

**AGREEMENT FOR PURCHASE AND SALE OF A STREET EASEMENT AND TEMPORARY
CONSTRUCTION EASEMENT
AND ESCROW INSTRUCTIONS
East Central Avenue Reconstruction Project
City Project No.: PW00815**

Philip F. Heck, Jr., Trustee of the Philip F. Heck, Jr. Living Trust, dated September 3, 2009, et al, 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 street easement 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 be referred to as the "Subject Property," being a street easement approximately **24,709 square feet** and a temporary construction easement approximately **50 square feet** in size, located at **3740 S. East Ave. Fresno, CA 93725**, contained within **Assessor's Parcel Number 330-021-31**, more particularly described as:

Exhibits "A" and "B" relative to a permanent street easement, and Exhibit "1" and "2" relative to a temporary construction easement, attached hereto and by reference made a part of hereof.

2. The total purchase price for the Subject Property, including any cost to cure damages as detailed in the Appraisal Summary Statement, and Temporary Construction Easement shall be the sum of **ONE HUNDRED TWENTY THREE THOUSAND EIGHT HUNDRED AND 00/100 (\$123,800.00)** as just compensation.

3. Seller(s) acknowledge that the Buyer has the power to acquire the Subject Property for public purposes by eminent domain. If title does not pass to the Buyer within the time provided by this Agreement, the Buyer 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 Seller(s). Seller(s) waive all other defenses in said proceeding.

4. It is understood and agreed by and between the parties hereto that the easement described on Exhibit "A" and depicted on Exhibit "B", is a permanent easement and right of way for public street purposes.

5. It is agreed and confirmed by the Buyer and Seller(s) that, notwithstanding other provisions of this Agreement, the right of possession and use of the Subject Property by the Buyer, including the right to remove and dispose of improvements within the permanent street easements, shall commence on September 20, 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 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, Escrow No.: FFOM-2011804492-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 Buyer a fully executed and recorded easement deed to the Subject Property and when said escrow holder stands ready to issue to the Buyer a standard title insurance policy guaranteeing a title to said property to the Buyer free and clear of all liens, encumbrances and restrictions of record, including, but not limited to, partial subordination of any and all deeds of trust in order to obtain title insurance prior to close of escrow.

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(s) 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(s), 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 Seller(s) and Buyers, their heirs, executors, administrators, successors in interest, and assigns.

12. It is understood and agreed that the City of Fresno will relocate Seller's irrigation pipeline, as depicted on Exhibit "C", attached hereto and made a part hereof, at no cost to Seller(s).

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:  Date 9/6/19
for Colleen Karby
Senior Real Estate Agent

BY:  Date 9-6-19
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

APPROVED AS TO FORM:

DOUGLAS T. SLOAN
City Attorney

BY:  Date 9.9.19
RAJ SINGH BADHESHA

This Agreement is being signed in counterparts, each of which so executed shall constitute one and the same document regardless of the date of its execution.

SELLERS' SIGNATURES

Philip F. Heck, Jr. Trustee of the Philip F. Heck, Jr. Living Trust, dated September 3, 2009, his 1/11th interest,

By: Philip F. Heck, Jr. 7/5/19
Philip F. Heck, Jr., Trustee Date

Catherine Heck, Michael F. Heck and Kathleen M. Heck, Jr., Trustees of the Heck Trust dated October 30, 2017,

By: _____ By: _____
Catherine Heck, Trustee Date Michael F. Heck, Trustee Date

By: _____
Kathleen M. Heck, Jr., Trustee Date

Daniel Heck, Susan Heck, Betty Bailey, Teresa Wayland, by deed dated May 1, 2003,

By: _____ By: _____
Rita Patillo, Executor for Daniel Heck Estate Date Susan Heck Date

By: _____ By: _____
Betty Bailey Date Teresa Wayland Date

Edward Heck, Thomas Heck, Rita Patillo and Phyllis Pulisivich, by deed dated May 1, 2003,

By: _____ By: _____
Edward Heck Date Thomas Heck Date

By: _____ By: _____
Rita Patillo Date Phyllis Pulisivich Date

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Philip F. Heck, Jr. Trustee of the Philip F. Heck, Jr. Living Trust, dated September 3, 2009, his 1/11th interest,

By: _____
Philip F. Heck, Jr., Trustee Date

Catherine Heck, Michael F. Heck and Kathleen M. Heck, Jr., Trustees of the Heck Trust dated October 30, 2017,

By: Catherine Heck 7-29-19 By: _____
Catherine Heck, Trustee Date Michael F. Heck, Trustee Date

By: _____
Kathleen M. Heck, Jr., Trustee Date

Daniel Heck, Susan Heck, Betty Bailey, Teresa Wayland, by deed dated May 1, 2003,

By: _____ By: _____
Rita Patillo, Executor for Daniel Heck Estate Date Susan Heck Date

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Betty Bailey Date Teresa Wayland Date

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Edward Heck Date Thomas Heck Date

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Rita Patillo Date Phyllis Pulisivich Date

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By: _____
Philip F. Heck, Jr., Trustee Date

Catherine Heck, Michael F. Heck and Kathleen M. Heck, Jr., Trustees of the Heck Trust dated October 30, 2017,

By: _____ By: Michael F. Heck 7-16-19
Catherine Heck, Trustee Date Michael F. Heck, Trustee Date

By: _____
Kathleen M. Heck, Jr., Trustee Date

Daniel Heck, Susan Heck, Betty Bailey, Teresa Wayland, by deed dated May 1, 2003,

By: _____ By: _____
Rita Patillo, Executor for Daniel Heck Estate Date Susan Heck Date

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Betty Bailey Date Teresa Wayland Date

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By: _____ By: _____
Catherine Heck, Trustee Date Michael F. Heck, Trustee Date

By: Kathleen M Heck 8/29/2019 KH
Kathleen M. Heck, Trustee Date

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By: _____
Catherine Heck, Trustee Date

By: _____
Michael F. Heck, Trustee Date

By: _____
Kathleen M. Heck, Jr., Trustee Date

Daniel Heck, Susan Heck, Betty Bailey, Teresa Wayland, by deed dated May 1, 2003,

By: *Rita Patillo* 7-17-19
Rita Patillo, Executor for Daniel Heck Estate Date

By: _____
Susan Heck Date

By: _____
Betty Bailey Date

By: _____
Teresa Wayland Date

Edward Heck, Thomas Heck, Rita Patillo and Phyllis Pulisivich, by deed dated May 1, 2003,

By: _____
Edward Heck Date

By: _____
Thomas Heck Date

By: *Rita Patillo* 7-17-19
Rita Patillo Date

By: _____
Phyllis Pulisivich Date

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Catherine Heck, Trustee Date

By: _____
Michael F. Heck, Trustee Date

By: _____
Kathleen M. Heck, Jr., Trustee Date

Daniel Heck, Susan Heck, Betty Bailey, Teresa Wayland, by deed dated May 1, 2003,

By: _____
Rita Patillo, Executor for Daniel Heck Estate Date

By: Susan Heck July 15, 2019
Susan Heck Date

By: _____
Betty Bailey Date

By: _____
Teresa Wayland Date

Edward Heck, Thomas Heck, Rita Patillo and Phyllis Pulisivich, by deed dated May 1, 2003,

By: _____
Edward Heck Date

By: _____
Thomas Heck Date

By: _____
Rita Patillo Date

By: _____
Phyllis Pulisivich Date

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By: _____
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Kathleen M. Heck, Jr., Trustee Date

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Rita Patillo, Executor for Daniel Heck Estate Date

By: _____
Susan Heck Date

By: Betty Bailey 7/29/19
Betty Bailey Date

By: _____
Teresa Wayland Date

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Thomas Heck Date

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By: _____
Rita Patillo, Executor for Daniel Heck Estate Date _____

By: _____
Susan Heck Date _____

By: Betty Bailey Date _____

By: Teresa Wayland 7-16-2019
Teresa Wayland Date

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By: _____
Edward Heck Date _____

By: _____
Thomas Heck Date _____

By: _____
Rita Patillo Date _____

By: Phyllis Pulisovich Date: _____

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Susan Heck Date

By: _____
Betty Bailey Date

By: _____
Teresa Wayland Date

Edward Heck, Thomas Heck, Rita Patillo and Phyllis Pulisivich, by deed dated May 1, 2003,

By: Edward Heck 8-19-19
Edward Heck Date

By: _____
Thomas Heck Date

By: _____
Rita Patillo Date

By: _____
Phyllis Pulisivich Date

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Betty Bailey Date

By: _____
Teresa Wayland Date

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Edward Heck Date

By: Thomas Heck 7-12-19
Thomas Heck Date

By: _____
Rita Patillo Date

By: _____
Phyllis Pulisivich Date

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By: _____ By: _____
Edward Heck Date Thomas Heck Date

By: _____ By: Phyllis Pulisivich 7-29-19
Rita Patillo Date Phyllis Pulisivich Date

EXHIBIT "A"

All that real property, located in the City of Fresno, County of Fresno, State of California, lying in the Southwest 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;

COMMENCING at the Southwest corner of said Southwest quarter; thence North $0^{\circ}30'50''$ East, on the West line of said Southwest quarter, a distance of 88.096 feet to the Southwest corner of that portion of land dedicated for public street purposes by deed of easement recorded June 30, 2017, as Instrument No. 2017-0082114, Official Records Fresno County; thence South $89^{\circ}46'00''$ East, on the South line of said easement, a distance of 30.00 feet to the southeast corner of said easement and the **TRUE POINT OF BEGINNING**; thence North $0^{\circ}30'28''$ East, on the East line of said easement, a distance of 363.65 feet; thence South $06^{\circ}08'23''$ East, leaving said East line, a distance of 86.38 feet; thence South $0^{\circ}30'28''$ West, a distance of 137.19 feet to the beginning of a curve, concave easterly, having a radius of 12.00 feet; thence southeasterly on said curve, through a central angle of $18^{\circ}11'42''$, an arc length of 3.81 feet to the beginning of a reverse curve, concave southwesterly, having a radius of 28.00 feet; thence southeasterly on said curve, through a central angle of $18^{\circ}11'42''$; an arc length of 8.89 feet; thence South $0^{\circ}30'28''$ West, a distance of 85.46 feet; thence South $44^{\circ}37'46''$ East, a distance of 49.01 feet; thence South $89^{\circ}46'00''$ East, a distance of 7.45 feet; thence South $0^{\circ}14'00''$ West, a distance of 2.00 feet to the north line of the south 94.00 feet of said Southwest quarter; thence South $89^{\circ}46'00''$ East, on said North line, a distance of 200.00 feet to the beginning of a curve, concave southwesterly, having a radius of 128.00 feet; thence southeasterly, on said curve, through a central angle of $16^{\circ}35'46''$, an arc length of 37.08 feet to the beginning of a reverse curve, concave northeasterly, having a radius of 112.00 feet; thence southeasterly on last said curve, through a central angle of $16^{\circ}35'53''$, an arc length of 32.44 feet to the North line of the south 84.00 feet of said Southwest quarter; thence South $89^{\circ}46'00''$ East, on last said North line, a distance of 790.16 feet to the West line of that portion of land conveyed to Fresno Metropolitan Flood Control District, by deed recorded September 7, 2001, as Document No. 2001-0129429, Official Records Fresno County; thence South $0^{\circ}31'15''$ West, on last said West line, a distance of 16.00 feet to the north line of that land dedicated for public street purposes by grant deed recorded March 13, 1973, as Instrument No. 24200, Official Records Fresno County; thence North $89^{\circ}46'00''$ West, on last said North line, a distance of 1092.87 feet to the beginning of a curve, concave northeasterly, having a radius of 20.00 feet; thence northwesterly, on said curve, through a central angle of $90^{\circ}16'32''$, an arc length of 31.51 feet to the **TRUE POINT OF BEGINNING**.

Containing an area of 24,709 square feet, more or less.

2018-091
15-A-9514



EXHIBIT "B"

SOUTH EAST AVENUE

LINE	BEARING	DISTANCE
L1	S 89°46'00" E	30.00'
L2	N 06°08'23" E	86.38'
L3	S 00°30'28" W	137.19'
L4	S 00°30'28" W	85.46'
L5	S 44°37'46" E	49.01'
L6	S 89°46'00" E	7.45'
L7	S 00°14'00" W	2.00'
L8	S 00°31'15" W	16.00'

CURVE	RADIUS	DELTA	LENGTH
C1	12.00'	18°11'42"	3.81'
C2	28.00'	18°11'42"	8.89'
C3	128.00'	16°35'46"	37.08'
C4	112.00'	16°35'53"	32.44'
C5	20.00'	90°16'32"	31.51'



1"=100'

TRUE
POINT OF
BEGINNING

APN 330-021-31

RADIAL
S 16°49'52" E

S 00°46'00" E 790.16'

N 00°46'00" W 1092.87'

S 89°46'00" E SECTION LINE

EAST CENTRAL AVENUE

POINT OF COMMENCEMENT
SOUTHWEST CORNER OF SECTION
26, T. 14 S., R. 20 E., M.D.B. & M.

LEGEND



INDICATES AREA TO BE DEDICATED FOR PUBLIC STREET PURPOSES. CONTAINING AN AREA OF = 24,709 S.F. ±

①

INDICATES AREA DEDICATED FOR PUBLIC STREET PURPOSES IN DEED OF EASEMENT RECORDED JUNE 30, 2017 AS INSTRUMENT No. 2017-0082114, OFFICIAL RECORDS FRESNO COUNTY

②

INDICATES AREA DEDICATED FOR PUBLIC MARCH 13, 1973 AS INSTRUMENT No. 24200, OFFICIAL RECORDS FRESNO COUNTY



12-11-18

REF. & REV.

2018-091

15-A-9514

PLAT 3458

CITY OF FRESNO
DEPARTMENT OF PUBLIC WORKS

AREA TO BE DEDICATED FOR
PUBLIC STREET PURPOSES

PROJ. ID. PW00815 RES TYPE

FUND NO. 31154

ORG. NO. 189901

DR. BY J.A.C.

CH. BY J.A.C.

DATE DEC. 11, 2018

SCALE 1" = 100'

SHEET NO. 1
OF 1 SHEETS

EXHIBIT "1"

APN 330-021-31 (portion)

Temporary construction easement

All that real property, located in the City of Fresno, County of Fresno, State of California, lying in the Southwest 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;

COMMENCING at the Southwest corner of said Southwest quarter; thence North $0^{\circ}30'50''$ East, on the West line of said Southwest quarter, a distance of 20.00 feet to the North line of the South 20.00 feet of said Southwest quarter; thence South $89^{\circ}46'00''$ East, on said North line, distance of 60.02 feet to the **TRUE POINT OF BEGINNING**; thence South $0^{\circ}14'00''$ West, leaving said North line, distance of 5.00 feet; thence South $89^{\circ}46'00''$ East, parallel with said North line, distance of 10.00 feet; thence North $0^{\circ}14'00''$ East, a distance of 5.00 Feet to the said North line; thence North $89^{\circ}46'00''$ West, on said North line, a distance of 10.00 feet to the **TRUE POINT OF BEGINNING**.

Containing an area of 50 square feet, more or less.

EXHIBIT "2"

SOUTH EAST AVENUE

N 00°30'28" E SECTION LINE

APN 330-021-31

EAST CENTRAL AVENUE

RIGHT-OF-WAY LINE

SEE DETAIL "A"
S 89°46'00" E SECTION LINE

POINT OF COMMENCEMENT
SOUTHWEST CORNER OF SECTION
26, T. 14 S., R. 20 E., M.D.B. & M.

LEGEND



INDICATES AREA TO BE DEDICATED FOR A TEMPORARY CONSTRUCTION EASEMENT, CONTAINING AN AREA OF = 50 S.F. ±

①

INDICATES AREA DEDICATED FOR PUBLIC STREET PURPOSES IN DEED OF EASEMENT RECORDED JUNE 30, 2017 AS INSTRUMENT No. 2017-0882114, OFFICIAL RECORDS FRESNO COUNTY

②

INDICATES AREA DEDICATED FOR PUBLIC MARCH 13, 1973 AS INSTRUMENT No. 24200, OFFICIAL RECORDS FRESNO COUNTY

TRUE
POINT OF
BEGINNING

EAST CENTRAL AVENUE

DETAIL "A"

SCALE: 1"=10'

60.02' N 89°46'00" W 10.00'
S 00°14'00" W 5.00' N 00°14'00" E 5.00'
S 89°46'00" E 10.00'

LINE	BEARING	DISTANCE
L1	N 00°30'28" E	20.00'
L2	S 89°46'00" E	60.02'



1"=100'

REF. & REV.

2018-091 TCE

15-A-9514

PLAT 3458

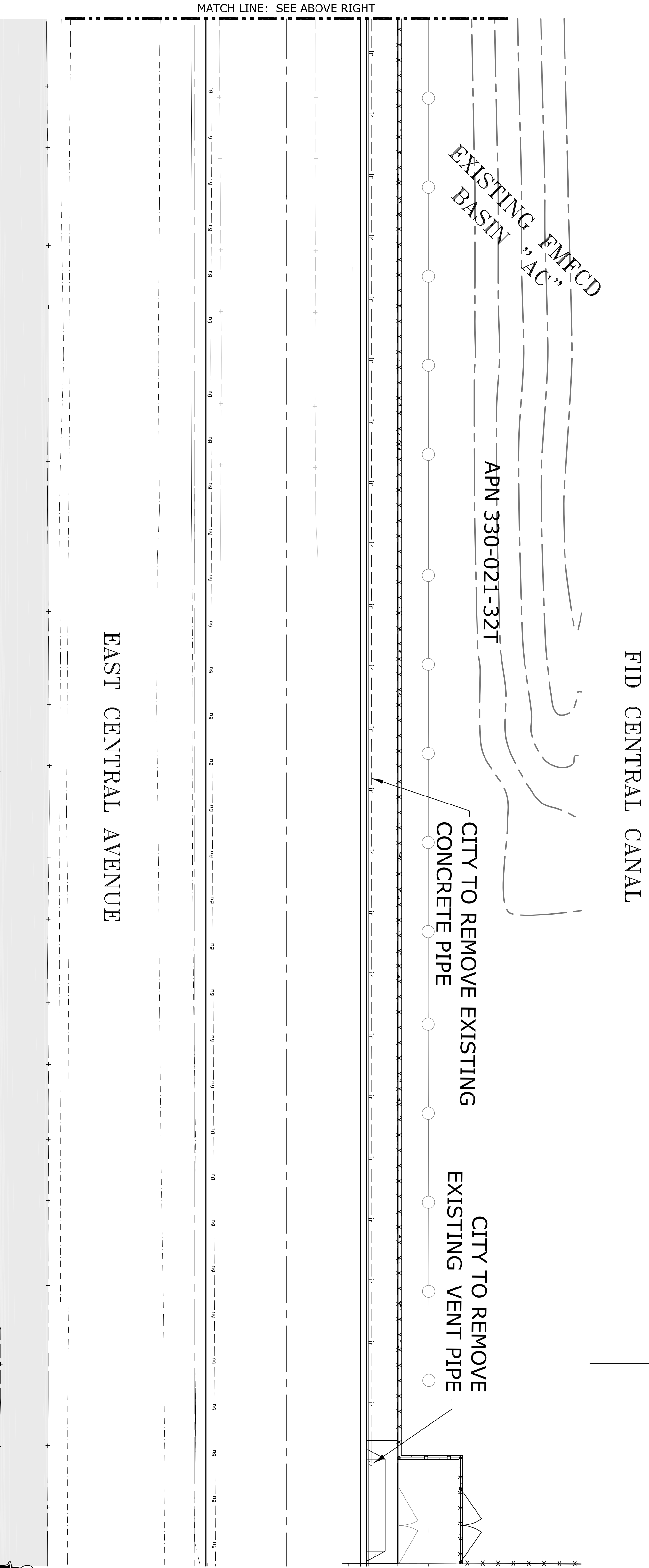
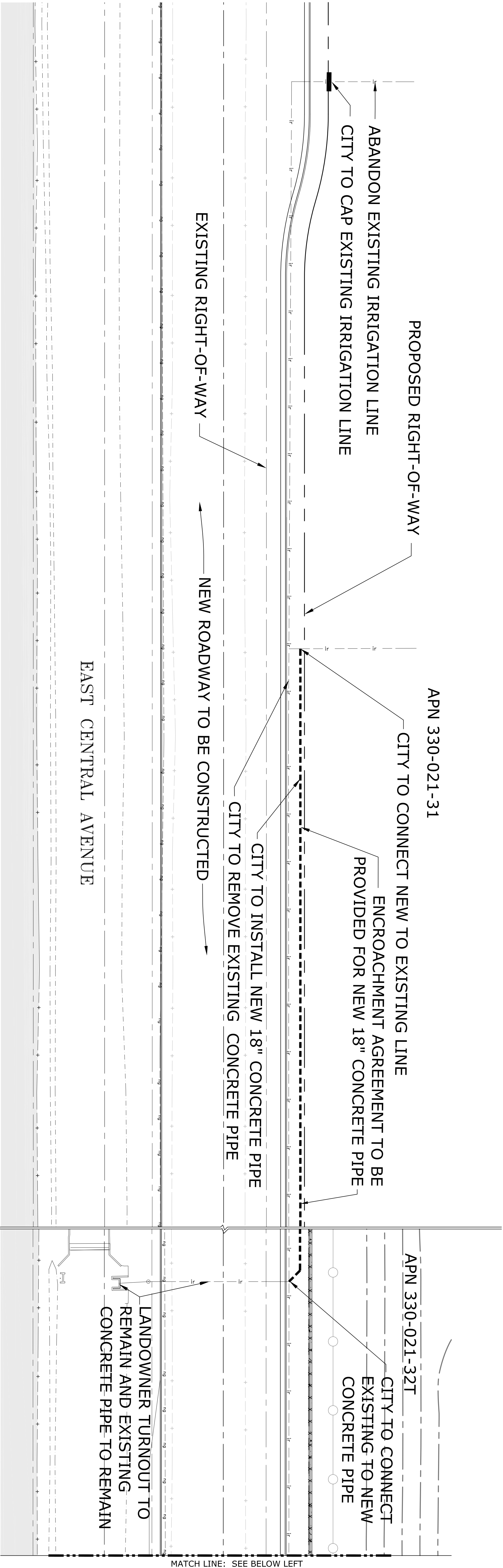
CITY OF FRESNO
DEPARTMENT OF PUBLIC WORKS

AREA TO BE DEDICATED AS A TEMPORARY
CONSTRUCTION IN FAVOR OF THE CITY OF FRESNO

PROJ. ID. PWA00815 RES TYPE
FUND NO. 31154
ORG. NO. 188901

DR. BY J.A.C.
CH. BY J.A.C.
DATE DEC. 20, 2018
SCALE 1" = 100'

SHEET NO. 1
OF 1 SHEETS



NOT TO SCALE