

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into this 7<sup>th</sup> day of October, 2013, by and between Antonio Perez Meraz (the "Seller"), and the City of Merced, a California Charter Municipal Corporation ("Buyer").

### WITNESSETH

WHEREAS, Seller owns a parcel of real property in the County of Merced, State of California, more commonly identified as 2300 Andregg Avenue, Merced, California, Assessor's Parcel Number 034-230-021 (the "Parcel"); and,

WHEREAS, Buyer desires to acquire land necessary for the widening of Parsons Avenue (the "Project"); and,

WHEREAS, Part of the areas necessary for the Project are located within the Parcel, consisting of approximately 0.29 acres and more fully described in Exhibit "A" and shown in Exhibit "B," both attached hereto and incorporated herein by reference (the "Subject Property"); and,

WHEREAS, Seller wishes to leaseback the Property from Buyer for a period commencing as of the close of escrow and continuing until the last day of the first full month after the close of escrow.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants, promises, and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto do hereby agree as follows:

SECTION 1. PURCHASE & SALE. Seller agrees to sell and Buyer agrees to purchase the Subject Property free from all liens and encumbrances.

SECTION 2. PURCHASE PRICE. The purchase price for Subject Property shall be Forty-Five Thousand Dollars (\$45,000.00) for approximately 0.29 based upon a survey to be prepared pursuant to Section 4 hereof, without any liens or encumbrances.

a. Deposit: Buyer will deposit the sum of Five Thousand Dollars (\$5,000.00) into escrow within ten (10) business days following the mutual execution of this Agreement.

b. Balance of Purchase Price: Buyer shall have until close of escrow ("Final Payment Date") to pay the balance of the purchase price of Forty Thousand Dollars (\$40,000.00) to Seller and to be deposited with the escrow holder as listed in Section 3.

SECTION 3. ESCROW. Escrow shall open on the Subject Property within ten (10) days at a title company in Merced, California selected by Buyer, and shall close within thirty (30) days thereafter, subject to the terms and conditions of this Agreement. All escrow costs shall be borne by the Buyer, including the transfer and documentary taxes, if any, upon recordation of the Deed. Each party shall pay for its own legal fees, if any are incurred.

SECTION 4. SURVEY, PARCEL MERGER, OR PROPERTY LINE ADJUSTMENT. The Subject Property might be the subject of a survey and/or a parcel split or property line adjustment upon determination by Buyer. All costs incurred in connection with the survey, parcel split, and/or property line adjustment shall be borne by the Buyer.

SECTION 5. ASSIGNMENT. This Purchase and Sale Agreement shall be binding upon and inure to the benefit of the respective parties hereto and to their respective heirs, transferees, successors, assignee, partners, and legal representatives. Neither this Purchase and Sale Agreement nor any part thereof shall be assignable except with the prior written consent of the other party hereto. Such consent shall not be unreasonably withheld. Any attempted assignment or delegation of the rights and responsibilities under this Purchase and Sale Agreement not executed in writing by the other party hereto shall constitute a material breach of this Purchase and Sale Agreement and shall be null and void.

SECTION 6. REMOVAL OF FIXTURES. Seller shall have the right to remove all fixtures from the Subject Project by or before the end of the leaseback period. Seller shall secure the Property at all times including during and after the removal of fixtures. The Seller will indemnify, defend and hold Buyer harmless of all liability and/or claims arising from Seller and/or its agents removal of such items from the Property.

SECTION 7. LEASEBACK OF PROPERTY.

a. Buyer agrees to leaseback the Property to Seller for a period commencing as of the close of escrow and continuing until the last day of the first full month after the close of escrow (the "Leaseback Period"). Buyer and Seller agree that the rental rate for the Leaseback Period shall be One Dollar (\$1.00) payable in advance at the close of escrow. If Seller vacates the Property prior to the end of the Leaseback Period, then Leaseback Period shall automatically terminate and Seller shall have no further rights relating to the Property.

b. Buyer and Seller agree that no extensions or hold-over shall be permitted at the end of the Leaseback Period. Should Seller none-the-less hold over past the Leaseback Period, Buyer shall have the right to immediately commence eviction proceedings and Seller agrees to pay Buyer any and all costs of such eviction proceeding, including attorneys fees and costs, as well as other damages Buyer may suffer as a result of Seller's holding-over.

c. Seller acknowledges and agrees that during the Leaseback Period of the Property, Seller shall be solely responsible for Seller's personal property and/or fixtures that are located on the Property. Seller shall maintain insurance coverage for such personal property and/or fixtures, Seller will arrange for coverage that, in Seller's opinion, is adequate to protect Seller's personal property and fixtures. It is further agreed that Buyer will not be undertaking to insure Seller's personal property and fixtures. Seller agrees that should damage or loss occur to Seller's personal property and fixtures during the Leaseback Period, Seller will make no claim or file any legal or equitable action against Buyer for any loss incurred by Seller or to Seller's personal property and/or fixtures.

d. Seller further acknowledges and agrees that during the Leaseback Period, should any accident or injury occur to Seller, Seller's agents, or invitees, Seller shall make no claim or file any action or proceeding against Buyer. Should an agent or invitee of Seller be injured on the Property during the Leaseback Period, Seller agrees to indemnify, protect, defend (with legal counsel selected by Buyer), and hold harmless Buyer from and against any such claim or legal action.

e. Seller shall be responsible for payment of all utilities during the leaseback period.

#### SECTION 8. RELOCATION BENEFITS.

A. Seller acknowledges and agrees that the consideration that it is receiving pursuant to the terms of the Agreement includes any and all relocation payments due to them under California Redevelopment Law, California Health & Safety Code Section 33000 *et seq.*, California Code of Regulations Title 25, Section 6000 *et seq.*, Federal Department of Transportation Regulation and Procedures contained in 49 Code of Federal Regulations Section 24.1 *et seq.* and all other applicable provisions of state and federal law and regulations. Seller acknowledges and agrees that it is not entitled to any additional relocation payments or payments for loss of goodwill from the City.

B. Seller, on its behalf and behalf of its successors in interest, hereby fully indemnifies, releases, and waives any claim against City, and its officials, officers, employees, boards, commissions, and agents from all claims and causes of action relating to 42 U.S.C. Section 4601, *et seq.*, State Code of Regulations Title 25, Chapter 6, and all other federal and state statutes regarding relocation expenses.

SECTION 9. RELEASE OF CLAIMS. Except for the obligations associated with payment of the purchase price for the Property by Buyer pursuant to Section 2, Buyer's leaseback of the Property to Seller pursuant to Section 7, and Seller's vacation of the Property pursuant to the requirements of Section 7, each of the parties to this Agreement, for themselves, their heirs, legal representatives, employees, assigns, corporations or partnerships, expressly releases each of the other parties

and their heirs, legal representatives, employees, assigns, corporations and partnerships from any and all liability for all present, past and future claims and demands, known or unknown, whether or not alleged, arising out of the matters which are or which could reasonably have been related to Buyer's acquisition of the Property, any matter relating to the Buyer's acquisition of the Property or the conduct of the parties prior to the effective date of this Agreement. All parties agree that all rights under section 1542 of the California Civil Code and any similar law of any state or territory of the United States are hereby expressly waived. Such section reads as follows:

*"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."*

The parties hereto realize that the facts upon which the foregoing release is based may hereafter turn out to be other than or different from the facts now known to the parties or believed by them to be true. Each party expressly accepts and assumes the risk that facts now known or thought to be true may later be found to be different, and each party agrees that this settlement is in all respects effective, and shall not be subject to termination, rescission or modification, by reason of any such change in facts or knowledge of facts.

SECTION 10. REAL ESTATE COMMISSIONS. Buyer and Seller both represent and warrant to each other that they are not, and have not been, represented by any real estate broker or agent in this transaction, and that there are no real estate or similar commissions due or owed for this transaction. Seller agrees that any commission due or owed as a result of Buyer's Close of Escrow on the Subject Property shall be the financial responsibility of Seller.

SECTION 11. DUE DILIGENCE & ENVIRONMENTAL STUDIES.

a. Within five (5) days after the mutual execution of this Agreement, or as soon thereafter as possible through reasonable diligence on behalf of Seller, Seller shall furnish Buyer with a preliminary California Land Title Association report of the title to the Subject Property and each

document shown as an exception or encumbrance in the report. This shall be done at the expense of Seller. Within fifteen (15) days after the delivery of the title report and related documents to Buyer, Buyer shall notify Seller in writing of any objection to any exception therein. Buyer's failure to object in this matter to any exception shall be an approval by Buyer of that exception.

b. Buyer's acceptance of the condition of the Subject Property, and any other matter affecting the Subject Property, is a contingency of this Agreement. Buyer and Buyer's agents and representatives, shall have unrestricted access to the property to conduct all inspections, investigations, tests, surveys, analysis, and other studies, immediately upon execution of this Agreement.

c. Therefore, Buyer shall have fifteen (15) days from the date this Agreement is mutually executed to undertake and complete any and all studies, reports, investigations, inspections, and analysis Buyer deems necessary regarding the Subject Property. All studies, reports, investigations, and analysis undertaken by Buyer or any representative of Buyer shall be performed at Buyer's own and sole cost and expense.

SECTION 12. NOTICE. All notices required or available to be sent pursuant to this Agreement shall be delivered by either first-class certified mail, return receipt requested, and properly addressed with correct postage fully paid thereon or by personal delivery to the individuals designated above at the address designated below. All mailed notices shall be deemed delivered within three (3) business days of deposit in the U.S. Mail and personal delivery shall be deemed delivered upon actual delivery thereof at the addresses set forth below:

SELLER: Antonio Perez Meraz  
2300 Andregg Avenue  
Merced, California 95340

BUYER: City of Merced  
City Clerk's Office  
678 West 18<sup>th</sup> Street  
Merced, California 95340

With a Copy to: City Attorney  
City of Merced  
678 West 18<sup>th</sup> Street  
Merced, California 95340

SECTION 13. FURTHER DOCUMENTATION. Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be reasonably required in order to consummate the purchase and sale herein contemplated and shall use their diligent efforts to accomplish the Close of Escrow in accordance with the provisions in this Agreement.

SECTION 14. INTERPRETATION. The use of the singular herein includes the plural, and the use of the neuter herein includes the masculine and/or feminine, as the context may require. The captions of the Sections and Subsections of this Agreement are for convenience only and shall not be considered nor referred to in resolving questions of interpretation and construction.

SECTION 15. NO PRESUMPTION RE DRAFTER. The parties hereto acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the parties and their attorneys, and this document reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement, and therefore no presumption for or against validity or as to any interpretations hereof, based upon the identity of the drafter, shall be applicable in interpreting or enforcing this document.

SECTION 16. RELATIONSHIP OF PARTIES. Nothing contained in this Agreement shall be interpreted or understood by any of the parties, or by any third person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between Seller and Buyer or their agents, employees or contractors. Except as either party may specify in writing, neither party shall have the authority to act as an agent of the other party or to bind the other party to any obligation.

SECTION 17. NO THIRD PARTY BENEFICIARIES. The parties hereto intend not to create rights in, or to grant to any third party as a beneficiary of the agreement or of any duty, covenant, obligation, or undertaking established herein.

SECTION 18. VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of California, and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Merced.

SECTION 19. ENTIRE AGREEMENT. This Agreement is a fully integrated agreement that contains the complete, final, entire, and exclusive expression of the agreement and understanding of the parties hereto. This Agreement supersedes and replaces all negotiations, and all proposed agreements, whether oral or written, between the parties hereto regarding, arising out of, or relating to the subject matter hereof. Each party acknowledges that it has read this Agreement and has signed it freely and voluntarily without reliance on any representations or promises made by any of the other, or their attorneys or its representatives, other than as expressly set forth within this Agreement.

SECTION 20. AMENDMENTS IN WRITING. This Agreement may be amended or modified only by a written agreement executed by or on behalf of each of the parties hereto and approved and adopted as required by law. Any attempted amendment not in compliance with the provisions of this Section shall be null and void.

SECTION 21. WAIVER. Any waiver by either party of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by either party to take action on any breach or default of the other party or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to either party to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligation under this Agreement. Consent by either party to any act or omission by the other party shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the other party's written consent to future waivers.



SECTION 22. TIME OF THE ESSENCE. Seller and Buyer agree that time is of the essence of this Agreement.

SECTION 23. SEVERABILITY. If any provision of this Agreement or the application thereof to any person, place or circumstance shall be held by a court of competent jurisdiction to be unconstitutional, invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

SECTION 24. COUNTERPARTS. This Agreement may be executed in counterparts and when each party has signed and delivered at least one such counterpart to the other parties hereto, each counterpart shall be deemed an original, and all counterparts taken together will constitute one and the same agreement, which will be binding and effective as to the Seller and Buyer. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other party to this Agreement is in the physical possession of the party seeking enforcement thereof.

SECTION 25. AUTHORITY TO EXECUTE. Each party hereto expressly warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of his/her/their governmental or business entity and warrants and represents that he/she/they has/have the authority to bind his/her/their entity to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

SELLER:  
ANTONIO PEREZ MERAZ

By:   
Antonio Perez Meraz

BUYER:

CITY OF MERCED, a California Charter  
Municipal Corporation

By: John M. Bramble  
City Manager

ATTEST:  
JOHN M. BRAMBLE, CITY CLERK

BY: [Signature]  
Assistant/Deputy City Clerk



APPROVED AS TO FORM:

BY: [Signature] 9/24/13  
City Attorney Date

213607 PO#: 111442  
ACCOUNT DATA:

BY: [Signature]  
Verified by Finance Officer

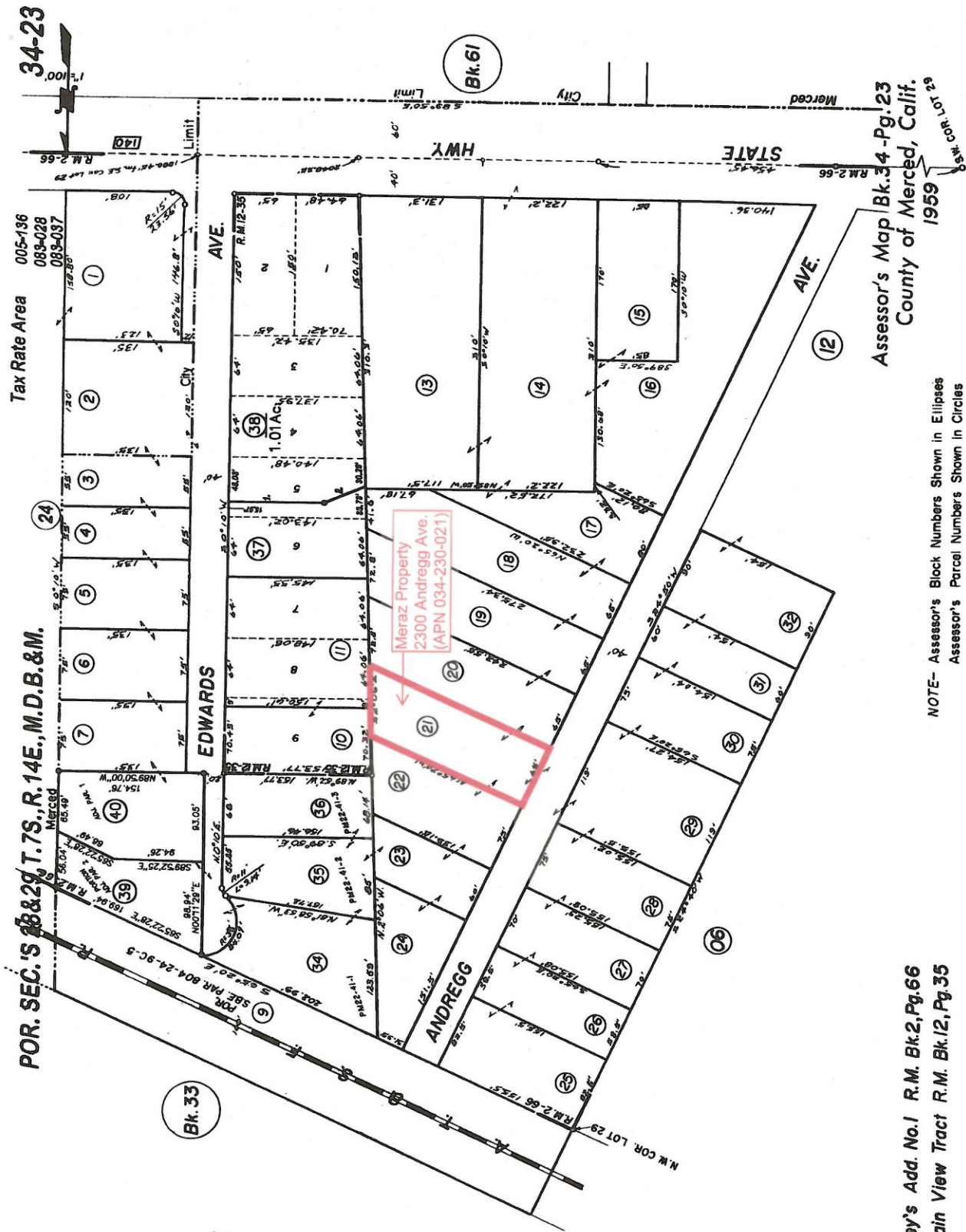
Funds Available. rec 9/24/13  
450-1104-637-6500 107023  
\$46,350.00 WK

0.\*  
Purchase Price 45,000.\*  
2.\*  
Est. Escrow 900.00\*\*  
900.00+  
45,900.00\*  
45,900.00+  
450.00+  
title ins.  
002  
total  
ENC. 46,350.00\*\*

## EXHIBIT A

All that portion of Lot 29, as shown on the map entitled "MAP OF BRADLEY'S ADDITION NO. 1 TO MERCED, CALIFORNIA", filed April 24, 1903, in the office of the County Recorder of Merced County, in Vol. 2 of Official Plats, at page 66, bounded and described as follows:

BEGINNING at a point on the Southeasterly line of a 40 foot avenue (which point is identified as being South 24°40' West 75 feet from a point which bears South 65°20' East 227.45 feet, and South 2°06' East 236.6 feet and North 65°20' West 139.15 feet from the Northwest corner of said Lot 29); thence from said point of beginning, boundary extends South 24°50' West along the Southeasterly line of said avenue, 65 feet; thence South 65°20' East to the East line of John M. Andregg Tract; thence North 2°06' East along the East line of said John M. Andregg tract to the Southeast corner of the land conveyed by John M. Andregg and Marie E. Andregg, his wife, to Grady T. Anderson and Rebecca Anderson, his wife, by Deed dated May 24, 1938, and recorded in Vol. 589 of Official Records, at page 51; thence North 65°20' West along said Anderson parcel to the point of beginning.



POR. SEC. 18 & 29, T. 7 S., R. 14 E., M. D. B. & M.

Tax Rate Area 005-136  
083-028  
083-037

34-23

-NOTE-  
This map is for Assessment purposes only.  
It is not to be construed as portraying  
legal ownership or divisions of land for  
purposes of zoning or subdivision law.

1. N 89° 30' 00" W 160.25'  
2. S 89° 30' 00" W 40.00'

EXHIBIT B

REVISED 11/74  
12-20-05

Bradley's Add. No. 1 R.M. Bk. 2, Pg. 66  
Mountain View Tract R.M. Bk. 12, Pg. 35

NOTE- Assessor's Block Numbers Shown in Ellipses  
Assessor's Parcel Numbers Shown in Circles

Assessor's Map Bk. 34 - Pg. 23  
County of Merced, Calif.

1959

1/2" = 100'