

**AGREEMENT FOR PURCHASE AND SALE OF PROPERTY
AND ESCROW INSTRUCTIONS
Kings River Pipeline Project**

CITY OF FRESNO
City Clerk's Office (Original)

EUGENE G. VANG AND APRIL PATHAO VANG HUSBAND & WIFE, AS JOINT TENANTS, hereinafter called the "Seller," without regard to number or gender, hereby offers to sell to the CITY OF FRESNO, a municipal corporation, hereinafter called the "City," the hereinafter described property is being purchased for an easement on the following terms and conditions:

1. All that real property which is the subject of this Agreement, and which is hereinafter for convenience referred to as the "subject property," is presently in fee simple title to that certain parcel of land situated in the City of Fresno, County of Fresno, State of California, more particularly described as Assessors' Parcel Number _____ with a street address of _____

Further the "subject property," to be acquired as an easement consists of 2,500.3 square feet and 6,687.3 square feet of Temporary Construction Easement and is depicted on deed and made part of this agreement.

2. The purchase price for the subject property shall be the sum of TEN THOUSAND FOUR HUNDRED AND 00/100 DOLLARS (\$10,400.00) as just compensation therefor,

3. Sellers acknowledge that the City has the power to acquire the subject property for public purposes by eminent domain. If title does not pass to the City within the time provided by this Agreement, the City may begin eminent domain proceedings to acquire such possession or title. The parties agree and stipulate that the net sum payable to Sellers hereunder shall be conclusively deemed to be the total just compensation payable in such proceedings, and this Agreement may be filed with the court as stipulation upon which judgment may be entered in the eminent domain proceeding as to the just compensation to be paid to Sellers. Sellers waive all other defenses in said proceeding.

4. It is agreed and confirmed by the City and the Seller that notwithstanding other provisions in this Agreement, the right of possession and use of the subject property by the City, including the right to remove and dispose

of improvements within the subject property shall commence on the close of escrow controlling this transaction or November 5, 2015, whichever occurs first.

5. Seller represents and warrants that it has the authority to make the offer herein made, and that it holds fee title to said real property and can convey the subject property free and clear of all liens, encumbrances, and restrictions of record upon review and approval of an updated title report.

6. The sale shall be completed through an escrow to be opened at Placer Title Company, 7643 North Ingram Avenue #101, FRESNO CA 93711. Phone number is 559-261-2910. Escrow Number is 2110-473. Darryl Evans is the escrow officer. Said escrow shall be opened upon the following terms and conditions, and the Sellers and City by their signature to this Agreement make this paragraph their escrow instructions:

- a. The City shall deposit the sums specified in Paragraphs 2 of this Agreement and the closing costs in escrow upon receipt of a demand and statement from said title company therefore.
- b. Payment of said sums, less Seller's cost to clear title, if any, may be made to Sellers only when escrow holder possesses and is in a position to deliver to the City a fully executed and acknowledged and recorded grant deed to the subject property and when said escrow holder stands ready to issue to the City a standard title insurance policy guaranteeing a title to said property in the City free and clear of all liens, encumbrances, and restrictions of record, except for: The City may require a partial subordination in order to obtain title insurance before close of escrow.
- c. It is understood that Sellers shall be responsible for the payment of all taxes, penalties, redemptions, and costs allocable to the subject property. It is further Seller's responsibility to apply to the County Tax Collector for any refund or decrease in taxes which may be granted.
- d. The escrow fee, cost of policy of title insurance, recording fees (if any), and all other closing costs shall be paid by the City. Sellers

will pay any cost to convey the title to the subject property in the condition described in 6.b above.

- e. Disbursements of the purchase price to be in the amounts, at the times, and in all respects in accordance with the terms and conditions and subject to the limitations of this Agreement.

7. Miscellaneous Provisions:

- a. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provision of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
- b. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement any rights and duties hereunder shall be in Fresno, California.
- c. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.
- d. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability or any one provision in this Agreement shall not affect the other provisions.
- e. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties

and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

- f. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.
- g. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment.
- h. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- i. Exhibits and Attachments. Each Exhibit and Attachment referenced herein is by such reference incorporated into and made a part of this Agreement for all purposes.
- j. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the City and the Sellers.

8. Environmental Indemnity Seller shall indemnify, hold harmless, and defend the Buyer, its officers, agents, employees, and volunteers from any liability, loss, fines, penalties, forfeitures, claims, expenses, and costs, whether incurred by the Seller, Buyer, or any other third party, arising directly or indirectly from the release, presence or disposal of any hazardous substances or materials (as now or hereafter defined in any law, regulation, or rule) in, on, or about the Property on or before Closing. This indemnity shall include, without limitation, any claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), or any other federal, state or local law whether statutory or common law, ordinance, or regulation. Costs or losses covered will include, without limitation, consultants, engineering, investigator fees, clean up or disposal costs and attorneys' fees, and damages. Upon written notice from the Buyer, the Seller, at Seller's sole cost and expense, shall immediately assume the defense of any claims, suit or action brought against the City by any public body, individual, partnership, corporation or other legal entity, relating to any matter covered by this paragraph. Seller's obligations under this indemnity shall survive the close of escrow and the recording of the grant deed.

9. It is understood and agreed that as a condition precedent hereto, this Agreement shall have no force and effect until approved by the Council for the City of Fresno. This Agreement is to remain open for one hundred and twenty (120 days) from the date hereof, and that upon its duly authorized execution within said time by the City, this Agreement shall become a contract for the purchase and sale of subject property binding upon Sellers and City, their heirs, executors, administrators, successors in interest, and assigns.

10. City or its agent, contractors or subcontractors shall be required to provide temporary fencing along the south line of temporary construction easement area.

11. City or its agent, contractors or subcontractors shall be responsible for the replacement of drive approach with same like and kind if damaged during construction.

This Agreement is executed by the City of Fresno by and through the Assistant Public Works Director or his designee of said City pursuant to authority granted by the Council of the City of Fresno on October 30, 2014, Resolution No. 2014-176

SELLERS:

EUGENE G. VANG AND APRIL PATHAO VANG, HUSBAND & WIFE, AS JOINT TENANTS

RECOMMENDED FOR APPROVAL:

BY: Cathy Rodriguez
Cathy Rodriguez
Senior Real Estate Agent
Date 9/3/15

BY: Craig L. Hansen
Craig L. Hansen
Supervising Real Estate Agent
Date 9/4/2015

SELLER'S SIGNATURE:

BY: Eugene G. Vang
Eugene G. Vang
Date 9.3.15

BY: April P. Vang
April Pathao Vang
Date 9.3.15

CITY OF FRESNO

Date 9.25.15
Scott Mozier, Director
Department of Public Works

Address of Sellers:

Address of City:
City of Fresno
Public Works Department
2600 Fresno Street, Room 4019
Fresno, CA 93721-3623

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By Raj Singh Badheshia 9.25.15
Deputy, RAJ SINGH BADHESHIA

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By Yvonne Spence 10-5-2015
Deputy