

8

CITY OF FRESNO  
City Clerk's Office (Original)

Recording Requested By:  
Public Works  
City of Fresno  
No Fee-Govt. Code 6103  
and 27383

Public Works Department,  
City of Fresno  
2600 Fresno Street  
Fresno, CA 93721-3623  
ATTN: Bruce Abbott  
2008-099



FRESNO County Recorder  
Robert C. Werner  
DOC- 2009-0150194  
Acct 301-Fresno City Public Works  
Friday, OCT 30, 2009 10:45:32  
Ttl Pd \$0.00 Nbr-0003099779  
JZG/R3/1-8

APN: 487-020-15T (Portion)

PW-2009-14944

**EASEMENT AGREEMENT**

This Agreement is made effective as of August 12, 2009, by and between (i) the Fresno Irrigation District, a California irrigation district ("District") and (ii) the City of Fresno, a municipal corporation ("City"), with respect to the following facts:

A. District owns the Fresno Colony No. 24 Canal and certain surrounding real property located along the north side of North Avenue and the east side of Cedar Avenue.

B. City desires to construct certain street improvements at the intersection of North Avenue and Cedar Avenue, and desires an easement over that portion of District's real property described in Exhibits A and B hereto, incorporated herein by this reference (the "Easement Area").

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. Grant of Easement. District hereby grants to City an easement for roadway purposes and related improvements over, under, through and across the Easement Area, on the terms and subject to the conditions of this Agreement.

(a) City's installation, maintenance and removal of improvements within the Easement area ("Encroachments") shall not unreasonably interfere with District's use of the Fresno Colony No. 24 Canal or any related facilities ("District Facilities"). City shall comply with all federal, state and local codes and ordinances regarding the installation, maintenance, repair and replacement of any Encroachments.

(b) City shall bear all costs of installing, maintaining, repairing and replacing the Encroachments. Should City fail to maintain, repair, or replace the Encroachments, District shall have the right (but not the obligation) to perform any maintenance, repair, replacement, or removal necessary for District's unhindered use of District Facilities following reasonable written notice to City. City shall be responsible to reimburse District on demand for any reasonable cost incurred by District in connection with the Encroachments, with interest at the rate of 10% per annum on any unpaid balance of said costs to accrue starting 30 days after written demand for payment is made.

1/8

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Public Works  
City of Fresno  
No Fee-Govt. Code 6103  
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(c) City shall repair or replace at City's sole expense any District Facilities damaged by or as a result of the installation, maintenance, repair or replacement of any of the Encroachments. In the event City fails, neglects, or refuses to repair or replace any such damage within 30 days after written notice from District or otherwise fails to proceed diligently in repairing or replacing such damage, District shall have the right, but shall not be required, to make any such repairs or replacements, and City shall repay to District the cost of any such repairs or replacement with interest at the rate of 10% per annum from the date(s) amounts were expended by District.

(d) All Encroachments installed or constructed pursuant to this Agreement shall be the property of City. Except as herein otherwise provided, neither District nor City shall have any right, title, or control over the other's property, except as provided by law.

(e) Consideration. City shall pay to District the total sum of \$500.00 for the easement rights granted under this Agreement.

2. Indemnity.

(a) City shall indemnify, hold harmless and defend District and each of its directors, officers, employees and authorized volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by District, City or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen from the negligent or intentional acts, omissions or willful misconduct of City or any of its officers, officials, employees, agents or authorized volunteers in its use of the Easement Area.

(b) In the event of concurrent negligence on the part of City or any of its officers, officials, employees, agents or authorized volunteers, and District or any of its directors, officers, employees, agents or authorized volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

3. Time and Computation of Time. Time is of the essence of this Agreement and each and all of its provisions. The parties agree that the time for performance of any action permitted or required under this Agreement shall be computed as if such action were "an act provided by law" within the meaning of California Civil Code § 10, which provides: "The time in which any act provided by law to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded."

4. Waiver. Waiver of any breach of this Agreement by any party hereto shall not constitute a continuing waiver or a waiver of any breach of the same or another provision of this Agreement.

5. Counterparts. This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, all of which together shall constitute one and the same instrument.

6. Binding Effect. This Agreement shall "run with the land" and be binding upon and inure to the benefit of the heirs, executors, administrators, assigns, and successors of the parties hereto.

7. Professionals' Fees. Should any action or proceeding be commenced between the parties hereto concerning this Agreement, or the rights and duties of any party in relation thereto, the party prevailing in such action or proceeding shall be entitled, in addition to such other relief as may be granted, to recover from the losing party a reasonable sum for its attorneys', paralegals', accountants', and other professional fees and costs incurred in connection with such action or proceeding.

8. Notices. All notices and other communications required under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of service, if served personally on the person to whom notice is to be given, (ii) on the date of service if sent by telecopier, provided the original is concurrently sent by first class mail, and provided that notices received by telecopier after 5:00 p.m. shall be deemed given on the next business day, (iii) on the next business day after deposit with a recognized overnight delivery service, or (iv) on the third (3rd) day after mailing, if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage-prepaid, and properly addressed as follows:

To District:                Fresno Irrigation District  
                                     2907 South Maple  
                                     Fresno, CA 93725-2218  
                                     Attn: General Manager

To City:                     City of Fresno  
                                     Attn: Director of Public Works  
                                     2600 Fresno Street  
                                     Fresno, CA 93721

A party may change its address for notices by providing notice to the other parties as provided above.

*[remainder of page intentionally left blank]*

Signature Page

This Agreement is executed by the City of Fresno by and through the Public Works Director of said the City of Fresno pursuant to authority granted by the Council of the City of Fresno on OCTOBER 29, 2009

RECOMMENDED FOR APPROVAL

BY K.A. Joaquin  
K.A. "Tony" Joaquin  
Senior Real Estate Agent  
Date 8/19/09

SELLER(S):

Jeff Boswell  
Jeff Boswell, President  
Date 8/12/09  
Gary R. Serrato  
Gary R. Serrato, Secretary  
Date 8-12-09

RECOMMENDED FOR APPROVAL

BY Craig L. Hansen  
Craig L. Hansen  
Supervising Real Estate Agent  
Date 8/17/09

Mailing Address of Sellers:  
2907 S Maple Ave  
Fresno, CA 93725

CITY OF FRESNO  
By Patrick N. Wiemiller  
for Patrick N. Wiemiller, Director  
Department of Public Works

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

APPROVED AS TO FORM:  
JAMES C. SANCHEZ  
City Attorney

By R. Coyle 8-06-09  
Deputy Coyle

ATTEST:  
REBECCA K. KLISCH  
City Clerk  
By Rebecca Klisch  
Deputy 10/30/09



APN # 487-020-15T  
PWF-10873  
2008-099  
15-A-8468

## EXHIBIT "A"

APN 487-020-15T (portion)  
Street easement

A portion of that parcel of land described in that Indenture recorded November 14, 1932 in Book 1240 at Page 438, Official Records of Fresno County, situated in the Southwest Quarter of Section 24, Township 14 South, Range 20 East, Mount Diablo Base and Meridian, according to the Official United States Government Township Plat thereof, in the City of Fresno, County of Fresno, State of California, said portion being more particularly described as follows;

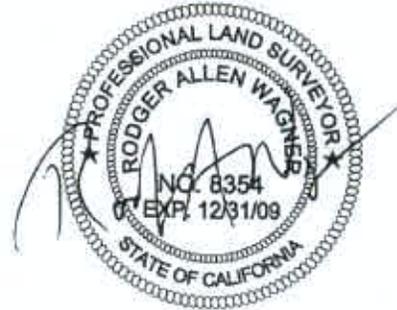
COMMENCING at the Southwest Corner of said Section 24; thence S 89°43'15" E, along the south line of said Southwest Quarter of Section 24, a distance of 30.00 feet; thence N 0°20'08" E, parallel with and 30.00 feet east of the west line of said Southwest Quarter of Section 24, a distance of 30.00 feet to the TRUE POINT OF BEGINNING of this description; thence continuing N 0°20'08" E, parallel with and 30.00 feet east of the west line of said Southwest Quarter of Section 24, a distance of 10.92 feet; thence S 48°07'10" E, a distance of 16.45 feet; thence N 89°43'15" W, parallel with and 30.00 feet north of the south line of said Southwest Quarter of Section 24, a distance of 12.31 feet to the TRUE POINT OF BEGINNING.

Contains an area of 67 square feet, more or less.



2008-099  
15-A-8468  
PWF 10873  
D:\DATA\North & Cedar\APN 487-020-15T.doc

# EXHIBIT "B"



WEST LINE OF THE SOUTHWEST 1/4 OF SECTION 24, 14/20  
N 0°20'08" E

**SOUTH CEDAR AVENUE**  
FOUND NO EVIDENCE OF PREVIOUS DEDICATION

**APN 487-020-15T**

FRESNO IRRIGATION DISTRICT  
RIGHT-OF-WAY ACQUIRED IN  
FEE TITLE BY THAT INDENTURE  
RECORDED 11/14/1932 IN BOOK  
1240 AT PAGE 438, O.R.F.C.

TRUE POINT OF BEGINNING

S 48°07'10" E, 16.45'

N 89°43'15" W

N 89°43'15" W, 12.31'

**EAST NORTH AVENUE**

FOUND NO EVIDENCE OF  
PREVIOUS DEDICATION

POINT OF COMMENCEMENT  
SOUTHWEST CORNER  
OF SECTION 24, 14/20

S 89°43'15" E, 30.00'

S 89°43'15" E

SOUTH LINE OF THE SOUTHWEST 1/4 OF SECTION 24, 14/20



INDICATES AREA TO BE DEDICATED  
67 S.F. ±

REF. & REV. 2008-099 PWF10873 PLAT 3260	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS	PROJ. ID. PWD0318 KRA 0101001000 FUND NO. 22048 RES TYPE ORG. NO. 189901
	PARCEL TO BE DEDICATED TO THE CITY OF FRESNO AS AN EASEMENT AND RIGHT-OF-WAY FOR PUBLIC STREET PURPOSES	DR. BY AJ CH. BY DATE APRIL 3, 2009 SCALE NO SCALE

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Fresno

On August 12, 2009 before me, Lynn B. Rowe, Notary Republic

Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Jeff Boswell and Gary R. Serrato

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the forgoing paragraph is true and correct.

WITNESS my hand and official seal.

  
Signature of Notary Public



Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document*

### Description of Attached Document

Title or Type of Document Easement Agreement

Document Date: August 12, 2009

Number of Pages: 4 + Exhibit A & B

Signer(s) Other Than Named Above: K.A. Tony Joaquin, Craig L. Hansen, Patrick N. Wiemiller

### Capacity(ies) Claimed by Signer(s)

Signer's Name: Jeff Boswell

- Individual  
 Corporate Officer - Title(s): President  
 Partner -  Limited  General  
 Attorney in Fact  
 Trustee  
 Guardian or Conservator  
 Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: Gary R. Serrato

- Individual  
 Corporate Officer - Title(s): Board Secretary  
 Partner -  Limited  General  
 Attorney in Fact  
 Trustee  
 Guardian or Conservator  
 Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

