

**AGREEMENT FOR PURCHASE AND SALE OF A STREET EASEMENT
AND ESCROW INSTRUCTIONS
Polk Ave. and Ashlan Ave. Public Street Improvement
City Project No.: PW00826**

Michael J. Berube and Cynthia L. Berube, Trustees, 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 for convenience be referred to as the "Subject Property," being a street easement approximately **1,430 square feet** in size and is located on the West side of Polk Avenue, South of Ashlan Avenue at address 3897 N. Polk Ave. and is contained within Assessor's Parcel Numbers 511-011-10 and which is more particularly described as:

Exhibits "A" and "B" relative to a permanent street easement 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 attached Appraisal Summary Statement dated May 1, 2018 shall be the sum of **THIRTY EIGHT THOUSAND EIGHT HUNDRED AND 00/100 DOLLARS (\$38,800.00)** as just compensation for this property.

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 properties by the Buyer, including the right to remove and dispose of improvements within the permanent street easements, shall commence on April 15, 2019, or close of escrows 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 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 upon review and approval of an updated title report.

7. The sale shall be completed through an external escrow to be opened at First American Title Company, Escrow No. 5405-5477980, located at 211 E. Caldwell Avenue, Visalia, CA 93277. Your Escrow Officer is Sherry Salierno-Munger, Phone number is 559-625-1550 or email at ssalierno@firstam.com. 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 therefore.
- 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.
- 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 Sellers' responsibility to apply to the County Tax Collector for any refund or decrease in taxes which may be granted, if any.
- 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 shall 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.

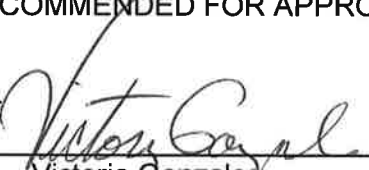
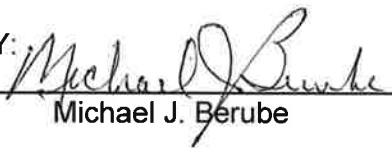



10. Environmental Indemnity Seller shall indemnify, hold harmless, and defend the Buyer, its officers, agents, employees, and volunteers from any liability, loss, fines, penalties, forfeitures, claims, expenses, and costs, whether incurred by the Seller, Buyer, or any other

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 Buyers, their heirs, executors, administrators, successors in interest, and assigns

Signature Page

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 October 22, 2015, Resolution No. 2015-187.

RECOMMENDED FOR APPROVAL	SELLER(S) Michael J. Berube and Cynthia L. Berube
BY:  Date: <u>6/26/19</u> Victoria Gonzales Senior Real Estate Agent	BY:  Date: <u>3/14/19</u> Michael J. Berube
BY:  Date: <u>7-9-19</u> R. Scott Beyelia Supervising Real Estate Agent	BY:  Date: <u>3/14/19</u> Cynthia L. Berube
CITY OF FRESNO	Mailing Address of Seller(s)
BY: _____ Date: _____ Randall Morrison, Assistant Director Public Works Department	Michael J. and Cynthia L. Berube 3897 N. Polk Ave. Fresno, CA 93722
Address: City of Fresno Public Works Department 2600 Fresno Street, Room 4019 Fresno, CA 93721-3623	
ATTEST: YVONNE SPENCE, MMC City Clerk	APPROVED AS TO FORM: DOUGLAS T. SLOAN City Attorney
BY: _____ Date: _____ Deputy	BY:  Date: <u>10/11/19</u>

APN: 511-011-10 (portion)
Street Easement

EXHIBIT "A"

That portion of the North 130 feet of the South 1,040 feet of the Northeast Quarter of the Northwest Quarter of Section 22, Township 13 South, Range 19 East, Mount Diablo Base and Meridian, described as follows:

The West 11 feet of the East 31 feet thereof.



T-5538
2017-068
15-A-9360

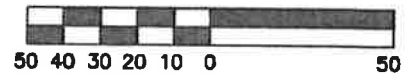
EXHIBIT "B"

POSITION OF THE NORTH QUARTER
CORNER OF SECTION 22, TOWNSHIP
13 SOUTH, RANGE 19 EAST,
M.D.B. & M.

WEST ASHLAN AVENUE



SCALE: 1' = 50'



APN 511-011-10

11'

130.00'

NORTH POLK AVENUE

1,040.00'

20' PREVIOUSLY DEEDED FOR PUBLIC ROAD
PURPOSES AS PER DEED RECORDED MAY 4,
1911 IN BOOK 477, PAGE 203 AS DOC. NO.
7834, OFFICIAL RECORDS OF FRESNO COUNTY.



POSITION OF THE SOUTHEAST CORNER
OF THE NORTHEAST QUARTER OF THE
NORTHWEST QUARTER OF SECTION 22,
TOWNSHIP 13 SOUTH, RANGE 19 EAST,
M.D.B. & M.



HATCHED AREA TO BE DEEDED FOR
PUBLIC STREET EASEMENT PURPOSES

AREA = 1,430 SQ. FT.

RECORD OWNER:

A.P.N. 511-011-10
MICHAEL J. BERUBE & CYNTHIA L.
BERUBE, TRUSTEES
3897 N. POLK
FRESNO, CALIFORNIA 93722
(559)

PREPARED BY:

GARY GIANNETTA
1119 "S" STREET
FRESNO, CA. 93721
(559) 264-3590

8/16/17

REF. & REV. ACC'T NO. FILE NO. TRACT 5538 2017-068	CITY OF FRESNO		PROJ. ID. _____ FUND NO. _____ ORG. NO. _____
	A PORTION OF THE NORTHWEST QUARTER OF SECTION 22, T 13 S, R 19 E, M.D.B. & M., TO BE DEEDED TO THE CITY OF FRESNO FOR: PUBLIC STREET EASEMENT PURPOSES		DR. BY: B. GIANNETTA CH BY: _____ DATE: _____ SCALE: AS NOTED
			SHEET NO. 1 OF 1 SHEET 15-A-9360