

**AGREEMENT FOR PURCHASE AND SALE OF PROPERTY  
AND ESCROW INSTRUCTIONS**

**Veterans Blvd Over Crossing Project**

**City Project Number      PW00669**

PETER K. BOECK, KATHRYN M. BOECK, GUILLON/BROUHARD GENERAL PART 1. a California general partnership, hereinafter called the "Sellers," 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. All that real property which is the subject of this Agreement, and which is hereinafter for convenience referred to as the "subject property," is fee simple title to a portion this property for street easement approximately 52,202 square feet and is contained within Assessor's Parcel Number APN 505-070-38 which is situated in the City of Fresno, County of Fresno, State of California, more particularly described as follows:

See Exhibits "A" and "B", which are attached and incorporated herein

2. The purchase price for the subject property shall be the sum of ONE HUNDRED NINETY FIVE THOUSAND FOUR HUNDRED AND 00/100 DOLLARS (\$195,400) as just compensation therefor,

3. Sellers 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 Sellers 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. Sellers waive all other defenses in said proceeding.

4. 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 May 31, 2016 or the close of escrow controlling this transaction, whichever occurs first, and the amount shown in Paragraph 2 above includes , but is not limited to, full payment for possession and use, including damages, if any, from said date.

5. 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 6.b below.

6. 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 ("escrow holder"), under Escrow Number FFOM-2011503821. Said escrow shall be opened upon the following terms and conditions, and the Sellers and City by their signature to this Agreement make this paragraph their escrow instructions:

- a. The City shall deposit the sums specified in Paragraph 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 Sellers 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, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of the Preliminary Title Report No. FFOM-2011503821 dated September 1 2015 from Fidelity National Title Company.
- c. It is understood that Sellers 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 maybe 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. Sellers will pay any

cost to convey the title to the subject property in the condition described in 6.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.

7. 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 Sellers.

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

9. 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.

10. 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

This Agreement is executed by the City of Fresno by and through the Assistant 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 \_\_\_\_\_

CITY OF FRESNO

By \_\_\_\_\_  
Scott Mozier, Director  
Department of Public Works

Date \_\_\_\_\_

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

SELLERS:

BY:   
Peter K. Boeck

Date: 4-21-16

BY:   
Kathryn M. Boeck

Date 4.4.16

BY: 

Date: 4-5-16

BY: 

Address of Sellers:  
2550 Lakewest Dr. # 50  
Chico, CA 95928

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By  5.5.16  
RAJ SINGH BADHESHA Deputy

ATTEST:

YVONNE SPENCE, CMC  
City Clerk

By \_\_\_\_\_  
Deputy

EXHIBIT "A"  
(Sheet 1 of 2)

APN 505-070-38 (portion)  
GRANT DEED

Being a portion of that parcel as described in the Grant Deed from Peter K. Boeck and Kathryn M. Boeck, husband and wife to Guillon/Brouhard Gen. Part. I, a California general partnership, as to an undivided 50% interest, recorded October 3, 2007 as Document No. 2007-0184364, Official Records Fresno County, said parcel being within the Northeast Quarter of Section 9 and the Northwest Quarter of Section 10 of Township 13 South, Range 19 East, Mount Diablo Base and Meridian, said portion being more particularly described as follows:

**Beginning** at the point of intersection of a line parallel with and 30.00 feet north of the South Line of said Northwest Quarter of Section 10, also being the north Right-of-Way Line of West Barstow Avenue as conveyed for a public road, recorded November 5, 1904 in Volume 328 of Deeds at Page 11, Official Records Fresno County, with the southwesterly Right-of-Way Line of State Route 99, as described in the Individual Grant Deed recorded November 7, 1958 in Book 4134 at Pages 44 through 47, Official Records Fresno County; thence along said parallel line, North 89°40'38" West, 24.77 feet; thence departing said parallel line, North 44°44'52" West, 782.71 feet; thence North 46°55'01" West, 1067.78 feet to the North Line of the South Half of the Northeast Quarter of said Section 9; thence along said North Line, North 89°52'14" East, 81.02 feet to said southwesterly Right-of-Way Line; thence along said southwesterly Right-of-Way Line, South 44°45'19" East, 1810.35 feet to the **Point of Beginning**.

Contains 52,202 square feet of land, more or less.

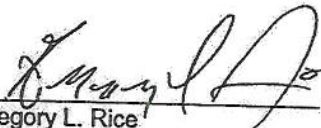
Veterans Blvd.  
2015-038  
15-A-9137  
PW File 11738

EXHIBIT "A"  
(Sheet 2 of 2)

APN 505-070-38 (portion)  
GRANT DEED

The bearings and distances described herein above, are based on the California Coordinate System of 1983 (1991.35), Zone 4, as shown on the Record of Survey filed in Book 58, at Page 8, Fresno County Records. Multiply by 1.000063 to obtain ground distances.

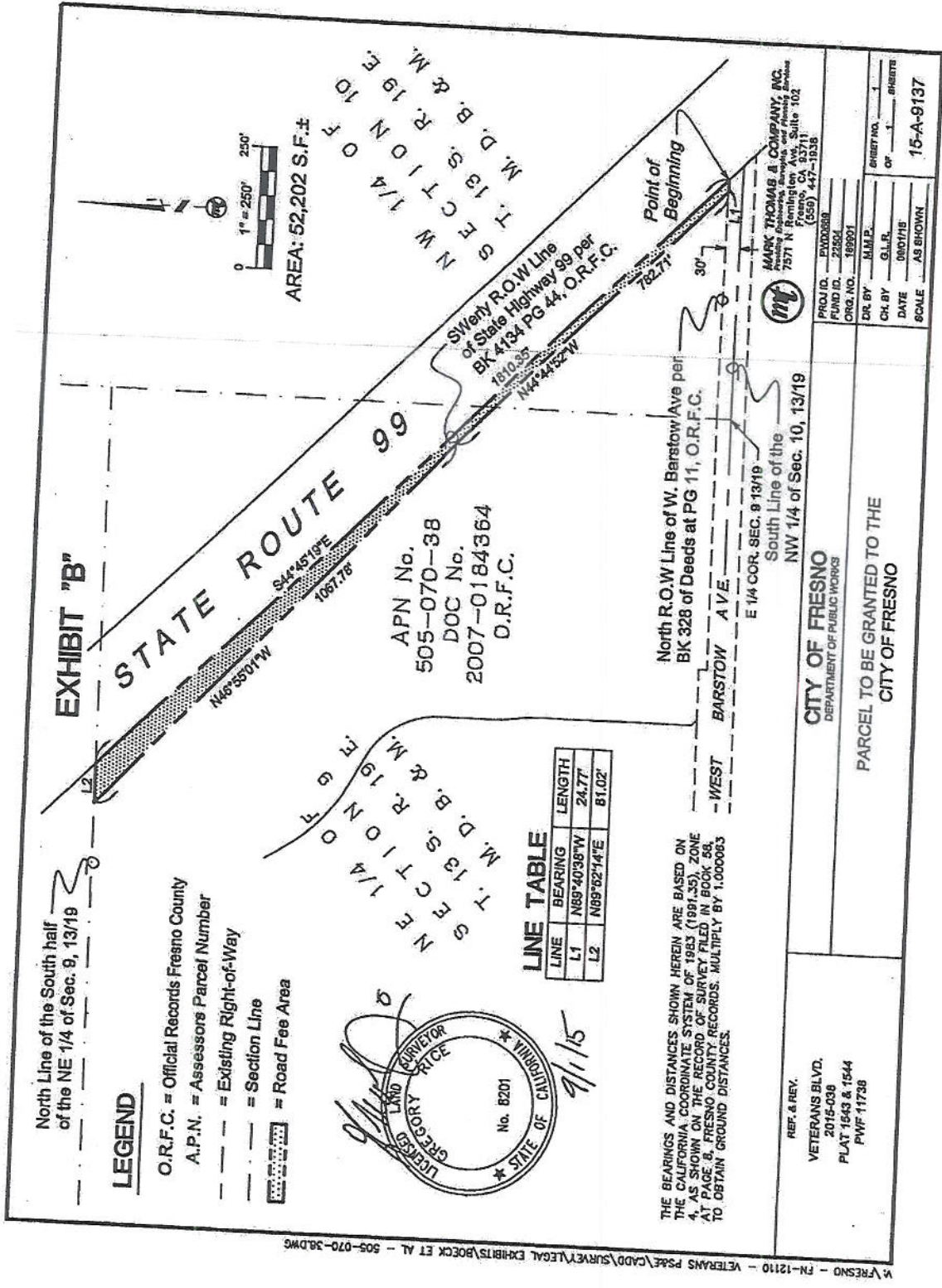
This real property description has been prepared by me, or under my direction in conformance with the Professional Land Surveyors Act.

  
Gregory L. Rice  
Licensed Land Surveyor  
California No. 8201



9/1/15  
Date

Veterans Blvd.  
2015-038  
15-A-9137  
PW File 11738



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