

Recording requested by and  
When recorded return to:

City of Merced, a California Charter  
Municipal Corporation  
678 W. 18<sup>th</sup> Street  
Merced, CA 95340

---

(Space Above For Recorder's Use)

(RECORD AT NO FEE PURSUANT TO  
CA GOVERNMENT CODE SECTION 27383)

**AGREEMENT FOR USE OF CITY RIGHT OF WAY**

THIS AGREEMENT FOR USE OF CITY RIGHT OF WAY ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between PETER TINETTI, and/or MARILYN TINETTI, Trustee of the Living Trust of Peter Tinetti and Marilyn Tinetti, as to an undivided 1/3 interest; STEPHEN G. TINETTI and/or JOAN M. TINETTI, Trustee of the Stephen G. Tinetti and Joan M. Tinetti Living Trust dated 05/21/1997, as to an undivided 1/3 interest; and ROBERTINE T. BENSON, Trustee of the Benson Family Trust dated 09/11/2002, as to an undivided 1/3 interest ("Owner") and the CITY OF MERCED, a California Charter Municipal Corporation ("City"). Owner and City are sometimes referred to collectively herein as the "Parties" and individually as a "Party."

**RECITALS:**

The following recitals are a substantive portion of this Agreement:

A. Owner holds fee title to the real property at and commonly known as 855 West 15<sup>th</sup> Street, Merced, California, APN 031-173-021, and more specifically described on the attached Exhibit "A" (the "Property").

B. City holds a public service easement as described on the attached Exhibit "B" (the "City Right of Way").

C. The Owner desires to construct and maintain certain improvements within the City Right of Way, including a loading dock, vehicle

access ramp, electrical wiring, and shade structure as described on Exhibit "C" (the "Encroachments").

**NOW, THEREFORE**, in furtherance of the foregoing Recitals, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Owner and City hereby agree as follows:

1. Grant of Encroachment and Nature of Agreement. City grants Owner permission to construct and maintain certain improvements within the City Right of Way, as set forth more specifically in Exhibit "C" attached hereto. In so doing, and notwithstanding anything to the contrary in this Agreement, or pursuant to the course of dealings between the Parties, City expressly does not and shall not abandon the City's Right of Way or waive any rights thereunder, and Owners, their heirs, successors, and assigns derive no basis for a claim of prescriptive, contractual, or other rights to maintain the Encroachments or otherwise utilize the City Right of Way. This grant of permission does not constitute a deed or grant of an easement or any other real property interest by the City.

2. Term of Agreement. City may terminate this Agreement with or without cause upon thirty (30) days advance written notice. If the City vacates the City Right of Way in accordance with California law, then this Agreement shall terminate and be of no further force and effect. Upon termination of this Agreement, the Owner shall remove all Encroachments from the City's Right of Way and restore the Property back to its natural state existing prior to use by the Owner.

3. Use of City Right of Way. This grant of permission shall be subject to and subordinate to the prior continuing right of the City to use the Property for public services. Any Encroachments shall not interfere with the City's existing utilities.

4. Damage to City Right of Way. Owner shall be solely responsible for any damage to City streets, sidewalks, curbs, utilities, or other City owned property due to the installation, maintenance, repair, or removal of its Encroachments in the City Right of Way, and shall repair, replace, and restore in kind the said damaged facilities at its sole expense.

5. Maintenance of Encroachments. Owner shall be solely responsible for any maintenance and/or repairs to the Encroachment. Owner

shall maintain the Encroachments and surrounding area in good and safe condition and free from damage, to the reasonable satisfaction of the City.

6. Hazardous Materials. Owner agrees that Owner shall not bring onto the City Right of Way, or store or dispose of on the City Right of Way, nor knowingly allow others to bring onto, store or dispose on the City Right of Way, any hazardous material of any kind.

7. Insurance Requirements. Owner shall maintain a Commercial General Liability insurance policy against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such liability insurance available to Owner under Owner's combined insurance policies (including any excess or "umbrella" policies) actually maintained by Owner, whichever is greater.

7.1 The City, its officers, officials, employees, agents, and volunteers, are to be covered as additional insureds on Owner's Commercial General Liability insurance policy.

7.2 Owner waives any and all rights of subrogation against the City and the City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers, which any insurer of Owner may acquire against the City.

7.3 For any and all claims related to this Agreement, Owner's insurance shall be primary non-contributing.

7.4 Owner shall furnish City with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the Owner's agreement with the City shall be canceled or materially changed except after thirty (30) days' notice by the insurer to City. Certificates, including renewal certificates, may be mailed or delivered to the City at 627 W. 18<sup>th</sup> Street, Merced, California 95340.

8. Defense and Indemnification. Owner shall indemnify, protect, hold harmless, and defend the City from any and all loss, cost, liability or expense, and from any judgments or damages to any person or property

arising or resulting, directly or indirectly, from the condition of the Encroachments, or in connection with the installation and/or maintenance of the Encroachments.

9. Representations and Warranties. The Owner hereby represents and warrants that Owner has full power and authority to execute and deliver this Agreement and to make and accept the obligations contemplated hereunder.

10. Compliance With Laws. Each of the Parties shall at all times comply fully with all applicable governmental laws, ordinances, rules, codes, regulations, and permit requirements pertaining to the use of the City Right of Way and maintenance and repair of the Interceptors.

11. Waiver. The failure of any of the Parties or their successors to enforce any of the terms and provisions set forth herein shall not constitute a waiver of the right to enforce the same thereafter.

12. Entire Agreement. This Agreement constitutes the entire integrated agreement of the Parties with respect to the subject matter of this Agreement. This Agreement may not be amended or terminated except by a writing signed by authorized signatories of all Parties.

13. Construction. The section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Wherever the context hereof may so require, the singular shall include the plural and the masculine shall include the feminine and neuter. This Agreement shall be interpreted pursuant to its plain and ordinary meaning, as though prepared by both Parties, and in accordance with the laws of the State of California.

14. Successors and Assigns. The rights and obligations of the Parties hereunder shall be binding on and inure to the benefit of the Parties hereto and the successors and assigns of the Parties hereto. These obligations shall run with the land.

15. Recordation of Agreement. Any of the Parties may cause this Agreement or a memorandum thereof to be recorded in the Office of the County Recorder of Merced County, California.

16. Governing Law and Venue. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue for any legal action arising out of this Agreement shall be the Superior Court of the County of Merced, California.

17. Attorneys' Fees. Should it become necessary to take steps to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its attorneys fees and costs related to the enforcement of this Agreement.

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have made and executed this Agreement on the day and year first above written.

CITY OF MERCED  
A California Charter Municipal Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST:

BY: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

BY: Kimberly C. Mason 10/5/21  
City Attorney Date

ACCOUNT DATA:

BY: \_\_\_\_\_  
Verified by Finance Officer

PROPERTY OWNERS:

THE PETER TINETTI AND MARILYN TINETTI LIVING TRUST, as to an undivided 1/3 interest

  
\_\_\_\_\_  
Peter Tinetti, Trustee

10-12-21  
Date

  
\_\_\_\_\_  
Marilyn Tinetti, Trustee

10-12-21  
Date

THE STEPHEN G. TINETTI AND JOAN M. TINETTI LIVING TRUST DATED 05/21/1997, as an undivided 1/3 interest


  
\_\_\_\_\_  
Stephen G. Tinetti, Trustee

10/12/21  
Date

  
\_\_\_\_\_  
Joan M. Tinetti, Trustee

10/12/21  
Date

THE BENSON FAMILY TRUST DATED 09/11/2002, as an undivided 1/3 interest

  
\_\_\_\_\_  
Robertine T. Benson, Trustee

10/12/21  
Date

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Merced

On October 12, 2021, before me, T. Patrick-Cardenas,  
a Notary Public, Personally appeared Peter Tinetti and Marilyn Tinetti

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.

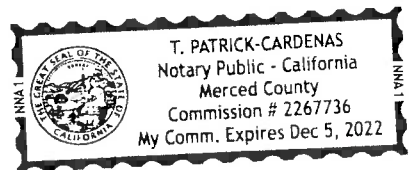
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature T. Patrick Cardenas

Notary Public

(seal)



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Merced

On October 12, 2021, before me, T. Patrick-Cardenas,  
a Notary Public, Personally appeared Stephen G Tinetti and  
Joan M. Tinetti

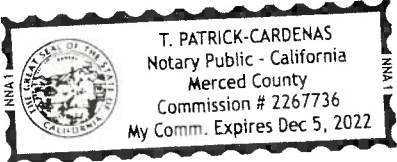
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),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

WITNESS my hand and official seal.

Signature T. Patrick Cardenas  
Notary Public

(seal)



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Merced

On October 12, 2021, before me, T. Patrick-Cardenas,  
a Notary Public, Personally appeared Robertine T. Benson

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.

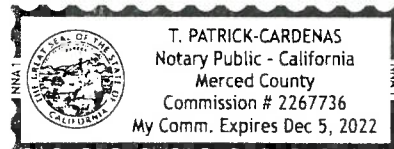
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature T. Patrick Cardenas

Notary Public

(seal)



## EXHIBIT "A"

### ADJUSTED PARCEL 2

Parcels One and Two as described in Trustee Deed Document No. 2009-022222, Merced County records, lying in Section 25, Township 7 South, Range 13 East, M.D.B.& M., described as follows:

#### Parcel One:

Commencing at the intersection of the Northeasterly line of 15<sup>th</sup> Street with the Northeasterly Prolongation of the Northwesterly line of "O" Street; thence North 24°39' East, along said prolongation, 126.0 feet to a point in the line that is parallel with and distant 94.0 feet southwesterly, measured at right angles, from the original located centerline of the main track (Lathrop to Fresno) of the Southern Pacific Transportation Company, and the True Point of Beginning of the parcel of land to be described; thence North 65°21' West. Along said parallel line, 355.0 feet; thence North 24°39' East, 22.0 feet to a line that is parallel with and distance 72.0 feet southwesterly, measured at right angles, from said original located centerline; thence South 65°21' East, along last said parallel line, 355.0 feet to said Northeasterly Prolongation of the Northwesterly line of "O" Street; thence South 24°39' West, along said prolongation, 22.0 feet to the True Point of Beginning.

EXCEPTING THEREFROM that portion of said property lying below a depth of five hundred (500) feet measured vertically from the contour of the surface thereof.

#### Parcel Two:

Beginning at the intersection of the Northeasterly line of 15<sup>th</sup> Street with the Northeasterly Prolongation of the Northwesterly line of "O" Street in said City of Merced; thence North 24°39' East along said Prolongation of said line of "O" Street, 126.0 feet, to a point in the line parallel with the 94.0 feet Southwesterly, at right angles, from the original center line of the main track of the Central Pacific Railway Company; thence North 65°21' West, along said parallel line 480.0 feet; thence South 24°39' West, 126.0 feet to a point in said Northeasterly line of 15<sup>th</sup> Street; thence South 65°21' East, along last said line of 15<sup>th</sup> Street, 480.0 feet to the Point of Beginning.

EXCEPTING THEREFROM the Northwesterly 125 feet (measured along the Northeasterly and Southeasterly lines) of the above described tract of land.

TOGETHER WITH THE FOLLOWING:

Beginning at a point on the Northeasterly line of 15<sup>th</sup> Street, said point being 125.0 feet Southeasterly from the Southwesterly Corner of said Parcel Three; thence along said Northeasterly line of said 15<sup>th</sup> Street, N 65°21'00" West, a distance of 42.03 feet; thence leaving said Northeasterly line North 87°33'30" East, to a point on the Easterly line of said Parcel 3, a distance of 47.21 feet; thence along said Easterly line South 24°39'00" West, a distance of 21.50 feet, to the Point of Beginning.

Containing 1.22 Acres, more or less.

## **EXHIBIT "B"**

All that portion of roadway delineated on that certain map entitled "OFFICIAL MAP OF THE TOWN OF MERCED" recorded on May 7, 1855, in Book X of Deeds, Page 540, Records of Merced County.

## EXHIBIT "C"

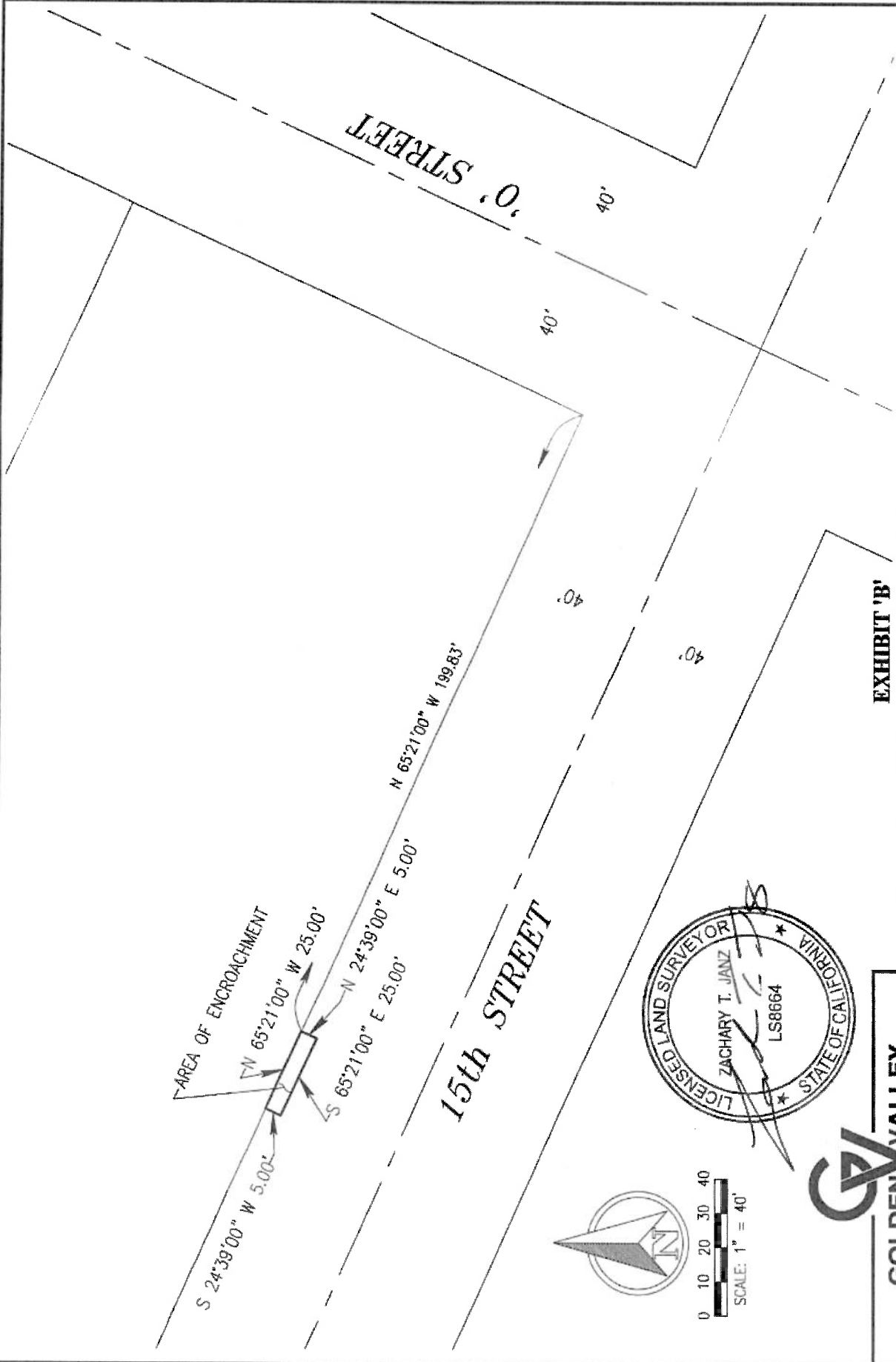
### EXHIBIT 'A'

All that portion of 15<sup>th</sup> Street as shown on the Map of the City of Merced, recorded in Volume 2 of Official Plats at Page 59, Merced County Records, lying in Section 25, Township 7 South, Range 13 East, Mount Diablo Base and Meridian, in the City of Merced, County of Merced State of California, described as follows:

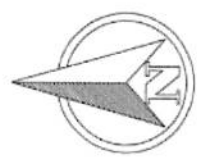
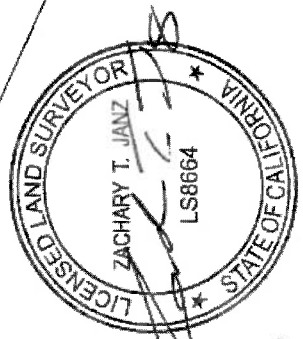
Commencing at the intersection of the northeasterly line of said 15<sup>th</sup> Street with the northeasterly prolongation of the northwesterly line of 'O' Street, as shown on said map; thence along said northeasterly line of 15<sup>th</sup> Street N 65°21'00" W 199.83 feet to the **Point of Beginning**; thence N 65°21'00" W 25.00 feet along said northeasterly line; thence S 24°39'00" W 5.00 feet; thence S 65°21'00" E 25.00 feet; thence N 24°39'00" E 5.00 feet to said north easterly line of 15<sup>th</sup> Street and the point of beginning.

Containing 125 square feet.





**EXHIBIT 'B'**  
 Area of encroachment, being a portion of 15th Street as shown on Map of the City of Merced, recorded in Volume 2 of Official Plats, Page 59, Merced County Records, lying in Section 25, T.7S., R.13E., M.D.B.&M., in the City of Merced, County of Merced, State of California



0 10 20 30 40  
 SCALE: 1" = 40'



**GOLDEN VALLEY**  
 ENGINEERING & SURVEYING  
 405 W 19th Street • P.O. Box 349 • Merced, CA 95340  
 Phone (209) 722-3200 • Fax (209) 722-3254

Job No. 20205 Date: 08/09/2021