

Grantor: City of Stockton, a municipal corporation

Project: Delta Flood Emergency Preparedness,  
Response, and Recovery  
 Parcel No.: EDF-44 (West Weber Avenue)

## RIGHT OF WAY CONTRACT

Document No. EDF-44 in the form of a Quitclaim Deed covering that property particularly described in the above instrument has been executed and delivered to Wesley M. Dote, Senior Right of Way Agent, for the State of California, Department of Water Resources.

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1.
  - a. The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said document and shall relieve State of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.
  - b. State requires Parcel No. EDF-44 for the construction of a material transfer facility, a public use for which State may exercise the power of eminent domain. Grantor is compelled to sell, and State is compelled to acquire said Parcel(s).

Both Grantor and State recognize the expense, time, effort, and risk to both Grantor and State in determining the compensation for said Parcel(s) by eminent domain litigation; and the compensation set forth herein for said Parcel(s) is in compromise and settlement in lieu of such litigation.
2. State shall:
  - a. Pay the sum of \$70,400 for the property described in said document to the following title company: Fidelity National Title Company, for the account of Grantor, Escrow No. FSSE-0101500745-PA, conditioned upon the property vesting in the State of California free and clear of all liens, leases, encumbrances, easements, (recorded and/or unrecorded), assessments, and taxes, except:
    - (1) Taxes for the tax year in which this escrow closes shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code, if unpaid at the close of escrow.
    - (2) Covenants, conditions, restrictions and reservations of record, or contained in the above-referenced document.
    - (3) Easements or rights of way over said land for public or quasi-public utility or public purposes, if any.
  - b. Pay all expenses incidental to and necessarily incurred for the conveyance of the real property to the State, including but not limited to recording fees, title insurance charges, reconveyance fees, trustee's fees, forwarding fees and prepayment penalties, limited to one percent of the compensation due under this transaction.
  - c. Have the authority to deduct and pay from the amount shown in paragraph 2.a. above, any or all monies payable under this agreement to discharge any obligations which are liens upon the property, including but not limited to those arising from judgments, assessments, delinquent taxes for other than the tax year referred to in paragraph 2.a.(1), or debts secured by deeds of trust or mortgages, except those items listed in paragraph 2.a. hereof, and/or to defray any other incidental costs other than those specified in paragraph 2.b. hereof to be borne by the State.
3. Pursuant to Section 1263.025 of the Civil Code of Procedure, you are entitled to obtain an independent appraisal and to be reimbursed for the actual reasonable cost of the appraisal up to \$5,000 if certain conditions are met. For further information on the requirements for reimbursement, contact Wesley M. Dote, Senior Right of Way Agent.

4. Title to said property shall pass immediately upon close of escrow. The issuance of any escrow instructions shall be the sole responsibility of State.
5. Grantor warrants that there are no oral or written leases on all or any portion of the property exceeding a period of one month, and Grantor further agrees to hold State harmless and reimburse State for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of Grantor for a period exceeding one month, except as may be otherwise provided herein.
6. The undersigned Grantor hereby agrees and consents to the dismissal of any eminent domain action in the Superior Court wherein the herein described land is included and also waives any and all claims to any money that may now be on deposit in said action.
7. To the best of Grantor's knowledge and after reasonable inquiry, Grantor represents and warrants the following:

During the 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 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.

There is no pending claim, lawsuit, agency proceeding, or any administrative challenge concerning the presence or use of hazardous substances on the property.

Grantor has not used the property for any industrial operations that use hazardous substances. Grantor is not aware of any such prior use of the property.

Grantor has not installed any underground storage tanks, aboveground storage tanks, barrels, sumps, impoundments or other containers used to contain hazardous substances on any part of the property. Grantor is not aware of any such prior installations.

For the purposes of this paragraph, the term "hazardous substances" shall mean any substance which at any time shall be listed as "hazardous" or "toxic" in the regulations implementing the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC §§6901, et seq.), or other federal or State law, or any other substance, chemical, material or waste product whose presence, nature or quality is potentially injurious to the public health, safety, welfare, the environment or the property. The term "reasonable inquiry" shall mean a thorough examination of the property and all records of the property, and any examination that Grantor was legally obligated to conduct as a result of any judicial or administrative order, or federal or State law.

The acquisition price of the property being acquired reflects the fair market value of the property without the presence of hazardous substances. If the property being acquired is found to be contaminated by a hazardous substance which may require remediation under federal or State law, State may elect to recover its clean-up costs from those who caused or contributed to the contamination.

The foregoing representations and warranties shall survive the close of escrow and shall remain in full force and effect for the duration of this easement and shall accrue for the benefit of State and its successors and assigns.

8. States escrow instructions and offer to purchase are contingent upon City's clearing the public access easements and abandoning the portion of Weber Avenue known as DWR Parcel No. EDF-44.

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN SHALL BE RECOGNIZED.

IN WITNESS WHEREOF, the parties have executed this contract.

GRANTOR(S): City of Stockton, a municipal corporation

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title

DEPARTMENT OF WATER RESOURCES

APPROVAL RECOMMENDED:

APPROVED:

\_\_\_\_\_  
Wesley M. Dote, Senior Right of Way Agent      Date

\_\_\_\_\_  
Paul Farris, Chief  
Real Estate Branch  
Division of Engineering

\_\_\_\_\_  
Linus Paulus, Chief      Date  
Acquisition and Appraisal Section

Date: \_\_\_\_\_