

Sellers: Fausel
APN: 099-010-023, -24
and 046-022-001
Project#: 77135
Escrow#: P-345715,
P-345538 & P-345745

EASEMENT ACQUISITION AGREEMENT FOR PUBLIC PURPOSES

This Agreement ("Agreement") is made by and between THE COUNTY OF EL DORADO, a political subdivision of the State of California ("County"), and David W. Fausel and Deanna M. Fausel as Trustees Under Declaration of Trust dated February 24, 1997 referred to herein as ("Sellers"), with reference to the following facts:

RECITALS

- A. Sellers own that certain real property located in an unincorporated area of El Dorado County, California, a legal description of which is attached hereto, as Exhibit A (the "Property").
- B. County desires to purchase an interest in the Property as Permanent Roadway Easements, as described and depicted in Exhibits B and G and the exhibits thereto; Permanent Slope and Drainage Easements, as described and depicted in Exhibits C and H, and the exhibits thereto; Permanent Public Utility Easements (waterline), as described and depicted in Exhibits D and J, and the exhibits thereto; a Permanent Public Utility Easement (AT&T line), as described and depicted in Exhibits E and K, and the exhibits thereto and Temporary Construction Easements as described and depicted in Exhibits F and I, and the exhibits thereto, all of which are attached hereto and referred to hereinafter as "the Easements," on the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties hereto agree as follows:

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AGREEMENT

1. ACQUISITION

Sellers hereby agree to sell to County, and County, upon approval by Board of Supervisors, hereby agrees to acquire from Sellers, the Easements, as described and depicted in the attached Exhibits B, C, D, E, F, G, H, I, J and K, and the exhibits thereto, which are attached hereto and hereby incorporated by reference and made a part hereof. The Temporary Construction Easement is for a period of 24 months from the date of full execution of this Agreement. Construction is anticipated to take 12 months.

2. JUST COMPENSATION

The just compensation for the Easements is in the amount of \$9,968.51 for the Roadway Easements; \$7,301.68 for the Slope and Drainage Easements; \$171.58 for the Public Utility Easements (waterline); \$84.00 for the Public Utility Easement (AT&T) and \$5,097.22 for the Temporary Construction Easements. In addition, \$8,500 to be paid for loss of trees and a small shed for a total of \$31,122.69, rounded to \$31,200.00 (Thirty-One Thousand, Two Hundred dollars, exactly)

3. ESCROW

The acquisition of the Easements shall be consummated by means of Escrow No. P-345745 for APN 046-022-001; P-345715 for APN 099-010-023 and P-345538 for APN 099-010-024 which has been opened at Placer Title Company ("Escrow Holder"). This Agreement shall, to the extent possible, act as escrow instructions. The parties shall execute all further escrow instructions required by Escrow Holder. All such further escrow instructions, however, shall be consistent with this Agreement, which shall control. The

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"Close of Escrow" is defined to be the recordation of the Easements. Sellers and County agree to deposit into escrow all instruments, documents, and writings identified or reasonably required to close escrow. The escrow must be closed no later than August 31, 2020 unless the closing date is extended by mutual agreement of the parties pursuant to the terms of this Agreement.

4. ESCROW AND OTHER FEES

County shall pay:

- A. The Escrow Holder's fees; and
- B. Recording fees, if applicable; and
- C. The premium for the policy of title insurance, if applicable; and
- D. Documentary transfer tax, if any; and
- E. All costs of executing and delivering the Easements; and
- F. All costs of any partial reconveyances of deeds of trust, if any.

5. TITLE

Sellers shall, by Grant of Easements, grant to County the Easements, free and clear of title defects, liens, and encumbrances that would render the Easements unsuitable for their intended purposes, as outlined herein.

6. AGREEMENT DECLARING RESTRICTIVE COVENANTS (ADRC)

Sellers acknowledge that County will use federal/state/local funds for the acquisition of the land rights for this Project. County has entered into a Master Agreement, Administering Agency – State Agreement for Federal Aid Projects, Agreement No. 03-5925F15, effective October 18, 2016. County has agreed to comply with the terms and conditions of that

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Agreement, which include compliance with all Fair Employment Practices and with all Nondiscrimination Assurances as are contained in said Master Agreement, including the addition of certain covenants as contained in the Easement Deeds being conveyed by Sellers, and as shown in Exhibits B, C, D, E, F, G, H, I, J, K and the exhibits thereto, attached hereto and incorporated by reference herein.

7. WARRANTIES

Sellers warrant that:

- A. Sellers own the Properties free and clear of all liens, licenses, claims, encumbrances, easements, and encroachments on the Property from adjacent properties, encroachments by improvements on the Property onto adjacent properties, and rights of way of any nature, not disclosed by the public record.
- B. Sellers have no knowledge of any pending litigation involving the Property.
- C. Sellers have no knowledge of any violations of, or notices concerning defects or noncompliance with, any applicable code statute, regulation, or judicial order pertaining to the Property.
- D. ~~All warranties, covenants, and other obligations described in this Agreement section~~ and elsewhere in this Agreement shall survive delivery of the Easements.

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8. MORTGAGES, DEEDS OF TRUST

Any or all monies payable under this Agreement, up to and including the total amount of unpaid principal and interest on notes secured by mortgages or deeds of trust, if any, and all other amounts due and payable in accordance with the terms and conditions of said trust deeds or mortgages shall, upon demands be made payable to the mortgagees or beneficiaries to furnish Seller with good and sufficient receipt showing said monies credited against the indebtedness secured by said mortgages or deeds of trust.

9. POSSESSION

It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this Agreement, the right to possession and use of the Easements by the County or County's contractors or authorized agents, for the purpose of performing activities related to and incidental to the construction of improvements for the Hank's Exchange Bridge at Squaw Hollow Creek, CIP #77135, inclusive of the right to remove and dispose of any existing improvements, shall commence upon the last date of execution of this Agreement by Sellers and County. The amount of the just compensation shown in Section 2 herein ~~includes, but is not limited to, full payment for such possession and use, including~~ damages, if any, from said date.

10. WAIVER OF AND RELEASE OF CLAIMS

This Agreement is full consideration for all claims and damage that Sellers may have relating to the public project for which the Easements are conveyed and purchased, and Sellers hereby waive any and all claims of Sellers relating to said project that may exist on the date of this Agreement.

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11. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

12. REAL ESTATE BROKER

Sellers have not employed a broker or sales agent in connection with the sale of the Easements, and Sellers shall indemnify, defend and hold the County free and harmless from any action or claim arising out of a claimed agreement by Sellers to pay any commission or other compensation to any broker or sales agent in connection with this transaction.

13. ITEMS TO BE DELIVERED AT CLOSE OF ESCROW

- A. Sellers shall execute and deliver to Escrow Holder the Easements prior to the Close of Escrow, for delivery to the County at Close of Escrow.
- B. County shall deliver to Escrow Holder prior to the Close of Escrow, for delivery or disbursement at Close of Escrow, funds in an amount equal to those shown in Section 2, together with County's Certificates of Acceptance to be attached to and recorded with the Easements.

C. Escrow Holder shall:

- (i) Record the Easement Deeds for the Easements described and depicted in Exhibits B, C, D, E, F, G, H, I, J, and K and the exhibits thereto, together with County's Certificates of Acceptance.
- (ii) Deliver the just compensation to Sellers.

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14. TIME IS OF THE ESSENCE

Time is of the essence to this Agreement. This Agreement may not be extended, modified, altered, or changed except in writing, signed by County and Sellers.

15. BEST EFFORTS

County and Sellers shall act in good faith and use their best efforts after the effective date hereof to ensure that their respective obligations hereunder are fully and punctually performed. County and Sellers shall perform any further acts and execute and deliver any other documents or instruments that may be reasonably necessary to carry out the provisions of this Agreement.

16. NOTICES

All communications and notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given on the earlier of the date when actually delivered to Sellers or County by the other or three (3) days after being deposited in the United States mail, postage prepaid, and addressed as follows, unless and until either of such parties notifies the other in accordance with this paragraph of a change of address:

SELLERS: David and Deanna Fausel
4881 Hank's Exchange Rd.
Placerville, CA 95667

COUNTY: County of El Dorado
Board of Supervisors
Attention: Clerk of the Board
330 Fair Lane
Placerville, CA 95667

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**COPY TO: County of El Dorado
Department of Transportation**
Attn: ROW Unit
2850 Fairlane Court
Placerville, CA 95667

17. BINDING EFFECT

This Agreement shall be binding on and inure to the benefit of the parties to this Agreement, their heirs, personal representatives, successors, and assigns except as otherwise provided in this Agreement.

18. GOVERNING LAW

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

19. HEADINGS

The headings of the articles and sections of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and shall not be used in its construction.

20. WAIVER

~~The waiver by any party to this Agreement of a breach of any provision of this Agreement~~
shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

21. ATTORNEY'S FEES

In any action or proceeding at law or in equity brought to enforce any provision of this Agreement, the prevailing party shall be entitled to all reasonable attorney's fees, costs, and expenses incurred in said action or proceeding.

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22. LEASE WARRANTY PROVISION

Sellers warrant that there are no oral or written leases on all or any portion of the Property exceeding a period of one month.

23. CONSTRUCTION CONTRACT WORK

County or County's contractors or authorized agents shall, at the time of construction, perform the following construction work on the Sellers' remaining property:

- A. County or County's contractor or authorized agent will remove the existing mailboxes at the driveway entrance and repair/reconstruct and/or replace, where applicable, and relocate to suitable US Post Office approved location. Reconstruction and/or replacement of mailboxes will be of like materials and workmanship.
- B. Fencing replaced with new, like-kind fence composed of field fencing below with barbed-wire at top.
- C. Upon completion of the project, to the extent reasonable, County or County's contractor or authorized agent will return easement areas to their original, ~~natural condition as they were prior to the commencement of the project.~~
- D. County or County's contractor or authorized agent will coordinate with Sellers to install temporary 4-strand barbed wire fencing, sufficient to keep livestock adequately contained prior to construction. Upon construction completion, County or County's contractor or authorized agent will remove the temporary fencing. (See Exhibit 'AA').

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- E. Fencing at slope and drainage easement to be at top of slope with a gate and padlock to be installed and a key made available to necessary County personnel and Sellers. (See Exhibit 'AA')
- F. County's contractor or authorized agent to install a conduit, six (6) inches in diameter under roadway. (See Exhibit 'AA')
- G. County or County's contractor or authorized agent will conform and pave the driveway to the limits shown on the attached exhibit to meet the new roadway elevation/s. (See Exhibit 'AA')
- H. Southernmost temporary construction easement to be reserved for vehicular parking only and boundary to be delineated with silt fencing.
- I. All trees, 20 (twenty) inches or larger in diameter, as shown on the Tree Exhibit (previously provided to seller), shall be cut to 16 (sixteen) foot lengths and left on Seller's property at location to be determined between Seller and contractor.
- J. Existing bridge to remain in place. Maintenance, repair, and liability associated with said bridge shall be sole responsibility of Seller in perpetuity.
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All work done under this Agreement shall conform to all applicable building, fire and sanitary laws, ordinances, and regulations relating to such work, and shall be done in a good and workmanlike manner. All structures, improvements or other facilities, when removed and relocated, or reconstructed by County, shall be left in as good a condition as found. Sellers understand and agree that after completion of the work described, said facilities, except utility facilities, will be considered Sellers' sole property and Sellers will be responsible for its maintenance and repair.

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24. PERMISSION TO ENTER FOR CONSTRUCTION PURPOSES

Permission is hereby granted to County, the County's contractor or its authorized agent to enter Sellers' Property, (Assessor's Parcel Numbers 099-010-023, 099-010-024 and 046-022-001) where necessary, to perform the work as described in Section 23 of this Agreement.

25. EFFECTIVE DATE

This Agreement shall be subject to the approval of the County's Board of Supervisors after due notice and in accordance with the provisions of applicable law.

26. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof. No amendment, supplement, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby.

27. AUTHORIZED SIGNATURES

The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

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SELLERS: David W. and Deanna M. Fausel, Trustees under Declaration of Trust

dated February 24, 1997

Date: 10/17/19

By: David W. Fausel
David W. Fausel, Trustee

Date: 10-17-19

By: Deanna M. Fausel
Deanna M. Fausel, Trustee

COUNTY OF EL DORADO:

Date: _____

By: _____
Board of Supervisors
Sue Novasel, Chair

ATTEST:

Clerk of the Board of Supervisors

By: _____
Kim Dawson, Deputy Clerk