

**AGREEMENT FOR ACQUISITION OF
RIGHT-OF-WAY
(JERRY’S L.L.C. – PORTER AVENUE BOND PROJECT)**

THIS AGREEMENT is made and entered into this _____ day of September, 2020, by and between the City of Norman, a municipal corporation (hereinafter “City”), and Jerry’s L.L.C., a limited liability company (hereinafter “Owner”) with reference to the following:

WHEREAS, the City is in the process of constructing a project known as the Porter Avenue and Acres Street Intersection 2019 Bond Project (“Project”); and

WHEREAS, in connection with the Project, it is necessary for the City to acquire certain property owned by Owner; and

WHEREAS, the City acknowledges that this Agreement and all actions to be taken by the parties, including but not limited to the vacation of right-of-way contemplated herein, are not intended to result in adverse impacts on surrounding properties, traffic, stormwater, or other similar considerations and are pursued for the purpose of improving the general health, safety, and welfare of the City and its residents.

WHEREAS, this Agreement sets forth the terms for the City’s acquisition of, and provision of consideration for this acquisition of property, as well as the terms of Owner’s decision to convey the property, and all alleged damages related thereto; and

WHEREAS, the parties positions conflict regarding the underlying damages claim, and this Agreement is entered as a means of potential resolution, where neither party waives any legal claim or position regarding the same.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, and as reflected in the attached exhibits, the parties hereby agree as follows:

1. **The Easements.** Owner has executed and delivered conveyances of permanent right-of-way, temporary construction and driveway, and utility easements for Parcels 1 and 2 of the Project, the legal descriptions for which are attached collectively hereto as Exhibit A (“Easements”). The Easements shall be presented to the City Council for the City of Norman (“City Council”) for consideration and acceptance as a companion item to approval of this Agreement. Owner’s conveyance of the Easements is expressly conditioned upon City Council’s acceptance and the City’s execution of this Agreement.
2. **Consideration for Easements.** The City shall, upon acceptance of the Easements and this Agreement, and any other companion agenda items by City Council, deliver the following consideration for the acquisition of the Easements and all alleged damages occasioned thereby, as further set forth:

- a. **Monetary Consideration.** City shall pay Owner **ONE HUNDRED AND FIVE THOUSAND THREE HUNDRED FIFTY-THREE AND NO/100 DOLLARS** (\$105,353.00). Of this Amount, **FIFTY-FOUR THOUSAND FOUR HUNDRED TWENTY-FIVE AND NO/100 DOLLARS** (\$54,425.00) is attributable to acquisition costs and the remaining **FIFTY THOUSAND NINE HUNDRED TWENTY-EIGHT AND NO/100 DOLLARS** (\$50,928.00) is attributable to Owners' alleged damages claims; and
 - b. **Other Consideration.** Additionally, the City shall construct upon existing City right-of-way directly adjacent to Parcel 2 the improvements to the dimensions and specifications depicted in Exhibit B hereto, which shall include no less than thirteen (13) parking spots, three paved access points in the locations depicted, paved driveway between the thirteen parking spots, and demolition of an area outside of the right-of-way on Owner's property to be determined by Owner, not to exceed 130 feet in length along the Porter Avenue frontage and no more than 5 feet in depth, for Owner's future landscaping plans (collectively the "ROW Improvements") as part of the Project. The ROW Improvements will be completed at the City's sole cost and expense, and it shall be the sole responsibility of the City to completely design, engineer, construct, finish, paint, obtain all permits, inspections, or permissions, and ensure any necessary compliance with existing and applicable laws, as required for the construction of the ROW Improvements. The ROW Improvements shall be a "turnkey" completed project that will not require any additional work, cost, expense, or City approval on behalf of Owner to finalize and use the ROW Improvements. Upon completion of construction of the ROW Improvements, the parties will initiate the ROW Closure/Vacation Proceedings set forth in Paragraph 4 herein.
3. **Construction in Phases.** Construction of the Project shall be conducted in at least two phases, and shall proceed as rapidly as is reasonable and prudent under the circumstances. The City shall endeavor to complete the ROW Improvements as expeditiously as is practicable during the Project. Upon the City contractor's provision of a timeline or schedule for construction, the City shall immediately contact Owner to discuss the same and, in good faith, both parties shall endeavor to reach specific agreements as to the manner in which to proceed with construction that will avoid disruption to Owner's business, where possible. The City shall at all times during construction of the Project provide reasonably acceptable ingress and egress to the business conducted on Parcels 1 and 2, including the parking lot, main entrance, and drive-through, such that Owner's customers shall have the ability to patronize Owner's establishment at all times during business hours. The City shall provide no less than 48-hours' notice where it becomes aware of situations affecting ingress and egress on Owner's property, and shall further contact Owner and engage in good faith discussions to reach solutions, as necessary, regarding the same.
4. **ROW Closure/Vacation Proceedings.** Upon completion of the ROW Improvements, the parties will cooperate in submitting an application, at the City's sole cost and

expense, to close/vacate a portion of the same public right-of-way, as described and set forth in Exhibit C, to City Council for consideration. This application shall include a joint request by the City and Owner to close the right-of-way depicted in Exhibit C as a part of the overall Project by the City. Upon an approval by City Council to close the right-of-way depicted in Exhibit C, Owner may institute an action in District Court to vacate the right-of-way in accordance with the terms of this Agreement, and City shall offer no objection to Owner's claims in such an action, whereupon title to the vacated property shall vest in Owner according to applicable Oklahoma law. As part of the District Court action, Owner shall request that its ownership interest in any vacated right-of-way be granted subject to the reservation or grant of public utility easements that are consistent with those depicted in Exhibit D. The City understands and acknowledges that the Owner considers ultimate vacation of this right-of-way as material, and will consider this agreement null and void in the event that the right-of-way is not ultimately closed/vacated by the City, and the Parties may reach alternative agreements or pursue legal rights as to the compensation owing to Owner, if any, in such case.

5. **ROW Improvements as Legal Non-Conforming.** Upon completion of the ROW/Vacation Proceedings described in Paragraph 4, all ROW Improvements upon property in which Owner, or Owner's successors in interest, heirs, or assigns, then has a vested legal ownership interest shall, to the extent not then in compliance with the Norman City Code, including the Zoning Ordinance, be considered and treated as "legal non-conforming" for the purposes of the Norman City Code, including the Zoning Ordinance. Notwithstanding these provisions, Owner shall not be subject to any City approvals or regulations on the sole basis of the existence of the ROW Improvements on the Property or the "legal non-conforming" status of the ROW Improvements on the Property. Additionally, the ROW Improvements shall not surrender "legal non-conforming" status as the result of improvements to the Property that are implemented entirely outside of the ROW Improvement boundaries depicted on Exhibit C. Furthermore, the issuance of building permits or certificates of occupancy for the Property, or improvements thereon, shall not be delayed or refused solely due to the ROW Improvements or the "legal non-conforming" status thereof.
6. **Signage.** Upon conclusion of the ROW Closure/Vacation Proceedings described in Paragraph 4 herein, "Dead End" or "No Through Street" signs will be posted by the City, which will cooperate with Owner in the placement of the signage, in order to discourage any through traffic.
7. **Encroachment of Private Signage.** The parties agree that Owner shall prepare and submit an application, the fee for which shall be at the City's sole cost and expense, for a Consent Agreement and Covenant allowing the sign currently existing upon Parcel 2. Owner shall not be denied the ability carry out future repairs, replacements, and/or improvements to the sign that would otherwise have been allowed despite the sign's encroachment onto City right-of-way, so long as the degree of encroachment is not increased. The City shall support said application as consistent with and as an implementation of this Agreement and the Project. The parties shall also bring this Consent Agreement and Covenant allowing the sign's encroachment for consideration by City Council as a companion item to this Agreement. Owner's conveyance of the

Easements and decision to enter this Agreement is expressly subject to City Council's acceptance of the Consent Agreement and Covenant.

8. **Covenant by Owner.** Owner hereby represents, promises, and covenants that it is vested with the entirety of the legal ownership interest in Parcels 1 and 2 and is legally capable of carrying out the obligations of, and has a legal right to the benefits flowing from, the terms of this Agreement.
9. **Release by Owner.** In further exchange for the Consideration by the City as set forth herein, and with the exception of any action to enforce the terms of this Agreement, including where the ROW closure/vacation referenced in Paragraph 4 does not occur, Owner hereby agrees to fully and finally release City from any and all damages relating to any claims, in law or equity, known or unknown, they could have stated with respect to the matters resolved by this Agreement.
10. **Advice of Counsel.** The parties represent that they have or could have been fully advised by independent legal counsel with respect to the legal effect of the terms of this Agreement and hereby execute the same with full legal knowledge of the terms, conditions, and covenants herein.
11. **Capacity for Agreement.** The parties hereby covenant and represent that its signatory party(ies) are vested with the authority to legally bind each party to the terms of this Agreement.
12. **Entire Agreement.** This document represents the entire agreement between the parties with respect to the matters addressed herein. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties concerning the subject matter of this Agreement are now merged herein. Except as may otherwise be provided herein, the terms of this Agreement are independent and severable. In the event any term or provision is determined to be unenforceable by a court of competent jurisdiction, the remaining terms and provisions shall continue to be of full force and binding effect. This Agreement shall not be amended except through a written instrument signed by the parties.
13. **Assignability.** This agreement shall not be assigned, except by written agreement of the other party.
14. **Attorney Fees and Costs.** Unless otherwise specifically stated elsewhere in this Agreement, each party agrees that it is responsible for its own attorney fees and costs relating in any way to the Easements, the Project, the ROW Improvements, and this Agreement. In any action filed to enforce the terms of this Agreement, the prevailing party shall be entitled to recovery of all attorneys' fees, costs, and expenses incurred in such action.
15. **Survival of Terms.** The terms and conditions of this Agreement will survive the execution and delivery of the conveyances or other rights and interests created by this Agreement.

16. **Land Use.** As otherwise permitted by this Agreement, the land use rights and restrictions outlined in this Agreement run with the land and shall be binding on the City, Owner, and their respective successors in interest.

17. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original for the purposes of this Agreement.

THIS AGREEMENT is effective the date and time first above written.


CITY OF NORMAN, OKLAHOMA,
A municipal corporation

Mayor Breea Clark

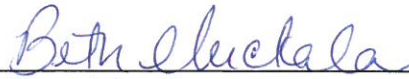
ATTEST:

City Clerk

JERRY'S L.L.C.

By: 
Nina Shuman, Manager

APPROVED as to form and legality this 15 day of September, 2020.


Office of the City Attorney