

Recording requested by and
When recorded return to:

City of Merced, a California Charter
Municipal Corporation
678 W. 18th 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 _____, 2018, by and between COUNTY OF MERCED, a political subdivision of the State of California ("**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 200 East 13th Street Merced, California, APN 035-010-005 and more specifically described on the attached Exhibit "A" (the "**Property**").

B. City holds a 80' Right-of-Way as described on the attached Exhibit "B" (the "**Easement**").

C. Owner desires to construct and maintain certain improvements within the City Right-of-Way, including a 4' high fence, landscape and irrigation (the "**Improvements**").

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 Right and Nature of Agreement. City grants Owner the right to construct and maintain the Improvements within the City Easement, 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 Easement or waive any rights thereunder, and Owner, its heirs, successors, and assigns derive no basis for a claim of prescriptive, contractual, or other rights to utilize the City Right-of-Way except as expressly provided herein. This grant of permission is limited to Owner constructing, maintaining and using the Improvements in the City Right-of-Way, and does not constitute a deed or grant of any other real property interest by City.

2. Use of the City Right-of-Way; Cessation of Interference. This grant of permission shall be subject to and subordinate to the prior continuing right of City to use the City Right-of-Way for the public services described in Exhibit "B". Any construction, maintenance or use of the Improvements (or of any further Improvements approved by City) shall not interfere with City's use of the City Right-of-Way. If at any time, City reasonably believes that Owner's construction, maintenance or use of the Improvements interferes with City's use of the City Right-of-Way as specified herein, City shall provide written notice to Owner of such interference. Owner shall work with City and remedy such interference by ceasing the interfering activities or removing or repairing the particular Improvements causing such interference within thirty (30) days of receipt of City's notice, unless such remedy takes longer than thirty (30) days in which case Owner shall commence such remedy within thirty (30) days and diligently prosecute it to completion. If Owner fails to remedy such interference as provided herein, City may (a) take steps to remedy the interference and Owner shall reimburse City's reasonable expenses for taking such steps within thirty (30) days of receipt of City's invoice for such expenses, or (b) terminate this Agreement on thirty (30) days' advance written notice. Upon termination of this Agreement, Owner shall remove all Improvements from the Easement and restore the Property to its natural state as it existed prior to the installation of Improvements by Owner.

3. Damage to the Right-of-Way. Owner shall be solely responsible for any damage Owner or its employees, representatives or contractors cause

to City streets, sidewalks, curbs, utilities, or other City owned property due to the installation, maintenance, repair, or removal of Owner's Improvements in the City Right-of-Way, and shall repair, replace, and restore in kind the said damaged facilities at its sole expense.

4. Owner's Maintenance of Improvements. Owner shall be solely responsible for any maintenance and/or repairs to the Improvements except maintenance or repairs necessary due to damage caused solely by City or its employees, representatives or contractors. Owner shall maintain the Improvements and surrounding area in good and safe condition and free from damage, to the reasonable satisfaction of 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. Notwithstanding the foregoing, Owner may store or use standard business materials normally used in Owner's type of business, in compliance with all laws, regulations, statutes, ordinances and codes.

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: 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.

7.1 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 The Parties waive any and all rights of subrogation against each other, including their respective elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers, which any insurer of a Party may acquire against the other Party.

7.3 For any and all claims related to this Agreement, Owner's insurance shall be primary unless claims, losses, costs, liabilities, expenses, judgments or damages arise out of the sole negligence of City or its employees, representatives or contractors.

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 Owner's agreement with 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. 18th Street, Merced, California 95340.

8. Defense and Indemnification. Owner shall indemnify, protect, hold harmless, and defend 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 Improvements, or in connection with the installation and/or maintenance of the Improvements. Notwithstanding the foregoing, Owner's indemnity and release herein shall not extend to losses, costs, liability, expense, judgments or damages arising out of the sole negligence of City or its employees, representatives or contractors, or arising from causes not related to Owner's Improvements.

9. Representations and Warranties. 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.

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. This Agreement, and the covenants, rights, duties, benefits and burdens described herein, constitute covenants running with the land that benefit and bind the Property, and each Party and their successors or assigns. If 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, in which case Owner may use its Property unencumbered by the City Right-of-Way.

15. Recordation of Agreement. Either 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: K. Flores 6/26/18
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

PROPERTY OWNER:

COUNTY OF MERCED

Date 7-2-18

BY: Dana S. Hertfelder
(Signature)

Dana S. Hertfelder Director
(Print Name and Title)

EXHIBIT A

All that real property situated in a portion of Section 30, Township 7 South, Range 14 East, M.D.B. & M., City of Merced, County of Merced, State of California, said real property being more particularly described as follows:

PARCEL 1

All that real property described in Deed to County of Merced, recorded on June 24, 1884, in Book X of Deeds, Page 391, Merced County Records.

PARCEL 2

All that real property described in Order No. 10273 to Merced County, a political corporation, recorded on November 21, 1939, in Volume 631, Official Records, Page 132, Merced County Records.

PARCEL 3

All that real property described in Grant Deed to County of Merced, a body politic and corporate, recorded on June 12, 1963, in Volume 1613, Official Records, Page 906, Merced County Records.

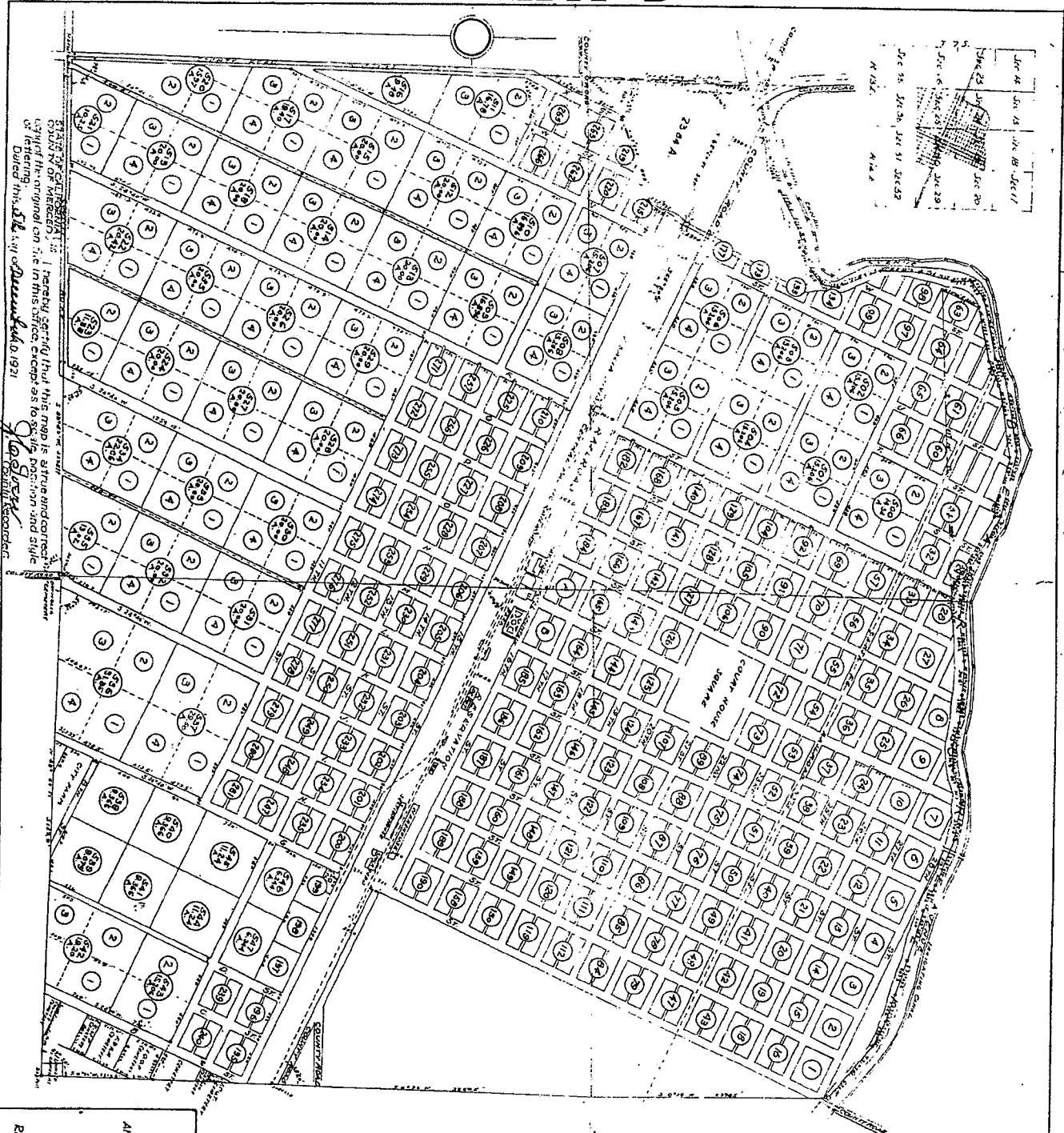
PARCEL 4

All that real property described in Grant Deed to Merced County, a body politic and corporate, recorded on July 19, 1993, in Volume 3129, Official Records, Page 435, Merced County Records.

PARCEL 5

All that real property described in Grant Deed to Merced County, recorded on August 18, 1953, in Volume 1116, Official Records, Page 154, Merced County Records.

EXHIBIT "B"



FROM ALL MEN BY THESE PRESENTS that if any portion of the annexed map shall be found to be an accurate plat of certain subdivisions of land in the City of Merced and known as "The City of Merced and Subdivisions of adjoining acreages properly situated particularly in and around the city of Merced," the parcels of ground within such subdivisions reserved for public purposes, such as boulevards, streets, parks, squares, and other public uses, shall be sold by number and acreage by public sale by number and their width and length.

In WHITTIER, WHERE, the said Pacific Improvement Company has caused these presents to be signed by its Secretary and its Vice-President, to be hereunto affixed on this 10th day of December, A.D. 1897

PACIFIC IMPROVEMENT COMPANY
(By F. S. Doudy, Secretary)

(CORPORATE SEAL)

E. R. Ryan, Mayor of the City and County of San Francisco, State of California, is hereby notified that the following persons have been appointed as the jury for the trial of the case of *People v. Ryan*, to be held on the 10th day of December, 1905, at the County Jail, San Francisco, California:

J. H. Huntington, known to me to be the President of the corporation that executed the foregoing certificate, and acknowledged to me that such corporation is the same.

In witness whereof, I have hereunto set my hand and affixed my official seal on the day and date aforesaid.


E. R. Ryan,
 Mayor, People in and for the
 City and County of San Francisco,
 State of California.

Filed in the office of the County Recorder
of the County of Merced State of California,
at 52 min. past 10 A.M. this 5 day of May 1901,
at the request of W. L. A. Fargo & Co.
E. M. STOKES
County Recorder.

MAP
OF THE CITY OF
MERCED
AND SUBDIVISIONS OF ADJOINING ACRES PROPERTY
MERCED CO., CAL.

VISALIA DIVISION
 CENTRAL PACIFIC RAILROAD
 SECS. 24 & 25 T7S R13E
 SECS. 10 & 30 T7S R14E
 Scale 5335 ft. to one inch.
 Resurveyed - June 1897
 By L. Dickinson
 Vol. 2 Page 59

2237 DOUGLAS BLVD., STE 144 • ROSELILLE, CA 94068-9540 • (916) 786-4279 • 916.786.2175

GL1-6583	AI	CERTIFICATE OF COVERAGE	07/03/2018		
CSAC Excess Insurance Authority C/O ALLIANT INSURANCE SERVICES, INC. PO BOX 6450 NEWPORT BEACH, CA 92658-6450 PHONE (949) 756-0271 / FAX (619) 699-0901 LICENSE #0C36861		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BELOW. THIS CERTIFICATE OF COVERAGE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.			
		IMPORTANT: If the certificate holder is an ADDITIONAL INSURED and/or requesting a WAIVER OF SUBROGATION, the Memorandums of Coverage must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).			
		COVERAGE AFFORDED A - CSAC Excess Insurance Authority			
		COVERAGE AFFORDED B			
Member: MERCED COUNTY ATTN: SCOTT DE MOSS 2222 M. STREET NO. 9 MERCED, CA 95340-3790		COVERAGE AFFORDED C			
		COVERAGE AFFORDED D			
		COVERAGE AFFORDED D			
Coverages THIS IS TO CERTIFY THAT THE MEMORANDUMS OF COVERAGE LISTED BELOW HAVE BEEN ISSUED TO THE MEMBER NAMED ABOVE FOR THE PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE COVERAGE AFFORDED BY THE MEMORANDUMS DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH MEMORANDUMS. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
CO LTR	TYPE OF COVERAGE	MEMORANDUM NUMBER	COVERAGE EFFECTIVE DATE (MM/DD/YYYY)	COVERAGE EXPIRATION DATE (MM/DD/YYYY)	LIABILITY LIMITS
A	<input checked="" type="checkbox"/> Excess General Liability	EIA 18EL-35	07/01/2018	07/01/2019	\$1,000,000 Limits inclusive of the Member's Self-Insured Retention of \$100,000
Description of Operations/Locations/Vehicles/Special Items: AS RESPECTS AGREEMENT BETWEEN MERCED COUNTY AND CITY OF MERCED FOR PROPERTY LOCATED AT 200 EAST 13TH ST, MERCED (APN 035-010-005). CITY OF MERCED, ITS OFFICERS, EMPLOYEES, VOLUNTEERS, AND AGENTS ARE INCLUDED AS ADDITIONAL COVERED PARTIES, BUT ONLY INsofar AS THE OPERATIONS UNDER THIS CONTRACT ARE CONCERNED.					
Certificate Holder CITY OF MERCED 678 W 18TH ST MERCED, CA 95340			Cancellation SHOULD ANY OF THE ABOVE DESCRIBED MEMORANDUMS OF COVERAGES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE MEMORANDUMS OF COVERAGE PROVISIONS.		
			AUTHORIZED REPRESENTATIVE 		

ENDORSEMENT NO. U-1

CSAC EXCESS INSURANCE AUTHORITY
GENERAL LIABILITY 1

ADDITIONAL COVERED PARTY AMENDATORY ENDORSEMENT

It is agreed that the "Covered Party, Covered Persons or Entities" section of the Memorandum is amended to include the person or organization named on the Certificate of Coverage, but only with respect to liability arising out of premises owned by or rented to the Member, or operations performed by or on behalf of the Member or such person or organization so designated.

Coverage provided under this endorsement is limited to the lesser of the limits stated on the Certificate of Coverage or the minimum limits required by contract.

ADDITIONAL COVERED PARTY:

NAME OF PERSON OR ORGANIZATION SCHEDULED PER ATTACHED CERTIFICATE OF COVERAGE

AS RESPECTS:

PER ATTACHED CERTIFICATE OF COVERAGE

It is further agreed that nothing herein shall act to increase the Authority's limit of liability.

This endorsement is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown below. All other terms and conditions remain unchanged.

Effective Date: _____

Memorandum No.: EIA 18 EL-00

Issued to: ALL MEMBERS

Issue Date: June 25, 2018



Authorized Representative
CSAC Excess Insurance Authority