

SETTLEMENT OF EMINENT DOMAIN ACTION**RECITALS**

On July 29, 2016, plaintiff COUNTY OF FRESNO ("County") filed a Complaint in Eminent Domain in the Fresno Superior Court (Case No. 16 CE CG 02431, entitled *County of Fresno v. Frances Andrade, et al.*) against FRANCES ANDRADE, VINCE ANDRADE and TINA ANDRADE to acquire an easement needed to expand the County's right-of-way along Fowler Avenue to allow for the construction of eight foot wide paved shoulders on each side of Fowler Avenue from Elkhorn Avenue to South Avenue ("Project").

FRANCES ANDRADE is the fee owner of the property located at 12310 South Fowler Avenue, Selma, California 93662 and further identified as APN 385-061-05 (designated by County as Parcel 4), which is the subject to the above-reference litigation. VINCE ANDRADE and TINA ANDRADE occupy the property subject to the above-referenced litigation and were named as defendants because of their occupation of and possible unknown interest in the property. This is an agreement between County and FRANCES ANDRADE, referred to here as "Grantor", and VINCE ANDRADE and TINA ANDRADE, referred to here as "Tenants". It is agreed between the parties as follows:

TERMS

1. Delivery of Documents An easement deed to the County of Fresno from the Grantor will be executed and delivered to the Design Division of the County of Fresno Department of Public Works ("Design Division"). A true and correct unexecuted copy of the Easement Deed is attached as **Exhibit "A"**. Grantor will execute and deliver to the Design Division a right of way contract. A true and correct unexecuted copy of the Right of Way Contract is attached as **Exhibit "B"** and is incorporated by reference.

2. Purchase Price and Title County shall pay Grantor Ten Thousand Four Hundred Dollars (\$10,400.00) and it is agreed that this amount is the fair value for the interest conveyed in the Easement Deed. The Grantor warrants she has title to the property for the interest conveyed in the Easement Deed.

3. Apportionment County shall pay exclusively to Grantor the entire sum of the

1 amount set forth in Paragraph 2 and this sum shall constitute County's entire monetary obligation
2 in this matter. Any apportionment of the sum in Paragraph 2 shall be accomplished exclusively
3 through negotiations and agreements between Grantor and Tenants, if any.

4 **4. Lease Warranty** Grantor warrants that there are no leases within the acquisition
5 area on the subject property. Grantor further agrees to hold County harmless and reimburse
6 County for any and all of its losses and expenses occasioned by reason of any lease on
7 acquisition area of the subject property.

8 **5. Possession** Grantor and Tenants agree that the right of possession and use of
9 the acquisition area of subject property by the County, including the right to remove and dispose
10 of improvements, shall commence sixty (60) days from Board of Supervisor's approval of the
11 Right of Way Contract or the date the Easement Deed is recorded, whichever occurs first, and
12 that the amount in Paragraph 2 herein includes, but is not limited to, full payment of such
13 possession and use, including damage, if any, from said date.

14 **6. Dismissal of Action in Eminent Domain** Grantor and Tenants consent to the
15 dismissal of the eminent domain action initiated by County entitled *County of Fresno v. Frances*
16 *Andrade, et al.*, FCSC Case No. 16 CECG 02431 (hereinafter "Andrade Suit") and also waives
17 any and all claims to money that may be deposited with the State Treasurer as the amount of
18 probable compensation. By execution of this Agreement, County, Grantor and Tenants will have
19 settled the Andrade Suit. It is the County's intent to dismiss the Andrade Suit if this Agreement
20 is consummated. Grantor and Tenants waive any claim for litigation expenses, including
21 attorney's fees, and costs of suit in connection with the County's dismissal of the Andrade Suit.
22 Grantor and Tenants hereby agree that the County's dismissal of the Andrade Suit does not
23 constitute an abandonment. This Agreement is full consideration for all claims of damage that
24 may have arisen by this eminent domain action and/or the public project for which this interest
25 conveyed is purchased.

26 **7. Authority to Enter Agreement** Grantor and Tenants warrant that they are
27 voluntarily entering into this Agreement, and that the person signing below has authority to sign
28 this Agreement on behalf of Grantor and Tenants.

1 **8. Enforcement of Agreement** The parties agree that the release of fees and
2 costs set forth herein does not extend to any breaches of this Agreement. If any action is
3 required to enforce the terms of this Agreement, the prevailing party shall be entitled to all
4 attorneys' fees and costs incurred to enforce this Agreement.

5 **9. Full Agreement** This Agreement in conjunction with Right of Way Contract
6 constitutes a full and complete compromise of all matters involving the Andrade Suit. This
7 Agreement and the Right of Way Contract contain all of the terms and conditions relating to the
8 subject matter of the settlement agreement reached in this action and, except as expressly
9 provided otherwise herein, supersede all other prior agreements, negotiations, correspondence,
10 undertakings and communications of the parties, oral or written, concerning its subject matter.

11 **10. Successors** This Agreement shall be binding and enforceable against the
12 successors, heirs, and assigns of the parties.

13 **11. Amendment** Subject to applicable law, this Agreement may be amended,
14 modified or supplemented only by a written agreement signed by the parties.

15 **12. Governing Law** This Agreement shall be governed by, and construed in
16 accordance with, the laws of the State of California applicable to contracts executed and to be
17 performed in the state.

18 **13. Review of Agreement** Grantor and Tenants warrant that they have completely
19 read and reviewed this Agreement, that they had the opportunity to obtain legal advice from
20 attorneys before signing it, and that they understand the meaning and effect of the Agreement.

21 **14. Construction** This Agreement represents the wording selected by the parties to
22 define their agreement and no rule of strict construction shall apply against either party.

23 **15. Signatures; Counterparts** This Agreement may be executed by original and/or
24 facsimile signatures and in one or more counterparts, and by the different parties hereto in
25 separate counterparts, each of which when executed shall be deemed to be an original but all of
26 which taken together shall constitute one and the same agreement.

27 **16. Costs** Each party to this Agreement shall bear their own attorney fees and costs
28 for the lawsuit related to the Andrade Suit and for reviewing and making this Agreement.

1 DEFENDANTS

2 Dated: 10-21-16

By: Frances Andrade *By per attorney in fact*
FRANCES ANDRADE *Vincent Andrade*
Defendant and Grantor

4 Dated: 10-21-16

By: Vincent Andrade
VINCE ANDRADE
Defendant and Tenant

6 Dated: 10-27-16

By: Tina Andrade
TINA ANDRADE
Defendant and Tenant

8 Approved as to form:

SHEPARD, SHEPARD & JANIAN

9 Dated: Nov 1, 2016

By: [Signature]
JEFF S. SHEPARD
Attorney for Defendants,
FRANCES ANDRADE, VINCE ANDRADE and
TINA ANDRADE

13 COUNTY OF FRESNO

14 Dated: January 10, 2017

By: [Signature]
Brian Pacheco,
Chairman Board of Supervisors

ATTEST:
Bernice E. Seidel, Clerk
Board of Supervisors

20 REVIEWED AND RECOMMENDED
FOR APPROVAL

By: [Signature]
Deputy

22 Dated: 12/7/16

By: [Signature]
STEVEN E. WHITE, DIRECTOR
Department of Public Works and Planning

25 APPROVED AS TO LEGAL FORM
DANIEL C. CEDERBORG, County Counsel

26 Dated: 12/11/2016

By: [Signature]
KYLE R. ROBERSON, Deputy
Attorney for Plaintiff,
COUNTY OF FRESNO

EXHIBIT "A"

Recording Requested By:
County of Fresno

When Recorded Mail To:

County of Fresno, Department
of Public Works and Planning
Design Division (Real Property)
2220 Tulare Street, 6th Floor
Fresno, CA 93721

GRANT OF EASEMENT

Fowler Avenue
Elkhorn to South
Parcel: 4
APN 385-061-05
Federal Project ID:
CML- 5942(211)

For value received,

FRANCES ANDRADE, a widow,

hereby grant(s) to the COUNTY OF FRESNO, a political subdivision of the State of California, an easement for public road purposes including the right of way and together with all incidents and appurtenances to any roadway purposes, on, over and through that certain real property in said County of Fresno, State of California, described as follows:

See attached Exhibit "1"

Date _____

Frances Andrade

EXHIBIT "1"

**FOWLER AVENUE
Elkhorn to South Ave.**

**Parcel 04
Portion of APN 385-061-05**

Exhibit '1'

That portion of the Northwest Quarter of Section 10, Township 16 South, Range 21 East, Mount Diablo Base and Meridian, in the County of Fresno, State of California, described as follows:

BEGINNING at the intersection of the South line of the South Half of the North Half of the Southwest Quarter of the Northwest Quarter of said Section 10 and the East line of the West 30 feet of said Northwest Quarter of Section 10; thence,

- 1) Along said East line, North $00^{\circ}34'22''$ East, a distance of 329.74 feet more or less to the North line of the South Half of the North Half of the Southwest Quarter of the Northwest Quarter of said Section 10; thence,
- 2) Along said North line, South $89^{\circ}55'37''$ East, a distance of 25.67 feet; thence,
- 3) South $01^{\circ}24'22''$ West, a distance of 329.80 feet more or less to the South line of the South Half of the North Half of the Southwest Quarter of the Northwest Quarter of said Section 10; thence,
- 4) Along said South line, North $89^{\circ}59'06''$ West, a distance of 20.87 feet more or less to the POINT OF BEGINNING

Containing 0.176 acre of land, more or less



EXHIBIT "B"

GRANTOR:	<u>Frances Andrade</u>	PROJECT:	<u>Fowler Avenue</u>
		LIMITS:	<u>Elkhorn to South</u>
ADDRESS:	<u>12310 S. Fowler Avenue</u>	PARCEL:	<u>4</u>
	<u>Selma, CA 93662</u>	DATE:	
	APN: 385-061-05		Federal Project ID: CML - 5942 (211)

RIGHT OF WAY CONTRACT

An easement deed to the County of Fresno from the Grantor(s) has been executed and delivered to the Design Division of the County of Fresno Department of Public Works and Planning.

In consideration of which, and the other consideration hereinafter set forth, it is mutually agreed as follows:

1. The Grantor(s) has title to the property, described in Exhibit "1" attached, hereto and incorporated herein by reference; and the full authority to sign the above-mentioned document.

2. The parties herein have set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said document and shall relieve the County of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.

3. The County shall pay the undersigned Grantor(s) the sum of \$10,400.00 for the property or interest conveyed by the above document(s) when title to said property or interest vests in the County. The County shall pay all recording fees, if any.

4. The County reserves the right to accept title to the property interest to be acquired by County herein subject to certain defects in any or all matters of record title to the property. In return for Grantor(s) receiving the total sum as stated in Clause 3, the undersigned Grantor(s) covenants and agrees to indemnify and hold the County of Fresno harmless from any and all claims and demands third parties may make or assert and causes of action third parties may bring which arise out of or are in connection with the foregoing defects in title to the property. The Grantor's obligation herein to indemnify and hold harmless the County shall not exceed the amount paid to the Grantor(s) under this contract.

5. Permission is hereby granted to the County of Fresno, its contractors, agents or assigns, to enter upon Grantor's property lying immediately adjacent to said acquired parcel during the period of construction for the purpose of constructing the public improvement and accomplishing all necessary incidents thereto.

6. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this contract, the right of possession and use of the subject property by the County, including the right to remove and dispose of improvements, shall commence 60 days from the Board of Supervisor's approval of this Right of Way Contract or the date the deed is recorded, whichever occurs first, and that the amount shown in Clause 3 herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date.

7. Clause 3 above may include payment for the replacement of improvements such as fencing and/or irrigation facilities that are within the area being acquired for this project and must

be replaced in order to proceed with the construction of the project. If Grantor(s) does not replace said items, County may install temporary fencing on Grantor's property lying immediately adjacent to the new right of way line, if necessary, to hold in livestock during construction of the road project, and/or plug the irrigation line(s) at Grantors' property line. Grantor(s) hereby agrees to allow the County access to their remaining property to perform said work and that the cost for said work shall be billed to and paid for by Grantor(s).

8. Grantor(s) agrees to hold the County harmless and reimburse the County for any and all losses and expenses as to the property being acquired hereunder occasioned by reason of any lease of said property held by any tenant of grantor(s).

9. Grantor(s) acknowledge that consummation of this Agreement will obviate the need for a certain County initiated suit in eminent domain (*County of Fresno v. Frances Andrade et al.*, FCSC Case No. 16 CECG 02431 – hereinafter “Andrade Suit”), filed in support of the construction of the proposed public improvement. By execution of this Agreement, the County and Grantor(s) Frances Andrade will have settled the Andrade Suit. It is the County's intent to dismiss the Andrade Suit if this Agreement is consummated. Grantor(s) hereby waive any claim for litigation expenses and costs of suit in connection with the County's dismissal of the Andrade Suit. Grantor(s) hereby agree that the County's dismissal of the Andrade Suit does not constitute an abandonment.

10. The sum set forth in Clause 3(A) above includes payment for the following:

0.176 acre road easement, paving, gravel and severance damages to the remainder, if any.

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

Frances Andrade

COUNTY OF FRESNO

Brian Pacheco, Chairman
Board of Supervisors

Recommended for Approval:

Steven E. White, Director
Department of Public Works and
Planning

By: _____
Dale Siemer, P.E.
Senior Engineer

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED