

**AGREEMENT FOR PURCHASE AND SALE OF A PERMANENT
STREET EASEMENT AND ESCROW INSTRUCTIONS
APN's 496-220-16s & 496-220-17s
City Project No.: PW00942**

This Agreement for a Permanent Street Easement and Right of Way (Agreement) is entered into by and between E. & J. GALLO WINERY, A CALIFORNIA CORPORATION, (GALLO), (Owner), without regard to number or gender, and the CITY OF FRESNO, a municipal corporation (City).

1. The real property which is the subject of this Agreement, hereinafter "Subject Property", is a Permanent Street Easement to facilitate the widening of North Fowler Avenue, South of East Clinton Avenue, situated in the City of Fresno, County of Fresno, State of California, being approximately 21,211 square feet in size, within Assessor's Parcel Numbers 496-220-16s, & 496-220-17s, 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 NINETY-NINE THOUSAND, FOUR HUNDRED DOLLARS (\$99,400) for the Easement, including cost to cure damages, benefits and/or severance damages to the remainder, if any, as described 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 landscaping and/or irrigation facilities that are within the area being acquired for this project and the irrigation lines will be removed by the City in order to proceed with the construction of the project. City will remove such lines and landscaping and Owner agrees not to seek additional compensation arising from such removal.
5. The Effective date of this Agreement shall be upon its duly authorized execution by the City and the payment of NINETY-NINE THOUSAND FOUR HUNDRED DOLLARS (\$99,400) 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 claims to compensation by any past or current owner or tenant of the said Subject Property held by any tenant of the Owner.
8. The sale shall be completed through an External Escrow to be opened at Placer Title Company located at 7700 N. Palm Avenue, #101, Fresno, CA 93711, Attention: Adrienne Ripley, email aripley@placertitle.com. Said escrow shall be opened upon the following terms and conditions, and the Owner and City by their signature to this Agreement make this paragraph their escrow instructions:

- a. 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.
 - b. Payment of said sums, less Owner's cost to clear any monetary liens, if any, may be made to Owner 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 free and clear of all monetary liens.
 - 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 monetary liens created by Owner. 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 assessments allocable to the subject property, except that City shall be reasonable for any charges, costs or liabilities arising from the widening of Fowler Avenue and the easement conveyed under this Agreement.
 - 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. "As Is" Transaction and Waivers and Releases. City represents and warrants that City has conducted or has been allowed to conduct a full visual inspection of the Property and all tests necessary to determine the physical and environmental condition of the Property. CITY SPECIFICALLY ACKNOWLEDGES THAT GALLO IS SELLING AND CITY IS PURCHASING THE RIGHTS CONVEYED HEREIN ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT CITY IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM GALLO OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION the physical condition of soils, geology and the compliance of the Property with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi- governmental entity or of any other person or entity, the presence or removal of hazardous or toxic materials, substances or wastes on, under or about the Property, and the presence or removal of archeological artifacts on, under or about the Property. City waives its right to recover from Gallo, and the employees and agents of Seller, and forever releases and discharges Seller from any and all damages, claims, losses,

liabilities, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with the physical condition of the Property or any law or regulation applicable thereto. City expressly waives the benefits of Section 1542, of the California Civil Code, which provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR."

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

E. & J. GALLO WINERY,
A California Corporation

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

By: _____ *6-7-21*
Date

RECOMMENDED FOR APPROVAL:

By: _____ *6-15-21*
Victoria Gonzales Date
Senior Real Estate Agent

By: _____
Date

By: _____ *6/15/21*
R. Scott Beyelia Date
Supervising Real Estate Agent

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____ *9/29/21*
Kristi Costa Date
Deputy City Attorney

ATTEST:
YVONNE SPENCE, MMC CRM
City Clerk

By: _____
Deputy Date

Attachments:

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

APN 496-220-17s (portion) & 496-220-16s (portion)
Street Easement

Exhibit "A"

That portion of the Southeast Quarter of Section 28, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, described as follows:

Commencing at the East Quarter corner of said Section 28; Thence North 89°51'42" West, along the North line of said Southeast Quarter of Section 28, a distance of 83.00 feet; Thence South 00°04'27" West, parallel with and 83.00 feet West of the East line of said Section 28, a distance of 69.98 feet to the **True Point of Beginning**.

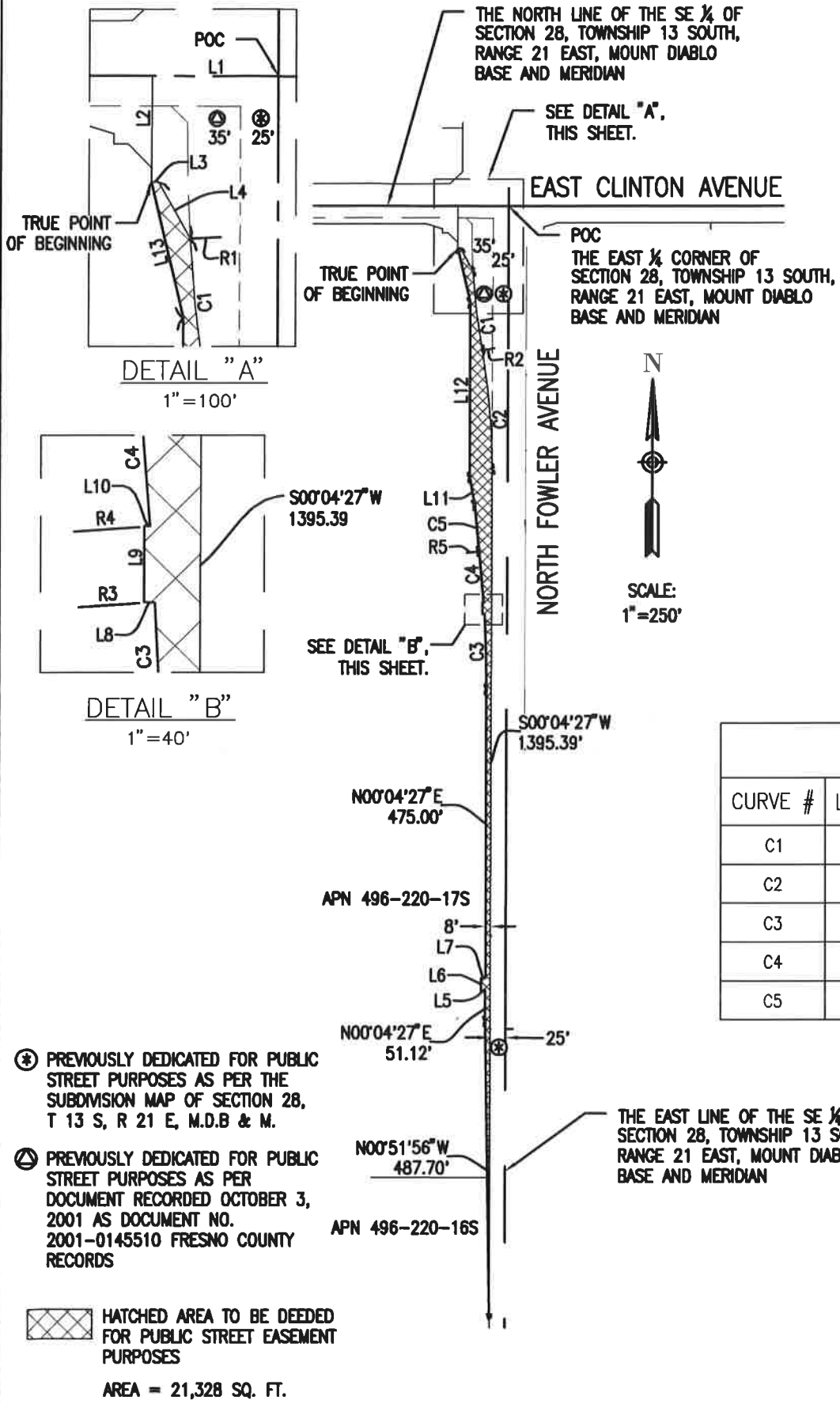
Thence South 89°55'33" East, along the existing right-of-way of North Fowler Avenue, a distance of 4.52 feet; Thence South 28°55'34" East, along the existing right-of-way of North Fowler Avenue, a distance of 42.59 feet; to a point on a non-tangent curve, concave to the East having a radius of 1139 feet, a radial line from said point bears North 86°32'24" East; Thence Southeasterly along said curve, also being along the existing right-of-way of North Fowler Avenue, through a central angle of 06°35'05", an arc distance of 130.90 feet; to the point of curvature of a reverse curve concave to the West having a radius of 1111.00 feet; Thence Southwesterly along said reverse curve, also being along the existing right-of-way of North Fowler Avenue, through a central angle of 10°07'09", an arc distance of 196.22 feet; Thence South 00°04'27" West, along the existing right-of-way of North Fowler Avenue, a distance of 1,395.39 feet, Parallel with and 25.00 feet West of the East line of said section 28; Thence North 00°51'56" West, a distance of 487.70 feet; Thence North 00°04'27" East parallel with and 33 feet West of the East line of said Section 28, a distance of 51.12 feet; Thence North 89°55'33" West, a distance of 6.50 feet; Thence North 00°04'27" East parallel with and 39.50 feet West of the East line of said Section 28, a distance of 20.00 feet; Thence South 89°55'33" East, a distance of 6.50 feet; Thence North 00°04'27" East, parallel with and 33 feet West of the East line of said Section 28, a distance of 475.00 feet; to a point on a tangent curve, concave to the West having a radius of 2007.00 feet; Thence Northwesterly along said curve, through a central angle of 03°30'46", an arc distance of 123.04 feet; to a point on a non-tangent line to said curve, a radial line from said point bears South 86°33'22" West; Thence North 89°55'33" West, a distance of 2.72 feet; Thence North 00°04'27" East parallel with and 39.50 feet West of the East line of said section 28, a distance of 20.00 feet; Thence South 89°55'33" East, a distance of 1.39 feet; to a point on a non-tangent curve, concave to the west having a radius of 2007.00 feet, a radial line from said point bears South 85°59'02" West; Thence Northwesterly along said curve, through a central angle of 02°22'53", an arc distance of 83.42 feet to the point of reverse curvature of a curve concave to the east having a radius of 2073.00 feet; Thence Northeasterly along said reverse curve through a central angle of 2°07'39", an arc distance of 76.97 feet; Thence North 11°10'33" West, a distance of 45.91 feet; Thence North 00°04'27" East, parallel with and 62.00 feet West of the East line of said section 28, a distance of 287.16 feet; Thence North 13°10'55" West, a distance of 91.59 feet **TO THE TRUE POINT OF BEGINNING**.

Contains an area of 21,328 square feet, more or less.

Date: 12/15/2020

Prepared by: 

Ruben Aparicio III
Professional Land Surveyor 8026

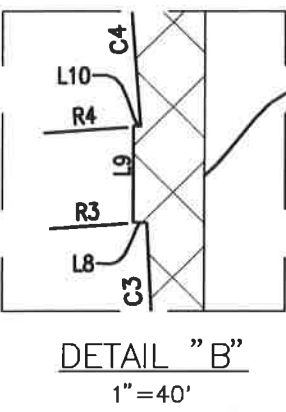


LINE TABLE		
LINE #	LENGTH	BEARING
L1	83.00'	N89° 51' 42"W
L2	69.98'	S0° 04' 27"W
L3	4.52'	S89° 55' 33"E
L4	42.59'	S28° 55' 34"E
L5	6.50'	N89° 55' 33"W
L6	20.00'	N0° 04' 27"E
L7	6.50'	S89° 55' 33"E
L8	2.72'	N89° 55' 33"W
L9	20.00'	N0° 04' 27"E
L10	1.39'	S89° 55' 33"E
L11	45.91'	N11° 10' 33"W
L12	287.16'	N0° 04' 27"E
L13	91.59'	N13° 10' 55"W

CURVE TABLE				
CURVE #	LENGTH	RADIUS	DELTA	TANGENT
C1	130.90'	1139.00'	6°35'05"	65.52'
C2	196.22'	1111.00'	10°07'09"	98.36'
C3	123.04'	2007.00'	3°30'46"	61.54'
C4	83.42'	2007.00'	2°22'53"	41.71'
C5	76.97'	2073.00'	2°07'39"	38.49'

RADIAL TABLE	
RADIAL #	DIRECTION
R1	N86° 32' 24"E
R2	N79° 57' 18"E
R3	S86° 33' 22"W
R4	S85° 59' 02"W
R5	S83° 36' 09"W

DETAIL "A"
1"=100'



⊙ PREVIOUSLY DEDICATED FOR PUBLIC STREET PURPOSES AS PER THE SUBMISSION MAP OF SECTION 28, T 13 S, R 21 E, M.D.B & M.

⊙ PREVIOUSLY DEDICATED FOR PUBLIC STREET PURPOSES AS PER DOCUMENT RECORDED OCTOBER 3, 2001 AS DOCUMENT NO. 2001-0145510 FRESNO COUNTY RECORDS

⊠ HATCHED AREA TO BE DEEDED FOR PUBLIC STREET EASEMENT PURPOSES
AREA = 21,328 SQ. FT.

REF. & REV. T-6214 2020-009	CITY OF FRESNO		PROJ. ID. _____
	A PORTION OF THE SOUTHEAST QUARTER OF SECTION 28, T 13 S, R 21 E, M.D.B. & M., TO BE DEEDED TO THE CITY OF FRESNO FOR: PUBLIC STREET EASEMENTS PURPOSES		FUND NO. _____
			ORG. NO. _____
			DR. BY: J.R.
			CH. BY: _____
			SCALE: AS NOTED
			DATE: 12/14/2020
			SHEET NO: 1
			OF 1 SHEET
			15-A-9620

EXHIBIT C
APPRAISAL SUMMARY

Area of Acquisition:

Land = 20,476 SF or 0.4701 acres @ \$115,870/ac	\$54,470.00
Adjusted To	<u>\$54,500.00</u>

Severance Damages:

Replace 1,300 LF of oleanders	\$26,358.00
Rebuild dirt farm road	\$10,000.00
Remove 670 vines	<u>\$ 8,500.00</u>
Total	\$44,858.00
Adjusted To	<u>\$44,900.00</u>

TOTAL COMPENSATION

Area of Acquisition	\$54,500.00
Severance Damages	\$44,900.00
Benefits	<u>\$ 00.00</u>
TOTAL	\$99,400.00