA OF 3.39 ACRES ±.

REF.& REV. 2021-196 15-A-10034 PLAT 1960	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS GRANT DEED	PROJ. ID _____ RES TYPE _____ FUND NO _____ ORG. NO _____ DR. BY J.A.C. CH. BY J.A.C. DATE DEC. 9, 2021 SCALE 1" = 100' SHEET NO. 1 OF 1 SHEETS
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CERTIFICATE OF ACCEPTANCE (Officer)

In accordance with Section 27281 of the Government Code, this is to certify that the interest in real property conveyed hereby is accepted by the undersigned officers on behalf of the Council of the City of Fresno pursuant to authority conferred by Resolution No. 92-219A of said Council, adopted June 9, 1992 and the grantee consents to the recordation thereof by its duly authorized officer.

Public Works Director
ACCEPTED:

By: _____ Date: _____
Andrew Benelli, Deputy

CERTIFICATE OF ACCEPTANCE (Council)

~~In accordance with Section 27281 of the Government Code, this is to certify that the interest in real property conveyed by this instrument to the City of Fresno, a municipal corporation, is hereby accepted by order of the Council of the City of Fresno made on the date hereafter set forth and the grantee consents to the recordation thereof by its duly authorized officer.~~

Item No./Reso. No. _____

Date of Council Order: _____

City Clerk

By: _____ Date: _____
DEPUTY

APPROVED AS TO FORM:

City Attorney

By: _____ Date: _____
DEPUTY

RECOMMENDED FOR ACCEPTANCE:

By: Jeff Benelli
Title: Engineer II

Date: 12-9-2021

Log No. 2021-196 Drawing No. 15-A-10034

CHECKED:

By: [Signature]
Title: Chief Land Surveyor

Date: 12-09-2021

RECORDING REQUESTED BY:
First American Title Company

**MAIL TAX STATEMENT
AND WHEN RECORDED MAIL DOCUMENT TO:**
City of Fresno a California municipal corporation
Attn Public Works Department City of Fresno
2600 Fresno Street
Fresno, CA 93721-3623

Space Above This Line for Recorder's Use Only

A.P.N.: 438-022-21

File No.: 2714-6884268 (NN)

GRANT DEED

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX \$-0- R&T Code **6103 and 27383**; CITY TRANSFER TAX \$-0-;
SURVEY MONUMENT FEE \$

☒ computed on the consideration or full value of property conveyed, OR
☐ computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
☐ unincorporated area; ☒ City of **Fresno**, and

EXEMPT FROM BUILDING HOMES AND JOBS ACTS FEE PER GOVERNMENT CODE 27388.1(a)(2)

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **Won K. Lee and Sang D. Lee,
Husband and Wife as Joint Tenants**

hereby GRANTS to **City of Fresno a California municipal corporation**

the following described property in the City of **Fresno**, County of **Fresno**, State of **California**:

See Exhibit "A" and Exhibit "B" attached hereto and incorporated herein by this reference

Mail Tax Statements To: **SAME AS ABOVE**

Date: **08/12/2022**

A.P.N.: 438-022-21

File No.: 2714-6884268 (NN)

Dated: August 12, 2022

Won K. Lee

Sang D. Lee

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____)SS

COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

This area for official notarial seal.

Notary Signature

EXHIBIT "A"

APN 438-022-21
Grant Deed

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

PARCEL C OF PARCEL MAP NO. 2002-13, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 62, PAGE 14 AND 15 OF PARCEL MAPS, FRESNO COUNTY RECORDS.

Containing an area of 3.39 acres, more or less.

2021-198
15-A-10034
FA00007
PLAT 1960

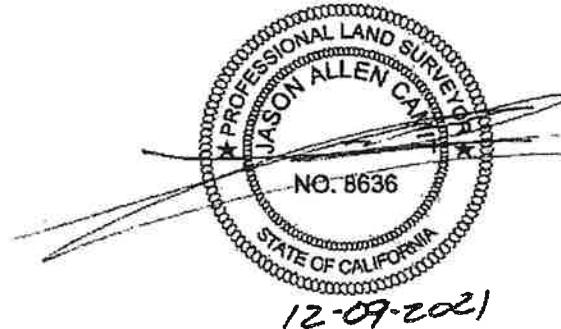
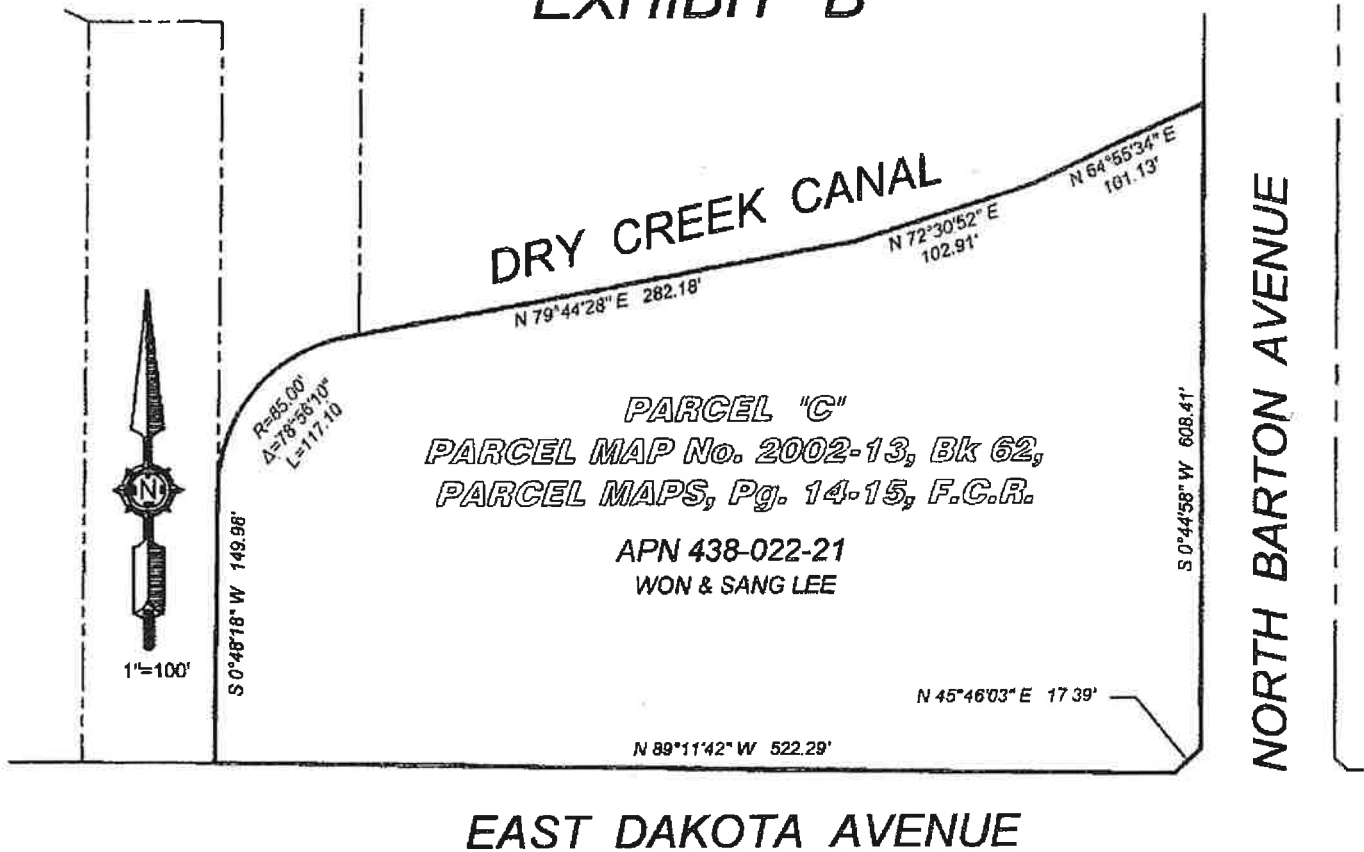


EXHIBIT "B"



12-09-2021



INDICATES PARCEL TO BE ACQUIRED IN FEE TITLE BY THE CITY OF FRESNO, CONTAINING AN AREA OF 3.39 ACRES ±.

REF. & REV. 2021-196 15-A-10034 PLAT 1960	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS GRANT DEED	PROJ. ID. _____ RES TYPE _____ FUND NO. _____ ORG. NO. _____ DR. BY _____ J.A.C. CH. BY _____ J.A.C. DATE DEC. 9, 2021 SCALE 1" = 100' SHEET NO. <u>1</u> OF <u>1</u> SHEETS
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In accordance with Section 27281 of the Government Code, this is to certify that the interest in real property conveyed hereby is accepted by the undersigned officers on behalf of the Council of the City of Fresno pursuant to authority conferred by Resolution No. 92-219A of said Council, adopted June 9, 1992 and the grantee consents to the recordation thereof by its duly authorized officer.

Public Works Director
ACCEPTED:

By: _____ Date: _____
Andrew Benelli, Deputy

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Item No./Reso. No. _____

Date of Council Order: _____

City Clerk

By: _____ Date: _____
DEPUTY

APPROVED AS TO FORM:

City Attorney

By: _____ Date: _____
DEPUTY

RECOMMENDED FOR ACCEPTANCE:

By: Jbb Benelli

Title: Engineer II

Date: 12-9-2021

Log No. 2021- 196 Drawing No. 15-A- 10034

CHECKED:

By: [Signature]

Title: Chief Land Surveyor

Date: 12-09-2021