

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

Almy Avenue and Roy Avenue Street Widening

City Project Number: PW00694

Jose Garcia, hereinafter called the "Grantor," without regard to number or gender, hereby offers to sell to the CITY OF FRESNO, a municipal corporation, hereinafter called the "City," the hereinafter described street easement on the following terms and conditions:

1. The street easement which is the subject of this Agreement, and which is hereinafter for convenience referred to as the "subject property," being a street easement approximately 1,764 square feet in size and is located within Assessor's Parcel Numbers _____ which is situated in the City of Fresno, County of Fresno, State of California, more particularly described as follows:

Exhibit "A" and "B" relative to a permanent street easements, hereto attached and reference made a part of hereof

2. The purchase price for the subject property shall be the sum of FIFTEEN THOUSAND EIGHT HUNDRED DOLLARS (\$15,800.00) as just compensation for the street easement.

3. Sellers acknowledge that the City has the power to acquire the subject properties 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 Sellers 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. Sellers waive all other defenses in said proceeding.

4. It is understood and agreed by and between the parties hereto that the street easement in 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 City and Seller(s) that, notwithstanding other provisions of this Agreement, the right of possession and use of the subject property by the City, including the right to remove and dispose of improvements within the permanent street easement, shall commence on August 31, 2015, 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, 7485 North Palm Avenue, Suite 106, Fresno, California 93711 under Escrow Number FFOM -2011403210-BW. Said escrow shall be opened upon the following terms and conditions, and the Seller and City by their signature to this Agreement make this paragraph their escrow instructions:

a. The City shall deposit the escrow and title costs upon receipt of demand and statement from said title company therefor.

b. 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 1, 2, 3, 4, 5, 6, 7 and 8, contained in the Preliminary Title Report No. FFOM - 2011403210-BW dated November 20, 2014 from Fidelity National Title Company, then escrow shall close and the deed of easement recorded.

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.

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. It is understood and agreed that as a condition precedent hereto, this Agreement shall have no force and effect until approved or otherwise authorized 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.

11. 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. Upon written notice from the Buyer, the Seller, at Seller's sole cost and expense, shall immediately assume the defense of any claims, suit or action brought against the City by any public body, individual, partnership, corporation or other legal entity, relating to any matter covered by this paragraph. Seller's obligations under this indemnity shall survive the close of escrow and the recording of the grant deed.

SIGNATURE PAGE

This Agreement is executed by the City of Fresno by and through the Assistant Public Works Director or his designee of said City pursuant to authority granted by the Council of the City of Fresno on SEPTEMBER 24, 2015 ITEM 1-B

RECOMMENDED FOR APPROVAL

BY *JA Pete Calderone*
Senior Real Estate Agent

Date 9-25-2015

GRANTOR(S):

BY: *Jose Garcia*
Jose Garcia

Date 7/15/15

CITY OF FRESNO
Andrew J. Benelli
Andrew J. Benelli, Assistant Director
Department of Public Works

Address of Sellers

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

APPROVED AS TO FORM:

Douglas T. Sloan
City Attorney

By *Pat Singh* 8.4.15
PAT SINGH Deputy

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By *Cindy Brewer* 9/29/15
Deputy

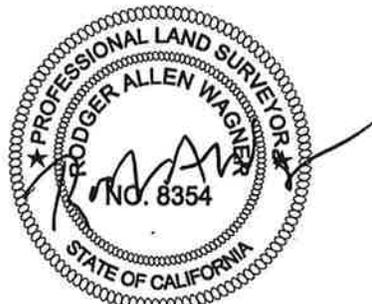
EXHIBIT "A"

(portion)
Street easement

A portion of Lot 65 of Central California Colony, according to the map thereof recorded in Volume 2 of Plats at Page 1, Fresno County Records, more particularly described as follows:

COMMENCING at the northeast corner of the south 120.00 feet of Lot 96 of said Central California Colony; thence N 89°43'44" W, along the north line of the south 120.00 feet of said Lot 96, a distance of 8.88 feet to the point of cusp of a tangent curve concave northerly and having a radius of 32.00 feet; thence easterly, along the arc of said curve, through a central angle of 16°06'48", an arc distance of 9.00 feet to a point on the west line of said Lot 65, said point being the TRUE POINT OF BEGINNING of this description; thence northeasterly and northerly, continuing along the arc of said 32.00 foot radius curve, through a central angle of 73°39'55", an arc distance of 41.14 feet; thence N 0°29'33" E, parallel with and 23.00 feet east of the west line of said Lot 65 and tangent to last said curve, a distance of 54.12 feet to the north line of the south 206.00 feet of said Lot 65; thence N 89°43'44" W, along last said north line, a distance of 23.00 feet to the west line of said Lot 65; thence S 0°29'33" W, along said west line, a distance of 84.74 feet to the TRUE POINT OF BEGINNING.

Contains an area of 1,764 square feet, more or less.



12/4/14

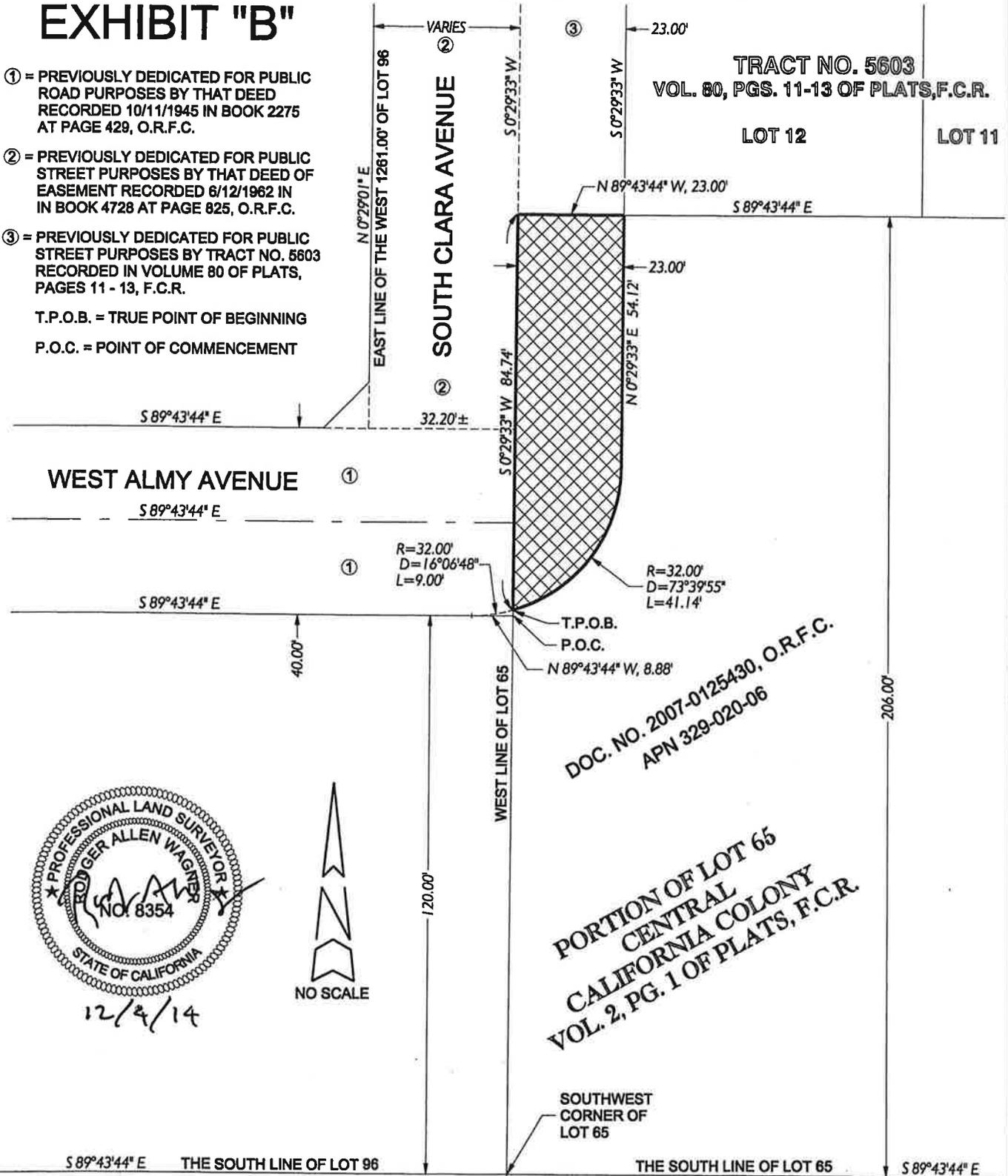
EXHIBIT "B"

- ① = PREVIOUSLY DEDICATED FOR PUBLIC ROAD PURPOSES BY THAT DEED RECORDED 10/11/1945 IN BOOK 2275 AT PAGE 429, O.R.F.C.
 - ② = PREVIOUSLY DEDICATED FOR PUBLIC STREET PURPOSES BY THAT DEED OF EASEMENT RECORDED 6/12/1962 IN IN BOOK 4728 AT PAGE 825, O.R.F.C.
 - ③ = PREVIOUSLY DEDICATED FOR PUBLIC STREET PURPOSES BY TRACT NO. 5603 RECORDED IN VOLUME 80 OF PLATS, PAGES 11 - 13, F.C.R.
- T.P.O.B. = TRUE POINT OF BEGINNING
P.O.C. = POINT OF COMMENCEMENT

TRACT NO. 5603
VOL. 80, PGS. 11-13 OF PLATS, F.C.R.

LOT 12

LOT 11



12/4/14



 INDICATES AREAS TO BE DEDICATED
1,764 S.F. ±

REF. & REV. 2014-119 PWF 11747 PLAT 3355	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS	PROJ. ID. <u>PV00694</u> RES TYPE _____ FUND NO. <u>20501</u> ORG. NO. <u>402182</u>
	PARCEL TO BE DEDICATED TO THE CITY OF FRESNO AS AN EASEMENT AND RIGHT-OF-WAY FOR PUBLIC STREET PURPOSES	DR. BY <u>AJ.</u> CH. BY <u>R.A.W.</u> DATE <u>NOV. 25, 2014</u> SCALE <u>NO SCALE</u>