

**AGREEMENT FOR PURCHASE AND SALE OF A PERMANENT STREET
EASEMENT AND ESCROW INSTRUCTIONS
APN 330-021-09**

**CENTRAL AND ORANGE AVENUE INTERSECTION IMPROVEMENT PROJECT
City Project No.: PW00710 Federal Project No.: STPL-5060(296)**

This Agreement for a Permanent Street Easement (Agreement) is entered into by and between ORANGE AVENUE DISPOSAL COMPANY, INC., A CALIFORNIA CORPORATION (Owner), without regard to number or gender, and the CITY OF FRESNO, a municipal corporation (City) for a permanent street easement and right-of-way for public street purposes on the following terms and conditions.

1. The real property which is the subject of this Agreement, hereinafter "Subject Property", is a Permanent Street Easement to facilitate the Central and Orange Avenue Intersection Improvement project (Project), situated in the City of Fresno, County of Fresno, State of California, being approximately 10,260 square feet in size, within Assessor's Parcel Number 330-021-09, as described on Exhibit "A" and depicted on Exhibit "B", attached hereto and incorporated herein by reference.
2. Owner agrees to grant to the City a permanent street easement and right of way, (Easement) for public street purposes over, under, through, and across the Subject Property, free and clear of all liens, encumbrances, and restrictions of record.
3. City shall pay just compensation of THIRTY SIX THOUSAND AND NO/100 DOLLARS (\$36,000.00) for the Easement, including cost to cure damages, benefits and/or severance damages to the remainder, if any, as indicated on Exhibit "C", attached hereto and incorporated herein by reference, for the Subject Property.
4. Clause 3 above may include payment for the replacement of improvements such as fencing and/or irrigation facilities that are within the area being acquired for this project and must be replaced in order to proceed with the construction of the project. If Owner does not replace said items, City may install temporary fencing on Owner's property lying immediately adjacent to the new right of way line, if necessary, to hold in livestock during construction of the road project, and/or plug the irrigation line(s) at Owner's property line. Owner hereby agrees to allow the City, its agents, employees, authorized contractors and subcontractors and their employees access to their remaining property to perform said work and that the cost for said work shall be billed to and paid for by Owner.
5. The Effective date of this Agreement shall be upon its duly authorized execution by the City and the payment of THIRTY SIX THOUSAND AND NO/100 DOLLARS (\$36,000.00) just compensation to the Owner.
6. Owner represents and warrants that it holds fee title to the Subject Property, and has the authority to enter into the Agreement herein made.

7. Owner 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 Owner.
8. The transaction of the sale shall be processed by the City through an internal escrow at 2600 Fresno Street, Fresno, CA 93721. The contact is Colleen Karby at 559-621-8697.
 - a. The City shall pay the Owner the sums due directly by check.
 - b. Payment of said sums, less Owner's cost to clear title, if any, may be made to Owner only when the City possesses a fully executed and acknowledged and recorded easement deed to the Subject Property free and clear of all liens, encumbrances and restrictions of record.
 - c. 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 property. In consideration for Owner receiving the total sum as stated in Paragraph 3, the undersigned Owner 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 property. The Owner's obligation herein to indemnify and hold harmless the City shall not exceed the amount paid to the Owner under specified in Paragraph 3.
 - d. It is understood that Owner shall be responsible for the payment of all taxes, penalties, redemptions, and costs allocable to the Subject Property.
 - e. The escrow fee, cost of policy of title insurance, recording fees (if any), shall be paid by the City.
 - f. 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.
9. Owner 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 Owner, 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 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 Owner's obligation herein

to indemnify and hold harmless the City shall not exceed the amount paid to the Owner specified in Paragraph 3.

10. 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. 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 Owner.

[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

Orange Avenue Disposal Company, Inc., a
California Corporation

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

By: Richard M. Caglia, II 8/17/2020
Richard M. Caglia, II Date
Corporate Director

RECOMMENDED FOR APPROVAL:

By: Colleen Karby 8/26/20
Colleen Karby Date
Senior Real Estate Agent

By: R. Scott Beyelia 8-26-20
R. Scott Beyelia Date
Supervising Real Estate Agent

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

ATTEST:
YVONNE SPENCE, MMC CRM
City Clerk

By: _____ 10/7/2020
Deputy Date

By: _____
Deputy Date

Attachments:

1. Exhibit "A"
2. Exhibit "B"
3. Exhibit "C"

EXHIBIT "A"

Parcel 1

All that real property, located in the City of Fresno, County of Fresno, State of California, lying in the Southeast quarter of Section 26, Township 14 South, Range 20 East, Mount Diablo Base and Meridian, according to the United States Government Township Plats, approved by the Surveyor General on January 15 1854, more particularly described as follows:

COMMENCING at the South quarter corner of said Section 26, said point also being the Southwest corner of that certain parcel of land granted in fee simple title to the County of Fresno by Final Judgement in Condemnation recorded September 23, 1974 as Instrument No. 72345, in Book 6350 of Deeds, at Pages 73 and 74, Official Records Fresno County; thence South 89°46'49" East, on the south line of said Southeast quarter and the on the south line of said deed, a distance of 30.00 feet to the **POINT OF BEGINNING OF PARCEL 1**; thence North 0°32'01" East, a distance of 10.05 feet to the beginning of a tangent curve, concave to the southeast, having a radius of 10.00 feet; thence northeasterly on said curve and said South line; through a central angle of 89°41'10", an arc distance of 15.65 feet to the South line of said deed; thence South 89°46'49" East, on said South line, a distance of 38.19 feet; thence South 71°41'30" West, leaving said South line, a distance of 9.89 feet; thence South 00°32'01" West, a distance of 3.14 feet; thence North 89°46'49" West, a distance of 19.42 feet; thence South 37°34'10" West, a distance of 17.26 feet to the South line of said Section 26; thence North 89°46'49" West, on said South line, a distance of 8.96 to the **POINT OF BEGINNING OF PARCEL 1**.

Parcel 2

All that real property, located in the City of Fresno, County of Fresno, State of California, lying in the Southeast quarter of Section 26, Township 14 South, Range 20 East, Mount Diablo Base and Meridian, according to the United States Government Township Plats, approved by the Surveyor General on January 15 1854, more particularly described as follows;

COMMENCING at the South quarter corner of said Section 26, said point also being the Southwest corner of that certain parcel of land granted in fee simple title to the County of Fresno by Final Judgement in Condemnation recorded September 23, 1974 as Instrument No. 72345, in Book 6350 of Deeds, at Pages 73 and 74, Official Records Fresno County; thence North 0°32'01" East, on the West line of said Section and said deed, a distance of 154.83 feet; thence S 89°27'59" East, leaving said West lines, a distance of 30.00 feet to the East line of said deed and the **POINT OF BEGINNING OF PARCEL 2**; thence South 25°12'06" East, a distance of 22.92 feet; thence South 89°46'49" East, a distance of 9.18 feet; thence South 00°32'01" West, a distance of 15.10 feet; thence South 48°11'09" East, a distance of 35.46 feet; thence South 88°14'07" East, a distance of 105.15 feet; thence South 77°52'21" East, a distance of 53.26 feet; thence South

89°46'49" East, a distance of 219.21 feet; thence South 83°34'41" East, a distance of 124.88 feet to the North line of said grant deed; thence North 89°46'49" West, on said North line, distance of 526.41 feet to the beginning of a tangent curve, concave to the northeast, having a radius of 20.00 feet; thence northwesterly, on said curve, through a central angle of 90°18'50", an arc distance of 31.53 feet to the East line of said grant deed; thence North 00°32'01" East, on said East line, a distance of 66.55 feet to the **POINT OF BEGINNING OF PARCEL 2.**

Containing an area of 10,260 square feet, more or less.



2019-026
15-A-9561
Plat 3459

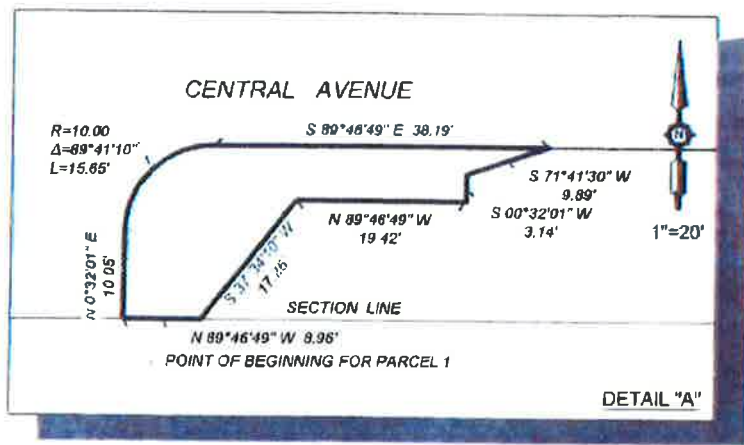
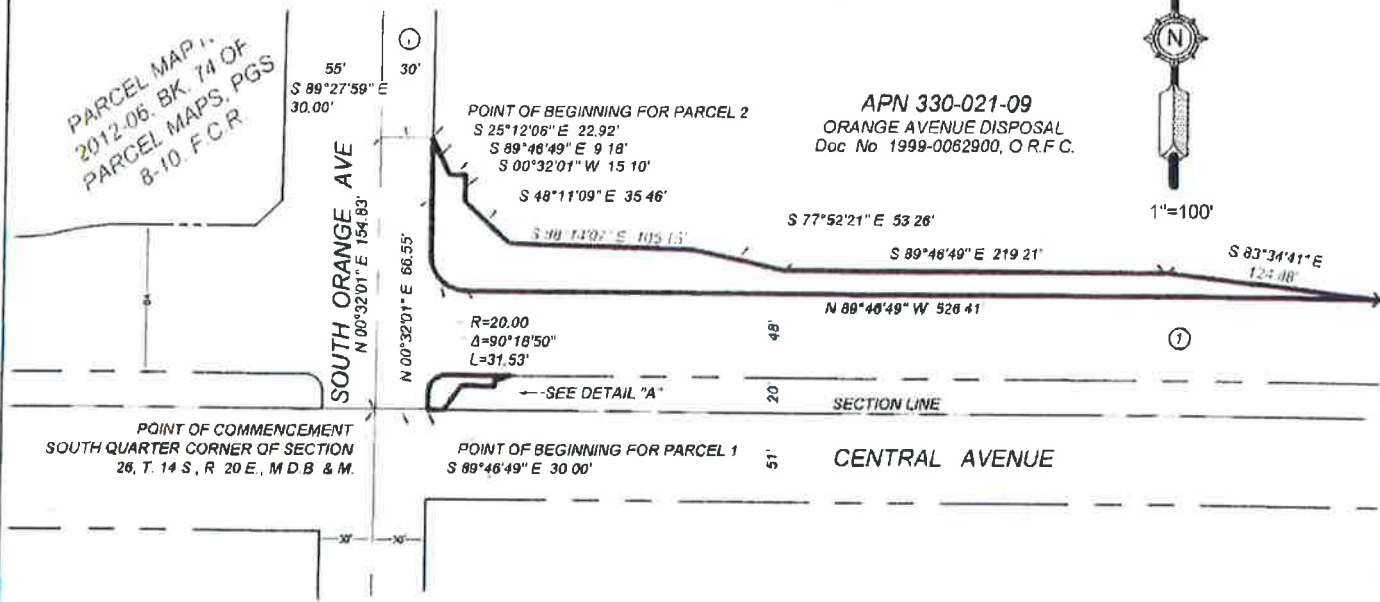
EXHIBIT "B"



1"=100'

PARCEL MAP 1,
2012-06, BK. 74 OF
PARCEL MAPS, PGS
8-10, F.C.R.

APN 330-021-09
ORANGE AVENUE DISPOSAL
Doc No 1999-0062900, O.R.F.C.



LEGEND

INDICATES AREA TO BE DEDICATED FOR PUBLIC STREET PURPOSES. 10,260 S.F. ±

① INDICATES A PARCEL OF LAND GRANTED IN FEE SIMPLE TITLE TO THE COUNTY OF FRESNO ON SEPTEMBER 23, 1974, AS INSTRUMENT No. 72345, INBOOK 6350, OF DEEDS, AT PAGES 73 AND 74, OFFICIAL RECORDS FRESNO COUNTY.



8-9-2019

REF. & REV 2019-026 15-A-9561 PLAT 3459	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS	PROJ ID. PW00710 FUND NO. 22048 ORG NO. 199901	RES TYPE _____
	AREA TO BE ACQUIRED FOR PUBLIC STREET AND PUBLIC UTILITY PURPOSES.	DR. BY J.A.C. CH. BY J.A.C. DATE AUGUST 9, 2019 SCALE 1" = 100'	SHEET NO. 1 OF 1 SHEETS

CITY OF FRESNO VALUATION SUMMARY STATEMENT “EXHIBIT C”		CONFIDENTIAL This document contains personal information and pursuant to Civil Code 1798.21, it shall be kept confidential in order to protect against unauthorized disclosure.	Page 1 of 2
Project Description	Parcel No.	Federal Aid Project No.	Date
Central/Orange Intersection Improv	330-021-09	STPL-5060(296)	February 6, 2020

Owner: Orange Avenue Disposal Co., Inc. Date Acquired: More than 5 years
A California Corporation

Property APN 330-021-09 Property to be acquired: Street Easement
Address: No address (bare land) Part: X All ___
Including Access Rights: Yes: ___ No: X

Total Subject
Property Area: +/- 10,260 square feet

BASIS OF VALUATION

The market value for the property to be acquired by the City is based upon a valuation prepared in accordance with accepted appraisal principles and procedures.

Code of Civil Procedure Section 163.320 defines Fair Market Value as follows:

- a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to between a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.
- b) The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.

Recent sales of comparable properties and income data are utilized as appropriate. Full consideration is given to zoning, development potential and the income the property is capable of producing.

Land- Right of Way Acquisition (Street Easement) 10,260 SF x \$3.50/SF \$35,910

Site Improvements in Acquisition Area: NONE

Total Value of Part Taken = \$35,910
ROUNDED **\$36,000**

BASIS OF VALUATION

BASIC PROPERTY DATA:

Interest valued: Partial acquisition
Date of valuation: January 27, 2020
Applicable zoning: H-1
Area to be acquired: +/- 10,260 square feet
Highest and best use: Industrial
Current use: Vacant Industrial