

**AGREEMENT FOR GRANTING OF EXCLUSIVE WATER LINE EASEMENT**  
**Congo Alley Water Main Pipeline Replacement Project**  
**Congo Alleyway between Merced Street and Fresno Street**  
**City Project No.: J5758**

This Agreement for Granting of Exclusive Water Line Easement ("Agreement") is made and entered into on \_\_\_\_\_, 2020 ("Effective Date") by and between the County of Fresno, a political subdivision of the State of California ("County"), and the City of Fresno, a municipal corporation ("City").

1. This Agreement shall be effective upon the Effective Date, and the term of this Agreement thereafter shall remain continuously in full force and effect in perpetuity. County agrees to grant a permanent exclusive water line easement to City subject to the terms and conditions contained in this Agreement. The exclusive water line easement ("Easement") which is the subject of this Agreement is situated in the Congo Alleyway between Merced Street and Fresno Street, in the City of Fresno, County of Fresno, State of California, which is more particularly described and shown on Exhibits A and B, attached and incorporated by this reference ("Easement Property").

2. The total purchase price for the Easement shall be zero dollars (\$0).

3. County represents and warrants that it holds fee title to the Easement Property and can convey the Easement.

4. It is understood and agreed by and between the parties that the Easement described in Exhibits A and B is a permanent and exclusive easement according to the terms thereof, provided however, the City's rights under the Easement may only be exercised subject to the terms and conditions of this Agreement. The City represents and warrants to the County that the Easement is necessary for the City to construct and maintain approximately 150 linear feet of a 12-inch water main pipeline. In anticipation of any work to be performed by City over, under, through, or across the Easement Property, City shall first give County at least ten (10) calendar days' advance written notice thereof, provided however, in the event of an emergency, where immediate action is needed to prevent damage to property or injury to persons, City shall give oral or written notice thereof as soon as is practicable under the circumstances. During construction of the improvements described herein, City shall adequately cordon off the construction area, and shall take all necessary safety precautions required by law.

5. City shall undertake its activities under the Easement only for so long as is reasonably necessary to undertake and complete construction of the above-described improvements, and City shall not unreasonably delay in the completion thereof. Upon completion of construction, City shall restore the Easement Property to the original condition existing as of the Effective Date of this Agreement. Following completion of construction of City's improvements, City shall give County prompt written notice thereof, and County thereafter shall keep the Easement Property free of any permanent surface obstructions, so that City may have vehicular access to the Easement Property under the Easement, but

subject to the terms and conditions of this Agreement. The County currently parks vehicles on the Easement Property, and will continue to park vehicles on the Easement Property following completion of construction of City's improvements, with those vehicles moved upon reasonable notice from the City that the City needs to access the easement.

6. City shall indemnify, hold harmless, and defend County and each of its officers, officials, employees, agents and 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 County, City or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and costs), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of City or any of its officers, officials, employees, agents, contractors, consultants, or volunteers in the City's performance of this Agreement; provided nothing herein shall constitute a waiver by City of governmental immunities including California Government Code section 810 et seq.

County shall indemnify, hold harmless, and defend City and each of its officers, officials, employees, agents and 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 the City, County or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and costs), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of County or any of its officers, officials, employees, agents, contractors, consultants or volunteers in the County's performance of this Agreement; provided nothing herein shall constitute a waiver by County of governmental immunities including California Government Code section 810 et seq.

In the event of concurrent negligence on the part of City or any of its officers, officials, employees, agents, contractors, consultants or volunteers, and County or any of its officers, officials, employees, agents, contractors, consultants or 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.

7. INSURANCE.

Without limiting County's right to obtain indemnification from City or any third parties, City, at its sole expense, shall maintain in full force and effect the following insurance policies or a program of self-insurance, including but not limited to, an insurance pooling arrangement or Joint Powers Agreement throughout the term of this Agreement. Coverage by City shall be provided for General Liability and Workers' Compensation. Upon request from County, City shall provide certificates of insurance or self-insurance evidencing such coverage.

Without limiting City's right to obtain indemnification from County or any third parties, County, at its sole expense, shall maintain in full force and effect the following insurance policies or a program of self-insurance, including but not limited to, an insurance pooling arrangement or Joint Powers Agreement throughout the term of this Agreement. Coverage by County shall be provided for General Liability and Workers' Compensation. Upon request from City, County shall provide certificates of insurance or self-insurance evidencing such coverage.

8. County shall deliver to the City a fully executed and acknowledged and recorded Grant of Easement in the form of Exhibit C, in regard to the Easement described herein.

9. The recording fees (if any), and any other associated costs shall be paid 100% by City.

10. 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 the County of 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 of any one provision in this Agreement shall not affect the other provisions.
- e. Non-assignment. Neither party shall assign, transfer or sub-contract this Agreement nor their rights or duties under this Agreement without the prior written consent of the other party
- 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. 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.
- g. 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.
- h. 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.

- i. 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 executed by duly authorized representatives of both the City and the County.
- j. Counterparts. Both parties agree that this Agreement may be signed in counterparts.

11. NOTICES:

The persons and their addresses having authority to give and receive notices under this Agreement include the following:

County of Fresno  
 Director  
 Public Works and Planning  
 2220 Tulare Street, 8<sup>th</sup> Floor  
 Fresno, CA 93721

City of Fresno  
 Director  
 Department of Public Utilities  
 2600 Fresno Street  
 Fresno, CA 93721

All notices between the County and City provided for or permitted under this Agreement must be in writing and delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, or by telephonic facsimile transmission. A notice delivered by personal service is effective upon service to the recipient. A notice delivered by first-class United States mail is effective three County business days after deposit in the United States mail, postage prepaid, addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one County business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is completed outside of County business hours, then such delivery shall be deemed to be effective at the next beginning of a County business day), provided that the sender maintains a machine record of the completed transmission. For all claims arising out of or related to this Agreement, nothing in this section establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

- 12. Time is of the essence of each and every term, condition, and covenant hereof.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**COUNTY OF FRESNO**

**CITY OF FRESNO**

REVIEWED & RECOMMENDED FOR APPROVAL

RECOMMENDED FOR APPROVAL

BY: \_\_\_\_\_  
Steven E. White  
Director  
Department of Public Works and Planning

BY: \_\_\_\_\_  
Robert Scott Beyelia  
Supervising Real Estate Agent

APPROVED AS TO LEGAL FORM  
Daniel C. Cederborg  
County Counsel

APPROVED AS TO FORM  
Douglas T. Sloan  
City Attorney

\_\_\_\_\_  
By:

BY: \_\_\_\_\_  
Deputy City Attorney

APPROVED AS TO ACCOUNTING FORM  
Oscar J. Garcia, CPA

FOR APPROVAL

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
Andrew J. Benelli, Assistant Director  
Public Works Department

ATTEST:  
Yvonne Spence, CMC  
City Clerk  
BY: \_\_\_\_\_  
Deputy City Clerk