

**AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY
AND ESCROW INSTRUCTIONS
APN: 451-063-01
BLACKSTONE & MCKINLEY BNSF GRADE SEPARATION PROJECT**

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

RECITALS

- A. Seller is the owner of an approximately 0.115 acre parcel (5000 square feet) located in the City of Fresno known as Assessor's Parcel Number (APN) 451-063-01.
- B. City desires to purchase Seller's property more particularly defined in Section 1 below (the Subject Property) for the Blackstone & McKinley BNSF Grade Separation Project (Project).
- C. City requires the Subject Property for Project purposes, and for public uses in accordance with Sections 21080.13(a) of the California Public Resources Code, and 15282(g) of the (CEQA) Guidelines and is authorized to acquire the Subject Property pursuant to CCP 1240.010.
- D. 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 451-063-01 is situated at 1598 North Glenn Ave. in the City of Fresno, County of Fresno, State of California, being approximately 0.115 acres (5000 square feet) in size, which includes fixtures and 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," 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, assessments, easements, leases, taxes, and restrictions of record except as set forth in this Agreement.
- 3. **Purchase Price.** City shall pay Seller \$340,000.00 (THREE HUNDRED FORTY THOUSAND AND 00/100 DOLLARS) (the 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. **Condemnation.** 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 the Seller hereunder shall be conclusively deemed to be the total just compensation in such proceedings, and this Agreement may be filed with the court as a stipulation upon which judgment may be entered in the eminent domain proceeding as to the just compensation to be paid to Sellers. Sellers waive all other defenses in said proceeding.
7. **Right of Possession.** 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 Subject Property by the City, including the right to remove and dispose of improvements within the Subject Property shall commence on the Close of Escrow controlling this transaction or by July 31, 2024, whichever occurs first.
8. **Escrow Instructions.** The sale shall be completed through an External Escrow to be opened at Fidelity National Title Company, 7475 N. Palm Ave. #107, Fresno 93711, with 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. **Purchase Price.** City shall pay the Purchase Price 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.

Any or all monies payable under this Agreement, up to and including the total amount of unpaid principal and interest on note(s) secured by mortgage(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with the terms and conditions of said trust deed(s) or mortgage(s), shall, upon demand(s) be made payable to the mortgagee(s) or beneficiary(ies) entitled thereunder; said mortgagee(s) or beneficiary(ies) shall furnish Seller with good and sufficient receipt

showing said monies credited against the indebtedness secured by said mortgage(s) or deed(s) of trust.

- b. **Feasibility Period.** City shall have the right to examine the feasibility of the Subject Property for a period of up to 60 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 five 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 parties shall move forward with the Close of Escrow as set forth in section i (Close of Escrow) below. If, prior to the expiration of the Feasibility Period, the City discovers issues with the physical condition of the Subject Property that impact the current deal terms and provides written notice to Seller of such issues, the parties agree to meet and confer in an attempt to reach agreement with respect to such issues, which may include, a reduction in the Purchase Price and/or an extension of the Feasibility Period for further inspection.
 - 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, any deposit on the Subject Property shall be immediately refunded to City by

Escrow Holder without the need for further instruction, notice, or demand from either party.

- c. **Conveyance of Title.** Seller shall convey by Grant Deed to City marketable fee simple title to the Subject Property free and clear of all recorded and unrecorded liens, encumbrances, assessments, easements, leases, and taxes, except:
 - i. Taxes for the fiscal year in which this transfer occurs.
 - ii. Quasi-public utility, public alley, public street easements and rights of way of record.
 - iii. Items numbered (none) of the title report dated January 25, 2024, issued by Fidelity National Title Company. Order No. FFOM-2012201083 -BW.
- d. **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.
- e. **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. Rents, if any, shall be prorated at the Close of Escrow and rents coming due after Close of Escrow shall be paid to City. If any rents have been or are collected by the Seller for any period after Close of Escrow, Seller shall refund such rents to the City. Seller 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 the City harmless for any claim therefor.
- f. **Destruction or Loss prior to Close of Escrow.** The risk of damages to or loss of improvements due to fire or other cause shall be Seller's until title passes to City at Close of Escrow. In the event any of the improvements on the Subject Property are destroyed or damaged prior to Close of Escrow, the purchase price shall be adjusted in the amount that the fair market value is reduced by such loss or damage, such reduction to be determined by appraisal. City shall select an appraiser therefor, and if Seller does not agree to such appraiser, Seller shall appoint an appraiser and the two appraisers shall appoint a third appraiser. The finding of the appraiser, or if there are three appraisers, the finding joined in by two of the three appraisers shall be binding on both parties and the sale shall be completed at the original escrow price less the reduction so fixed by

appraisal. Notwithstanding the foregoing, if the cost of restoring the damaged improvement to a condition equal to its condition on date of this agreement exceeds ten (10) percent of the original purchase price of the property, City shall have the right to cancel the escrow, terminate this agreement, and recover any and all amounts paid to Seller or to Escrow Holder on account of the purchase price of the Subject Property. Seller agrees to maintain any existing fire and/or casualty insurance on the property in force until Close of Escrow.

- g. **Costs.** The escrow fee, cost of policy of title insurance, transfer tax and recording fees (if any) shall be paid by the City.
 - h. **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.
 - i. **Close of Escrow.** Close of Escrow for the purchase and sale of the Subject Property shall occur no later than 20 days from the expiration or waiver 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 physical inspection of the Subject Property;
 - v. City's completion, approval, or waiver of the Feasibility Study;
 - vi. Approval of this Agreement by the City Council of the City of Fresno prior to execution by City.
 - vii. Escrow Holder is in possession of a good and sufficient grant deed, duly executed by Seller, in the form attached hereto as Exhibit B.
9. **Possession.** Full possession of the Property (subject to the rights of the tenants under the Leases and any other Permitted Exceptions) shall be delivered to City by Seller at Closing. City, in its sole discretion, may allow the Close of Escrow subject to any or all of the current business leases on the Subject Property.
10. **Leases.** Not later than five (5) days after the full execution and delivery of this Agreement, Seller shall deliver or make available to City a true, correct and complete copy of each Lease, Rental Agreement, or other Contract affecting the possession and use of the Subject Property. Seller agrees to execute a complete, current and correct statement of Leases, Rental Agreements or other Contracts on a form furnished to Seller and deliver same to City within fifteen (15) days hereof with copies of any written leases and rental agreements attached. All security deposits shall be credited to City through escrow and all rents will be pro-rated as of the close of escrow on the basis of a thirty (30) day

month consistent with that statement, subject to approval of City. Seller hereby warrants that the rental statement referred to shall include the terms of all rental agreements, tenancies and leases (written, unwritten, recorded or unrecorded). Seller also warrants that there shall be no undisclosed tenancies, whether by oral or written leases on all or any portion of the Property, and Seller further agrees to hold City harmless and reimburse City for any and all of its losses and expenses occasioned by reason of any such undisclosed tenancies.

11. **Relocation.** The City recognizes its responsibility for consideration of relocation assistance. If and to the extent that City's intended use of the Subject Property after the Close of Escrow results in the permanent or temporary displacement of persons (families, individuals, businesses, nonprofit, organizations, and farms) the Parties shall comply with all applicable local, State and federal statutes, including but not limited to 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.
12. **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: Edward D. Fanucchi	PROPERTY OWNER CONTACT 7069 N. Van Ness Fresno, CA 93711 Telephone: 616-482-7066
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TO CITY:	CITY OF FRESNO Attention: Public Works Director 2600 Fresno Street Fresno, CA 93721 Telephone: (559) 621-8650
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TO ESCROW HOLDER:	TITLE COMPANY NAME Fidelity National Title Company Attention: Bernadette Watson 7475 N. Palm Ave. #107 Fresno, CA 93711 Telephone: <u>:(559) 431-8050</u>
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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.

13. 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 Public Works Director 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.
15. **Environmental 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 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 City, 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 in this paragraph. Seller's obligation under this indemnity shall survive the Close of Escrow and the recording of the grant deed.

16. In the event the Property is not used in whole or in part for the Project, the City shall offer the owner the right of first refusal to purchase the remaining property at the then current Fair Market Value as determined by Independent Licensed appraisers, pursuant to Code of Civil Procedure section 1245.245(f). The Parties understand and agree that the City must dispose of the Property pursuant to the Surplus Land Act (SLA) and the Fresno Municipal Code (FMC) 4-204 in effect at the time of disposal.

[SIGNATURES FOLLOW ON THE NEXT PAGE.]

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

OWNER,

By: _____

Randall W. Morrison, PE Date
Capital Projects Director

By: Edward D. Fanucchi 3.18.2024
Edward D. Fanucchi Date

RECOMMENDED FOR APPROVAL:

By: Nancy Bruno 3.19.24
Nancy Bruno Date
Supervising Real Estate Agent

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: Kelsey A. Seib 3/21/24
Kelsey A. Seib Date Deputy
City Attorney

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Deputy Date

Attachments:
1. Exhibit A – Legal Description

EXHIBIT "A"

APN 451-063-01
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:

LOT 45 OF STIVERS TRACT NO. 3, ACCORDING TO THE MAP THEREOF RECORDED
IN BOOK 9, PAGE 86 OF PLATS, FRESNO COUNTY RECORDS.

