

**AGREEMENT FOR PURCHASE AND SALE OF A STREET EASEMENT
AND ESCROW INSTRUCTIONS**

**W. Audubon Right-of-Way for Public Street and Utility Purposes
City Project No.: PW00806**

Fresno Supreme Inc., a California Corporation, hereinafter called the "Seller(s)," without regard to number or gender, hereby offers to sell to the CITY OF FRESNO, a municipal corporation, hereinafter called the "Buyer," the hereinafter described easements on the following terms and conditions:

1. The real property which is the subject of this Agreement is situated in the City of Fresno, County of Fresno, State of California and may hereinafter for convenience be referred to as the "subject property," being a road **easement for public street purposes of approximately 3,418 square feet** and an **easement for public utility purposes of approximately 1,742 square feet** and is located on the Northeast corner of Audubon Drive and Nees Avenue, and is contained within **Assessor's Parcel Number 402-570-09** and which is more particularly described as:

Exhibits "A", "B" and "C" relative to a permanent street easement plus utility easement and by reference made a part of hereof.

2. The total purchase price for the subject property, including any cost to cure damages based on the Scott Appraisal Co. Appraisal dated December 7, 2018 shall be the total sum of **EIGHTY FOUR THOUSAND DOLLARS AND 00/100 (\$84,000.00)** as just compensation for this property.

3. Seller(s) 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 Seller(s) 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. Seller(s) waive all other defenses in said proceeding.

4. It is understood and agreed by and between the parties hereto that the **easements described on Exhibit "A" and depicted on Exhibit "B" and "C" are permanent easements and right of way for public street and public utility purposes.**

5. It is agreed and confirmed by the City and Seller(s) that, notwithstanding other provisions of this Agreement, the right of possession and use of the subject properties by the City, including the right to remove and dispose of improvements within the permanent street easements, shall commence on May 1, 2019, or 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 such possession and use, including damages, if any, from said date.

6. Seller represents and warrants that it has the authority to make the offer herein made, and that it holds fee title to said easement and can convey the subject property free and clear of all liens, encumbrances, and restrictions of record except for the title exceptions noted in 7.b below.

7. The sale shall be completed through an escrow to be opened at Fidelity National Title Company, 7475 North Palm Avenue, Suite 107, Fresno, California 93711 under Escrow Number FFOM-2011803290-BW. Said escrow shall be opened upon the following terms and conditions, and the Seller and Buyer by their signature to this Agreement make this paragraph their escrow instructions:

a. The City shall deposit the sums specified in Paragraphs 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 Seller 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 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 4 through 24, contained in the Preliminary Title Report No. FFOM-2011803290-BW dated July 5, 2018 from Fidelity National Title Company.

c. It is understood that Seller 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 may be 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. Seller will pay any cost to convey the title to the subject property in the condition described in 7.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.

8. **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.

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

10. 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.

11. 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.

Signature Page

This Agreement is executed by the City of Fresno by and through the 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: Coll Karby Date 5/9/19
for Victoria Gonzales
Senior Real Estate Agent

BY: [Signature] Date 5/14/19
R. Scott Beyelia
Supervising Real Estate Agent

CITY OF FRESNO

BY: _____ Date _____
Scott Mozier, PE, TE
Public Works Director

Address: City of Fresno

Public Works Department
2600 Fresno Street, Room 4019
Fresno, CA 93721-3623

ATTEST:
YVONNE SPENCE, MMC
City Clerk

BY: _____ Date _____
Deputy

SELLER: Fresno Supreme Inc., a California Corporation

BY: [Signature] Date 5-9-19
Blake Hoffman, Director

Mailing Address of Seller(s)

Fresno Supreme Inc.
215 W. Fallbrook, #224
Fresno, CA 93711

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

BY: [Signature] Date 6/6/19
RINA GONZALES
DEPUTY

EXHIBIT "A"

APN 402-570-09 (portion)
Street Easement

The land referred to herein below is situated in the City of Fresno, County of Fresno, State of California, lying in the Southeast quarter of Section 29, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, according to the Official Government Plat thereof, being a portion Parcel "B" of Parcel Map No. 2004-07 per Book 65 of Parcel Maps, at Pages 88 and 89, Fresno County Records, more particularly described as follows:

Commencing at the most northerly corner of said Parcel "B"; thence South $53^{\circ}42'25''$ West, on the northwesterly line of said Parcel "B", a distance of 23.08 feet to the TRUE POINT OF BEGINNING, said point being the beginning of tangent curve, concave southeasterly, having a radius of 298.00 feet; thence leaving said northwesterly line, southwesterly on said curve, through a central angle of $54^{\circ}05'17''$, an arc distance of 281.32 feet to the westerly line of said Parcel "B"; thence North $0^{\circ}55'52''$ West, tangent to last said curve, a distance of 152.13 feet to the northwesterly corner of said Parcel "B"; thence North $53^{\circ}42'25''$ East, on the northwesterly line of said Parcel "B", a distance of 152.13 feet to the TRUE POINT OF BEGINNING.

Containing an area of 3,418 square feet, more or less

TOGETHERWITH a public utility easement as shown on Exhibit "C" attached to herein, more particularly described as follow:

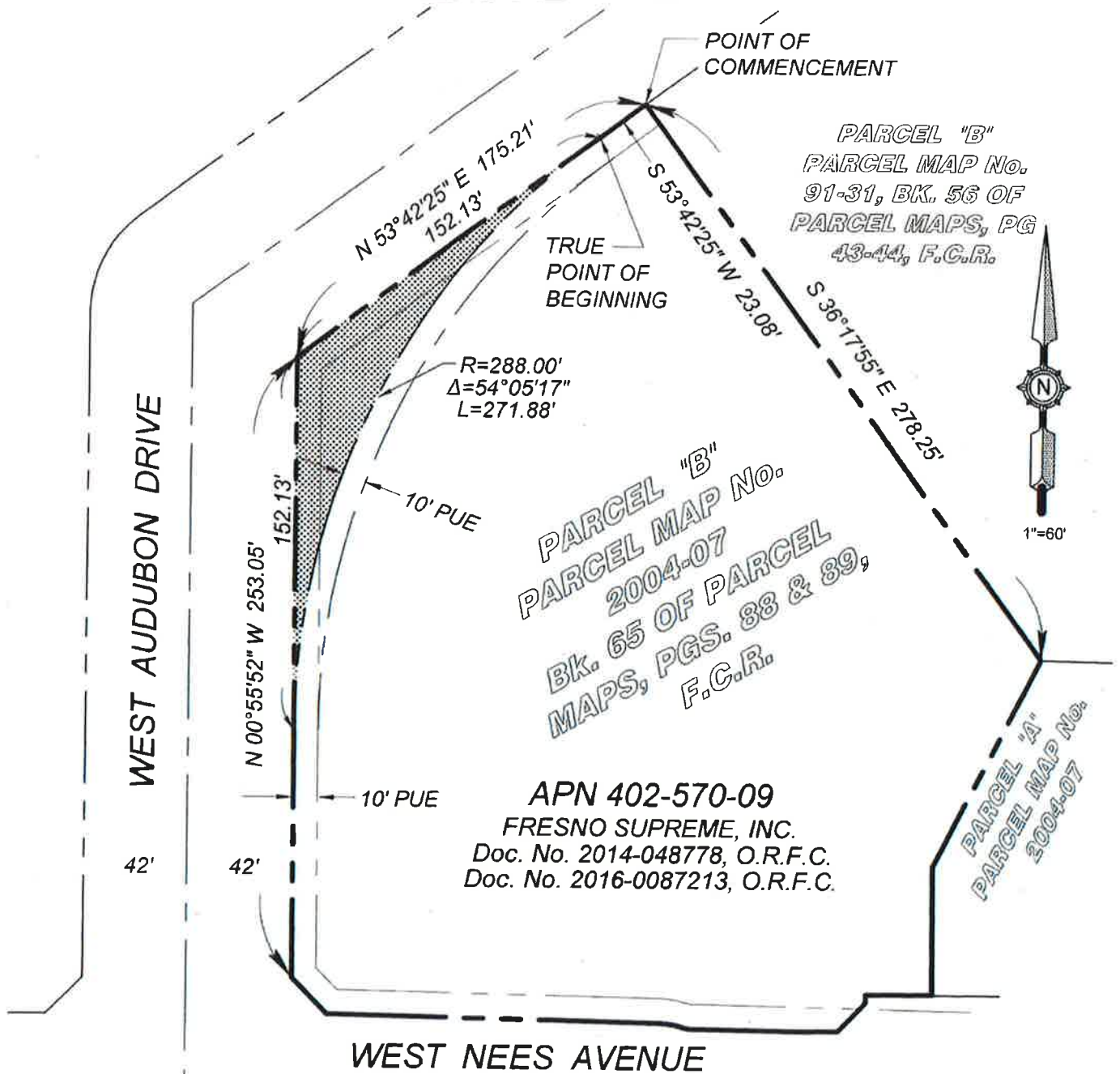
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Commencing at the most northerly corner of said Parcel "B"; thence South $36^{\circ}17'55''$ East, on the northeasterly line of said Parcel "B", a distance 10.00 feet; thence South $53^{\circ}42'25''$ West, leaving said northeasterly line, a distance of 23.08 feet to the TRUE POINT OF BEGINNING, said point being the beginning of tangent curve, concave southeasterly, having a radius of 288.00 feet; thence southwesterly on said curve, through a central angle of $54^{\circ}05'17''$, an arc distance of 271.88 feet; thence North $0^{\circ}55'52''$ West, parallel with and 10.00 feet east of the West line of said Parcel "B", a distance of 76.55 feet to the beginning of a non-tangent curve, concave southeasterly, having a radius of 298.00 feet, at which point a radial line bears North $75^{\circ}29'46''$ West; thence northeasterly, on said curve, through a central angle of $24^{\circ}19'04''$, an arc distance of 126.48 feet; thence North $53^{\circ}42'25''$ East, a distance of 76.55 feet to the TRUE POINT OF BEGINNING.

Containing an area of 1,742 square feet,
more or less



EXHIBIT "B"



3-7-2019

REF. & REV. 2017-083 15-A-9375 PLAT 1054	<div>CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS</div>	PROJ. ID. <u>PW00806</u> RES TYPE <u> </u>	
	AREA TO BE DEDICATED FOR PUBLIC STREET AND PUBLIC UTILITY PURPOSES.	FUND NO. <u>31578</u>	
		ORG. NO. <u>189901</u>	
		DR. BY <u>J.A.C.</u>	SHEET NO. <u>1</u>
		CH. BY <u>J.A.C.</u>	OF <u>1</u> SHEETS
		DATE <u>AUG. 10, 2018</u>	
		SCALE <u>1" = 60'</u>	

EXHIBIT "C"

WEST AUDUBON DRIVE

42'

42'

N 00°55'52" W 253.05'

152.13'

76.55'

N 75°29'46" W

RADIAL

10' PUE

10' PUE

R=298.00'

$\Delta=24^{\circ}19'04"$

L=126.48'

N 53°42'25" E 175.21'

152.13'

76.55'

R=288.00'

$\Delta=54^{\circ}05'17"$

L=271.88'

S 53°42'25" W 23.08'

S 36°17'55" E 278.25'

TRUE POINT OF BEGINNING

POINT OF COMMENCEMENT

PARCEL "B"

PARCEL MAP NO.

91-31, BK. 56 OF

PARCEL MAPS, PG

43-44, F.C.R.

PARCEL "B"

PARCEL MAP NO.

2004-07

BK. 65 OF PARCEL

MAPS, PGS. 88 & 89,

F.C.R.

PARCEL "A"

PARCEL MAP NO.

2004-07

APN 402-570-09

FRESNO SUPREME, INC.

Doc. No. 2014-048778, O.R.F.C.

Doc. No. 2016-0087213, O.R.F.C.



1"=60'



3-20-2019



INDICATES AREA TO BE DEDICATED FOR PUBLIC UTILITY PURPOSES. 1,742 S.F. ±.

NOTE:

DATA BASED ON PARCEL MAP No. 2004-07, IN BOOK 65 OF PARCEL MAPS, AT PAGES 88 & 89, FRESNO COUNTY RECORDS.

REF. & REV.

2017-083

15-A-9375

PLAT 1054

CITY OF FRESNO
DEPARTMENT OF PUBLIC WORKS

AREA TO BE DEDICATED FOR PUBLIC STREET AND
PUBLIC UTILITY PURPOSES.

PROJ. ID. PW00806

RES TYPE

FUND NO. 31578

ORG. NO. 189901

DR. BY J.A.C.

CH. BY J.A.C.

DATE AUG. 10, 2018

SCALE 1" = 60'

SHEET NO. 1
OF 1 SHEETS