



February 4, 2010

FROM: PATRICK N. WIEMILLER, Director
Public Works Department

BY: SCOTT L. MOZIER, PE, City Engineer / Assistant Director
Public Works Department, Engineering Division 

SUBJECT: APPROVE A TEMPORARY ROAD DETOUR EASEMENT WITH OWNERS LISA AND SAM MONACO THAT WILL HELP EXPEDITE THE CONSTRUCTION OF THE INTERSECTION OF HERNDON AVENUE AND GOLDEN STATE BOULEVARD (PROPERTY IS LOCATED IN DISTRICT 2)

RECOMMENDATION

Staff recommends that the City Council:

1. Approve the Temporary Road Detour Easement Agreement of 6,213 square feet at the northwest corner of Herndon Avenue and Golden State Boulevard from property owners Lisa and Sam Monaco.
2. Authorize the Public Works Director or his designee to execute the Temporary Road Detour Easement Agreement with Lisa and Sam Monaco.

EXECUTIVE SUMMARY

Lisa and Sam Monaco purchased 1.75+/- acres from the City of Fresno in 2008. The originally owned City parcel was not improved and was not part of the street or alley system nor dedicated for public use. As part of the sale to the Monaco's, staff negotiated a future right of way reservation for the anticipated future construction of the Herndon Avenue grade separation at the Union Pacific Railroad crossing. Construction will be starting in the weeks to come on the project to widen and improve the Herndon/Golden State intersection. The purpose of the Temporary Road Detour Easement is to allow the City's contractor to build the improvements at the intersection in a more expeditious and safe manner while at the same time keeping the local businesses open. The Temporary Road Detour Easement improvements will be constructed and removed as one of the phases of construction to complete the intersection.

BACKGROUND

In July 2002 a lease agreement was established with Lisa and Sam Monaco for a ten-year period with the option to extend for another ten years and first right of refusal to purchase the parcel if it were to put up for sale. Beginning in 2007, the Public Works Department began the process to plan improvements to the Herndon Avenue and Golden State Boulevard intersection. In 2008, the

Report to the City Council

Approve Temporary Road Detour – Intersection of Herndon Avenue and Golden State Boulevard

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Page 2

Monaco's, who were aware of the anticipated Herndon Avenue and Golden State Boulevard widening project and future grade separation project, agreed to purchase the property from the City at the appraised price. The purchase agreement included provisions that a portion of the parcel must be reserved as a street easement for the City's use for the construction of the grade separation at the Union Pacific Railroad tracks.

Construction bids for the widening of Herndon Avenue and Golden State were initiated in October, 2009. The Temporary Road Detour Easement will allow the City's contractor to build the intersection project in a more expeditious and safe manner. The businesses in the area will be able to use the Temporary Road Detour Easement to travel through the area. Several options were considered by staff that took more time and were more costly to construct than the temporary road detour. The Temporary Road Detour Easement Agreement will be recorded. After the project is completed and the temporary road detour easement area is restored to its original condition, then staff will record a release of the Temporary Road Detour Easement.

The City Attorney's Office has reviewed and approved the Agreement as to form.

FISCAL IMPACT

No compensation is being paid or received from this Temporary Road Detour Easement Agreement. The cost of constructing and removing the detour paving will be fully paid for by funding already appropriated for the project.

PNW/SLM/PC/eam

Apprv Temp Rd Detour Esmnt Agrmnt w Monaco – Herndon-Golden Sta 2-4-2010

Attachments: Agreement
Exhibits A & B

**AGREEMENT FOR GRANT OF TEMPORARY DETOUR EASEMENT
OF REAL PROPERTY AND RIGHT OF ENTRY**

HERNDON AVENUE AND GOLDEN STATE INTERSECTION PROJECT

SAMUEL VINCENT AND LISA QUIMET MONACO, TRUSTEES OF THE MONACO REVOCABLE TRUST, dated March 27, 2003, hereinafter called the "Grantor," without regard to number or gender, hereby offers, donates, to the CITY OF FRESNO, a municipal corporation, hereinafter called the "City," the hereinafter described temporary detour easement and right of entry (collectively, the "Agreement") on the following terms and conditions:

1. The real property easement which is the subject of this Agreement and may hereinafter for convenience be referred to as the "easement," is a temporary detour easement and right of way for public street purposes (not to include public utilities), to facilitate the construction of the intersection project at Herndon and Golden State Blvd., over, under, across and through certain real properties situated in the County of Fresno, State of California, being a portion of Assessor's Parcel Number 504-060-75, and which are more particularly described as:

On Exhibits "A" and "B" attached hereto, and by reference made a part of hereof.

2. The Grantor consents to the City's or its contractor's entry on to Grantor's remaining land adjacent to the temporary detour easement area for purpose of constructing the street improvements

3. Any improvements, such as, but not limited to, fences, irrigation pipelines, driveways, sidewalks, trees, shrubs and mail boxes that are damaged or displaced as a result of City's construction of the intersection will be repaired or replaced at City's expense.

4. Grantor represents and warrants that it has the authority to make the offer herein made, and that it holds title to said real property and the right to possession thereof. City hereby agrees to defend and indemnify the Grantor against any claims, demands, or liability which may arise out of any construction, re-construction, public use as a street easement and right of way for street purposes which may be affected by this Agreement.

5. It is understood and agreed that this Agreement shall become effective upon Grantor's receipt of a copy of the contractor's "Notice to Proceed" letter from the City (the "Effective Date"). The time to construct is approximately forty (40) calendar days during which time the temporary detour easement will be constructed (3-5 days), used until such time as intersection improvement are completed and ready for traffic, and the demolition and restoration of the temporary detour easement (3-5 days). In the event that the improvements to the intersection are completed sooner than the estimated forty calendar days then the temporary detour easement will be removed and the land restored to a condition as good as or better than before this agreement was executed between the parties.

6. This Agreement shall be binding upon Grantors and the City, their heirs, executors, administrators, successors in interest, and assigns.

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 Grantor.

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK.
SIGNATURES APPEAR ON NEXT PAGE.

This Agreement is executed as of the date set forth below, and effective as of the Effective Date as set forth in the Agreement.

RECOMMENDED FOR APPROVAL

BY _____
J. A. Pete Caldwell
Senior Real Estate Agent

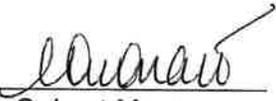
GRANTEE:
City of Fresno

GRANTOR:
Samuel Vincent Monaco and Lisa Quimet Monaco, Trustees of the Monaco Revocable Trust

By _____ Date _____
Patrick Wiemiller,
Public Works Director

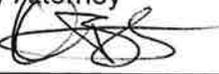
By  Date 1-11-10
Samuel Vincent Monaco

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

By  Date 1-11-10
Lisa Quimet Monaco

APPROVED AS TO FORM:
James C. Sanchez
City Attorney

Address of Grantor:
6943 North Golden State Blvd.
Fresno, CA 93722

By  _____
Deputy BRADY

ATTEST:
REBECCA K. KLISCH
City Clerk

By _____
Deputy

APN 504-060-75

EXHIBIT "A"

APN 504-060-75T (portion)
Temporary Detour Easement

A portion of that certain parcel of land being a portion of Lots 69 and 70 of J.C. Forkner Fig Gardens Subdivision No. 10, according to the map thereof recorded in Book 10 of Plats at Page 38, Fresno County Records, together with a portion of Perrin Street as shown on the map of the Town of Herndon according to the map thereof recorded in Book 1 of Miscellaneous Maps at Page 27, Fresno County Records, also together with a portion of James Street as shown on said map of J.C. Forkner Fig Gardens Subdivision No. 10 lying adjacent to said Lots 69 and 70 that was vacated by City of Fresno Resolution No. 2004-395 recorded November 17, 2004 as Document No. 2004-0258974 and which would pass by a conveyance of said land under Section 831 and 1112 of the California Civil Code, being described in Grant Deed and Certificate of Parcel Merger recorded on August 21, 2008 as Document No. 2008-0119274, Official Records of Fresno County, in the City of Fresno, County of Fresno, State of California, more particularly described as follows:

COMMENCING at the west corner of said parcel of land, being the intersection of the southwesterly prolongation of the northwesterly line of Lot 70 of J.C. Forkner Fig Gardens Subdivision No. 10 with the centerline of said vacated James Street, said centerline being parallel with and 30.00 feet southwesterly, measured at right angles, of the southwesterly line of said Lots 69 and 70; thence North 33°03'51" East, along said southwesterly prolongation and along said northwesterly line of Lot 70, a distance of 347.71 feet to the most northerly west corner of Public Street Reservation as described in said Document No. 2008-0119274, said corner being a point of beginning of a non-tangent curve, with a radial bearing of South 28°13'47" West, concave northeasterly; thence southeasterly, along the westerly line of said Public Street Reservation and along the arc of said non-tangent curve with radius of 3,480.00 feet, through a central angle of 0°32'53", an arc distance of 33.29 feet to the **TRUE POINT OF BEGINNING** of this description; thence South 10°19'49" East, non-tangent to said non-tangent curve, a distance of 162.29 feet to a point on the westerly line of said Public Street Reservation, said point being a point of beginning of a non-tangent curve, with radial bearing of South 62°23'31" East, concave northwesterly; thence northeasterly, along the westerly line of said Public Street Reservation and along the arc of last said non-tangent curve with radius of 700.00 feet, through a central angle of 1°28'46", an arc distance of 18.07 feet; thence North 26°07'43" East, continuing along the westerly line of said Public Street Reservation and tangent to last said non-tangent curve, a distance of 32.94 feet to the beginning of a tangent curve, concave southeasterly; thence northeasterly, continuing along the westerly line of said Public Street Reservation and along the arc of said tangent curve with radius of 860.00 feet, through a central angle of 4°10'23", an arc distance of 62.64 feet; thence North 15°45'13" West, continuing along the westerly line of said Public Street Reservation and non-tangent to said tangent curve, a distance of 21.05 feet to the beginning of a non-tangent curve, with radial bearing of South 26°17'01" West, concave northeasterly; thence northwesterly, continuing along the westerly line of said Public Street Reservation and along the arc of last said non-tangent curve with radius of 3,480.00 feet, through a central angle of 1°23'53", an arc distance of 84.91 feet to the **TRUE POINT OF BEGINNING**.

Containing an area of 6,213 square feet, more or less.

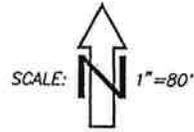
2009-150
PWF 10814



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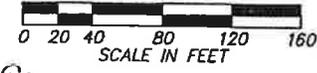
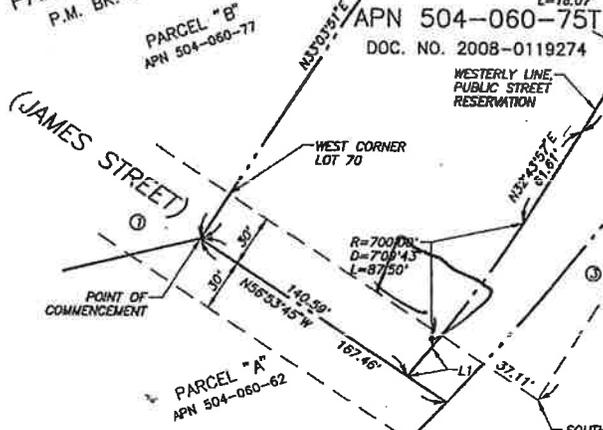
EXHIBIT "B"

OCTOBER 29, 2009



- ① VACATION OF JAMES STREET, BY FRESNO RESOLUTION NO. 2004-395 RECORDED NOVEMBER 17, 2004 AS DOC. NO. 2004-0258974, O.R.F.C.
- ② PARCEL RESERVED AS AN EASEMENT FOR PUBLIC STREET PURPOSES RECORDED AUGUST 21, 2008 AS DOC. NO. 2008-0119274, O.R.F.C.
- ③ GRANT DEED TO THE STATE OF CALIFORNIA RECORDED JANUARY 15, 1958 IN BOOK 4015 AT PAGE 612, O.R.F.C.
- ④ GRANT DEED TO THE STATE OF CALIFORNIA RECORDED APRIL 26, 1951 IN BOOK 3008 AT PAGE 63, O.R.F.C.
- ⑤ PARCEL 11 OF THAT DEED TO THE COUNTY OF FRESNO RECORDED SEPTEMBER 11, 1961 IN BOOK 4807 AT PAGE 525, O.R.F.C.
- ⑥ PARCEL 1 OF THAT RELINQUISHMENT TO THE COUNTY OF FRESNO RECORDED SEPTEMBER 15, 1960 IN BOOK 4440 AT PAGE 155, O.R.F.C.

PARCEL MAP NO. 2000-10
P.M. BK. 65, PGS. 30-31, F.C.R.
PARCEL "B"
APN 504-060-77



NOTE
N1 WESTERLY LINE, PUBLIC STREET RESERVATION

CURVE TABLE

| | | | |
|----|-------------|------------|----------|
| C1 | R=860.00' | D=4°10'23" | L=62.64' |
| C2 | R=3,480.00' | D=1°23'53" | L=94.91' |
| C3 | R=700.00' | D=6°36'14" | L=80.68' |

LINE TABLE

| | | |
|----|-------------|----------|
| L1 | N39°53'40"E | L=21.57' |
| L2 | N15°45'13"W | L=21.05' |

RADIAL BEARING

| | |
|----|-------------|
| R1 | S28°13'47"W |
| R2 | S62°23'31"E |
| R3 | S26°17'01"W |

Blair, Church & Flynn
CONSULTING ENGINEERS

451 Clark Avenue, Suite 200
Clovis, California 93612
Tel (559) 328-4400
Fax (559) 328-1800



INDICATES CONSTRUCTION EASEMENT
6,213 SQUARE FEET, MORE OR LESS

| | | |
|---|--|--|
| REF. & REV. 2009-150 PWF 10814 PLAT 1342 | CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS | PROJ. ID. PWD0306 KRA 0101001000 FUND NO. 22048 RES TYPE ORG. NO. 189501 |
| | DETOUR EASEMENT | DR. BY HR CH. BY TDW DATE 10/28/09 SCALE AS NOTED |

SHEET NO. 1
OF 1 SHEETS

Drawing: F:\205-0229\dwg-lego\dwg\205229_DETOUR EASEMENT.dwg; Model - BCF.ctb
Plot by: twhite Jan 07, 2010 - 10:36am

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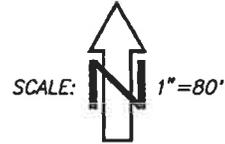
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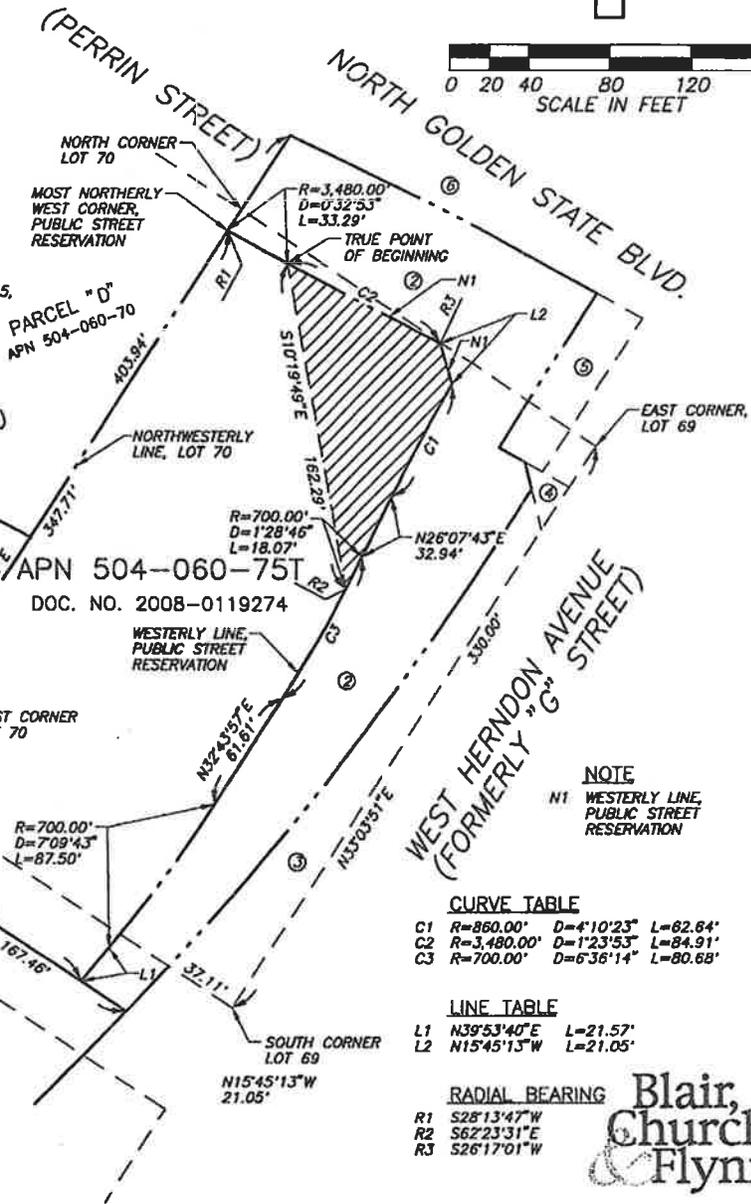
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461 Olive Avenue, Suite 200
Clovis, California 93612
Tel (509) 328-0400
Fax (509) 328-0900



| | | |
|---|--|--|
| REF. & REV. 2009-150 PWF 10814 PLAT 1342 | CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS | PROJ. ID. PWD0306 KRA 0101001000 FUND NO. 22048 RES TYPE ORG. NO. 189901 |
| | DETOUR EASEMENT | DR. BY HB CH. BY TDW DATE 10/28/09 SCALE AS NOTED |

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Plot by: twhite Jan 07, 2010 - 10:36am