

Project: Road 80 Widening Project  
Grantor: Cottonwood Fresno Holdings, LLC  
Parcels No.: 077-360-016

## **AGREEMENT FOR PURCHASE OF PROPERTY**

This Agreement for Purchase of Property is between the County of Tulare (Grantee), and Cottonwood Fresno Holdings, LLC, a Delaware Limited Liability Company (Grantor).

**The parties hereby agree as follows:**

1. **PROPERTY.**

For use by Grantee on the Road 80 Widening Project as set forth in the terms and conditions set forth in this Agreement, the Grant Deed and Temporary Easement more particularly described in the documents delivered herewith, together with such other property interests as may be specified herein (the Property).

2. **DELIVERY OF DOCUMENTS.**

The Deed shall be executed and delivered by Grantor to Thomas Evatt, Area Manager for Universal Field Services, acting for the Grantee for the purpose of placing the Deed into escrow. The Deed shall be delivered in the manner described in the previous sentence solely for the convenience of the parties. Grantee shall not be deemed to have accepted delivery of the Deed until such time as the Deed is recorded in the Official Records of Tulare County, California in accordance with written escrow instructions delivered to escrow by Grantee and Grantor.

This transaction shall be handled through an escrow with Chicago Title and Escrow Company, 1750 E. Walnut Avenue Visalia c/o Barbara Clark Order No. 07-42305016 Within five (5) days after this Agreement is executed by Grantee and Grantor, Grantor shall complete, execute and deliver to Escrow Holder (i) an affidavit executed by Grantor certifying that Grantor is not a "foreign person" within the meaning of Internal Revenue Code Section 1445(f)(3), and meeting the requirements of Internal Revenue Code Section 1445(b)(2), and (ii) an original Withholding Exemption Certificate (California Form 590 or 590-RE, as applicable), fully executed by Grantor as required by the California Taxation and Revenue Code, certifying that Grantor is not subject to tax withholding under applicable California law.

3. **PURCHASE PRICE AND TITLE.**

The purchase price for the Property under this Agreement is Two Thousand Seven Hundred Dollars (2,700.00). Upon delivery of the Deed into escrow, Title Company shall promptly deliver to Grantee a current preliminary title report. Grantee shall have ten (10) days in which to review and approve the condition of title. Failure to object to the condition of title within said (10) days shall be deemed approval. Exceptions to title as

## **Agreement for Purchase**

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disclosed in the preliminary title report and as approved by Grantee shall be conclusively deemed to be the "Permitted Exceptions".

Grantee shall deliver the purchase price into escrow promptly after delivery of the Deed into escrow. Grantor shall convey good, marketable and insurable fee simple title to the property to Grantee free and clear of all liens, encumbrances, taxes, assessments and leases recorded and/or unrecorded, except for the Permitted Exceptions.

Escrow agent shall deliver the purchase price to Grantor, less Grantor's share of prorated taxes and amounts necessary to place title in the condition required by this Agreement, when title to the Property vests in Grantee free and clear of all liens, encumbrances, taxes, assessments and leases recorded and unrecorded, except for the Permitted Exceptions. Good, marketable and insurable fee simple title to the Property, subject only to the Permitted Exceptions, shall be evidenced by an ALTA extended coverage owner's policy of title insurance ("Title Policy"), with survey exception if Grantee elects not to obtain an ALTA survey for the Property. The Title Policy shall be in the amount of the Purchase Price, showing fee simple title to the Property vested in Grantee, subject only to the Permitted Exceptions. It shall be a condition precedent to Grantee's obligations under this Agreement that escrow holder is able to issue the Title Policy to Grantee upon the close of escrow.

Grantee shall pay all costs of escrow and recording fees incurred in this transaction.

#### **4. PRORATION OF TAXES.**

- (a) If Grantee acquires fee title to the Property under the terms, covenants and conditions of this Agreement, taxes shall be prorated in accordance with California Revenue and Taxation Code section 5081 et seq., as of the recordation of the Grant Deed conveying title to Grantee, except that where Grantee has taken possession of the Property, taxes shall be prorated as of the date of possession. In the event Grantee acquires an order of possession in an action in eminent domain, taxes shall be prorated in accordance with California Revenue and Taxation Code section 5083.
- (b) Grantor authorizes Grantee to deduct from the purchase price any amount necessary to satisfy any delinquent taxes, together with penalties and interest thereon, and any delinquent or non-delinquent assessments or bonds, which are to be cleared from the title to the Property.

#### **5. LEASE WARRANTY.**

Grantor warrants that there are no oral or written leases on any portion of the real property and Grantor further agrees to hold harmless and reimburse Grantee for any and all losses or expenses resulting or arising from any lease on the Property.

**6. TEMPORARY CONSTRUCTION EASEMENT**

Permission is hereby granted to the Grantee and its authorized agents and contractors to enter on Grantor's land, within the temporary construction easement area described in the documents delivered herewith, for construction of new surface and underground improvements within the road right-of-way.

- a. Where necessary, improvements in the temporary easement area will be removed by the Grantee. Such improvements will be reconstructed at Grantee's sole expense upon the termination of the temporary easement, or, if reconstruction is not feasible, Grantee will pay Grantor the value of such improvements, which payment shall be in addition to the purchase price for the Property set forth above.
- b. All work performed by the Grantee in the temporary easement area shall conform to applicable building, fire, and sanitary laws, ordinances and regulations relating to such work and shall be done in a good and workmanlike manner.
- c. The temporary construction easement is for a period of three years. Said three year period shall begin upon thirty days written notice to Grantor by the Grantee. In the event Grantee occupies the Property beyond the specified time period, at the request of the Grantor, the Grantee shall make payment to Grantor for the additional time on the same per month basis of valuation for the first year.

**7. DISMISSAL OF ACTION IN EMINENT DOMAIN; SATISFACTION OF ALL CLAIMS.**

Grantor consents to the dismissal of any eminent domain action involving the Property and waives any and all claims to any monies that may now be on deposit in such action. The purchase price for the Property and the other consideration set forth herein constitutes a complete settlement of all rights of Grantor to just compensation and to claim, assess or receive severance, inverse condemnation or other eminent domain damages arising from or related to the acquisition of the Property by Grantee.

**8. POSSESSION.**

Grantee shall have the right of possession and use of the Property including the right to remove and dispose of improvements. Such possession shall commence on acceptance of this contract by Tulare County and deposit of purchase price into escrow.

**9. IMPROVEMENTS.**

Except as may be otherwise provided herein, the purchase price for the Property includes compensation for any and all improvements thereon which include 112 sq ft of turf grass and a sprinkler system

**10. CONFORMANCE.**

The driveways, walkways, and lawn areas on Grantor's retained property, if any, shall be reconstructed by Grantee as necessary to conform to street frontage revisions and Grantor's retained property. Said reconstruction shall be provided by Grantee at no expense to Grantor. Permission is hereby granted to Grantee and its authorized agents and contractors to enter upon Grantor's retained property, where necessary, for the purpose of conforming such driveway and walkway areas, and for the purpose of resloping and replanting any affected lawn and landscaped areas.

**11. HAZARDOUS WASTE MATERIAL**

The Grantor hereby represents and warrants that during the period of Grantor's ownership of the Property, there have been no disposals, releases or threatened releases of hazardous substances on, from, or under the Property. Grantor further represents and warrants that Grantor has no knowledge of any disposal, release, or threatened release of hazardous substances, on, from, or under the Property which may have occurred prior to Grantor taking title to the Property.

The acquisition price of the Property being acquired in this transaction reflects the fair market value of the Property without the presence of contamination. If the Property being acquired is found to be contaminated by the presence of hazardous substances which requires mitigation under Federal or State law, the Grantee reserves the right to recover its clean-up costs from those who caused or contributed to the contamination or the grantor.

Grantor shall indemnify, defend with counsel acceptable to Grantee and hold harmless Grantee and Grantee's officers, representatives, agents and employees from and against any and all suits, damages, costs, fees, claims, demands, causes of action, losses, liabilities and expenses, including without limitation attorneys' fees, arising in conjunction with or as a result of Grantor's breach of any of its representations or warranties set forth in this Section 11, which representations and warranties shall survive close of escrow and recordation of the Grant Deed. As used in this Agreement the term "hazardous substances" means any and all chemicals, substances, wastes or materials which have been or are hereafter determined by any federal, state or local governmental Grantee to be capable of posing risk of injury to health or safety, including, without limitation, petroleum, asbestos, polychlorinated biphenyls, radioactive materials and radon gas. Grantee's obligations pursuant to this Section 11 shall survive the close of escrow and recordation of the Grant Deed.

**12. SEVERABILITY.**

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force without being impaired or invalidated in any way.

**13. GOVERNING LAW.**

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**14. PUBLIC PURPOSE.**

Grantee requires the Property, which is not now appropriated to a public use, for the Project, and Grantee can acquire the Property through the exercise of the power of eminent domain. Grantor is compelled to sell, and Grantee is compelled to acquire the Property.

Both Grantor and Grantee recognize the expense, time, effort and risk to both Grantor and Grantee in resolving a dispute over compensation for the Property by eminent domain litigation; and, the compensation set forth herein is in compromise and settlement, in lieu of such litigation.

**15. GRANTEE AND EXECUTION.**

Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and Grantee to enter into this Agreement and perform all of its obligations hereunder.

**15. ENTIRE AGREEMENT.**

This Agreement represents the full and complete understanding of the parties with respect to the Property and the Project. Any prior or contemporaneous oral or written agreements by and between the parties or their agents and representatives with respect to the Property or the Project are revoked and extinguished by this Agreement.

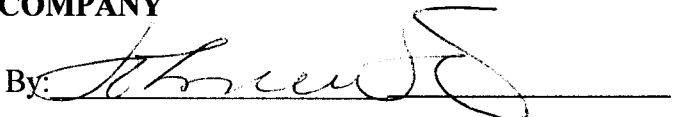
**ALL AGREEMENTS FOR PURCHASE OF PROPERTY ARE CONTINGENT UPON THE APPROVAL OF THE BOARD OF SUPERVISORS.**

**IN WITNESS WHEREOF, the parties have executed this Agreement on this**

\_\_\_\_\_ date of \_\_\_\_\_, 200\_.

**Grantor:**  
**COTTONWOOD FRESNO HOLDING, LLC**  
**A DELAWARE LIMITED LIABILITY**  
**COMPANY**

Date: January 9, 2008

By: 

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

GRANTEE

COUNTY OF TULARE

By: \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST: Jean Rousseau  
County Administrative Officer/  
Clerk of the Board of Supervisors

By \_\_\_\_\_  
Deputy Clerk

Approved as to Form  
County Counsel

By *Clara O. R. P.*  
Deputy

Dated *1-22-08*