

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

**Belmont Avenue between Trimmer Springs Road & Armstrong Avenue
1090 Armstrong Avenue APN 310-190-01**

City Project Number: WC00057

ANDY PETER WARMERDAM, A SINGLE MAN, AS TO AN UNDIVIDED 1/2 INTEREST AND ANDY WARMERDAM, AS EXECUTOR OF THE ESTATE OF MARGARET J. WARMERDAM, AKA MARGARET WARMERDAM, A WIDOW, AS TO AN UNDIVIDED 1/2 INTEREST, 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 surface water pipeline easement on the following terms and conditions:

1. The surface water pipeline easement which is the subject of this Agreement, and which is hereinafter for convenience referred to as the "subject property," being a water line easement within Assessor's Parcel Number 310-190-01 which is situated in the County of Fresno, State of California, more particularly described as follows:

Exhibits "A" and "B" relative to a permanent surface water pipeline easement, hereto attached and reference made a part of hereof

2. The purchase price for the subject property shall be the sum of ONE THOUSAND TWO HUNDRED AND 00/100 DOLLARS (\$1,200) as just compensation. The City or its agents, contractors or subcontractors shall be required to saw-cut for trenching purposes any and all locations adjacent to APN 310-190-01 (1090 Armstrong Avenue) that involves asphalt paving.

3. Sellers acknowledge that the City has the power to acquire the subject property 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 surface waterline easement described on Exhibit "A" and depicted on Exhibit "B", is a permanent easement and right of way for water line 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 surface water pipeline easement, shall commence on October 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 real property.

7. The sale shall be acquired by the City of Fresno which shall handle the transaction via an internal escrow.

- a. The City shall pay the Grantor(s) the sums due directly by check.
- b. The escrow fee, cost of policy of title insurance, recording fees (if any), and all other closing costs shall be paid by the City.
- c. Disbursements of the purchase price shall be in accordance with the terms and conditions 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. 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 TO FOLLOW

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 Resolution No. 2014-176 Approved November 10, 2014.

RECOMMENDED FOR APPROVAL

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

Date 8/28/2015

SELLERS:

BY: Andy Peter Warmerdam
Andy Peter Warmerdam

Date 8/28/2015

BY: Andy Warmerdam
Andy Warmerdam, Executor of the Estate
of Margaret J. Warmerdam,
AKA Margaret Warmerdam

Date 8/28/2015

CITY OF FRESNO
BY: Andrew Benelli
Andrew Benelli, Assistant Director
Department of Public Works

Date 9-22-15

Address of Sellers:

1090 Armstrong Avenue
Fresno, CA 93227

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: Raj Singh Badhesha
RAJ SINGH BADHESHA Deputy

Date 9.14.15

ATTEST:
Yvonne Spence, CMC
City Clerk

BY: Cindy Bruer
Deputy

Date 9/22/15

Exhibit "A"

WATER MAIN EASEMENT
APN 310-190-01(PORTION)

All that portion of the Southeast quarter of Section 34, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, according to the Official United States Government Township Plat thereof, in the County of Fresno, State of California, described as follows:

BEGINNING at a point 70.00 feet East of the West line and 30.00 feet North of the South line of the Southeast quarter of said Section 34, said point being the Southeast corner of the land conveyed to the County of Fresno for public road right of way per the deed recorded October 21, 1955 in Book 3672, Page 635 as Document No. 72923, Official Records Fresno County; thence continuing along the Easterly boundary of the land conveyed by said Document No. 72923 the following two courses:

- 1) North 68°50'59" West, 42.87 feet to a point on a line 30.00 feet East of and parallel with the West line of said Southeast quarter; thence
 - 2) North 0°04'01" East, 30.27 feet along said parallel line;
- thence, leaving said Easterly boundary, South 44°55'59" East, 64.70 feet to a point on a line 30.00 feet North of and parallel with the South line of said Southeast quarter; thence North 89°19'56" West, 5.75 feet along said parallel line to the **POINT OF BEGINNING**.

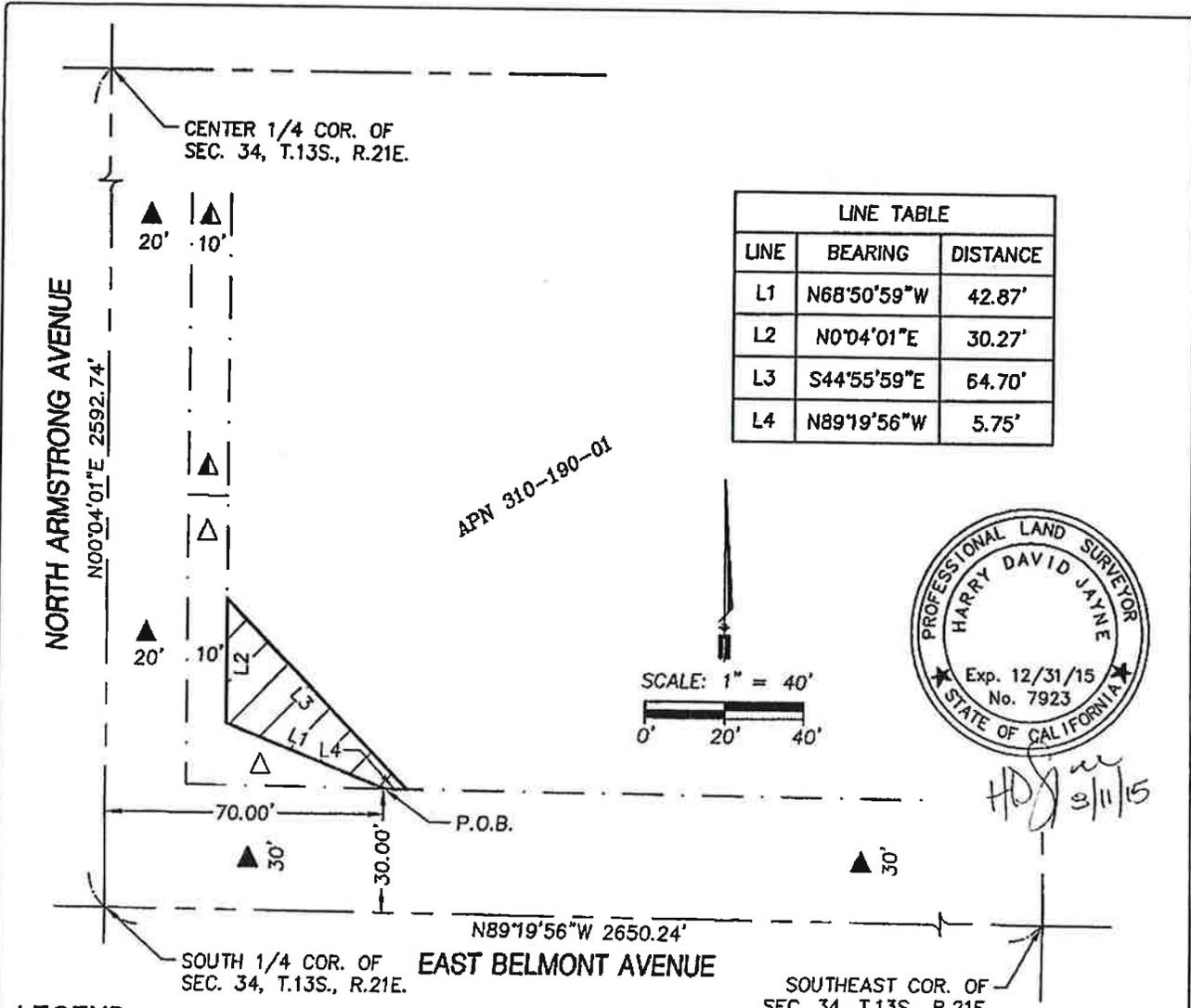
Containing an area of 735.6 square feet, more or less

2015-052
15-A-9148



HDJ ul
3/11/15

EXHIBIT "B"



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N68°50'59"W	42.87'
L2	N0°04'01"E	30.27'
L3	S44°55'59"E	64.70'
L4	N89°19'56"W	5.75'

LEGEND



AREA TO BE DEDICATED FOR WATER MAIN EASEMENT PURPOSES. AREA = 735.6 SQ. FT.

F.C.R. FRESNO COUNTY RECORDS

O.R.F.C. OFFICIAL RECORDS FRESNO COUNTY

P.O.B. POINT OF BEGINNING



PREVIOUSLY ACCEPTED FOR PUBLIC ROAD PURPOSES PER FRESNO COUNTY BOARD OF SUPERVISORS RESOLUTION ENDORSED 2/07/1913 AND FILED IN VOL. 29 OF MISCELLANEOUS AT PG. 9, F.C.R.



PREVIOUSLY GRANTED EASEMENT FOR PUBLIC ROAD PURPOSES PER INSTRUMENT RECORDED 10/21/1955 IN BK. 3672 AT PG. 635 AS DOC. NO. 72923, O.R.F.C.



PREVIOUSLY GRANTED EASEMENT FOR PUBLIC STREET PURPOSES PER DEED OF EASEMENT RECORDED 12/31/2008 AS DOC. NO. 2008-0177449, O.R.F.C.

BASIS OF BEARINGS:

THE WEST LINE OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 13 SOUTH RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, AS SHOWN ON THE RECORD OF SURVEY RECORDED IN BOOK 49 OF RECORD OF SURVEYS PAGES 43-44, F.C.R. TAKEN TO BE NORTH 0°04'01" EAST.

REF. & REV. PW FILE NO. 2015-052 PLAT NO. 15-A-9148	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS	PROJ. NO. _____ FUND. # _____ DSC. # _____	SHEET NO. 1
	KINGS RIVER PIPELINE PROJECT EXHIBIT "B" WATER MAIN EASEMENT	DR. BY: JLS CL. BY: HDJ DATE: 8/11/2015 SCALE: SHOWN	OF 1 SHEETS