

RIGHT OF WAY CONTRACT -- STATE HIGHWAY

RW 8-3 (Rev. 6/95)

Page 1 of 5

_____, California

_____, 2014

District	County	Route	Post Mile	Exp. Auth.
4	CC	80	3.8-5.3	WO #4170 / OA0811

(Use SAME date as DIRECTOR's signature date)

GRANTOR: Cestmir Hertus and Mary Catherine McGinley, TRUSTEES OF THE Cestmir Hertus and Mary Catherine McGinley 1999 Recoverable Trust

Document No. 63743 in the form of a Grant Deed, covering the property particularly described in the above instrument has been executed and delivered to Debra L. Baker, Supervising Real Property Agent for Contra Costa County.

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 the County of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.
- (B) County requires said property described in Document No. 63743 for State highway purposes, a public use for which County has the authority to exercise the power of eminent domain. Grantor is compelled to sell, and County is compelled to acquire the property.

In both Grantor and County recognize the expense, time, effort, and risks to both parties in determining the compensation for the property by eminent domain litigation. The compensation set forth herein for the property is in compromise and settlement, in lieu of such litigation.

2. The County shall:

- (A) Pay the undersigned Grantor(s) the sum of Two Hundred Eighty Five Thousand and 00/100 and No/100 (\$285,000.00) (Purchase Price) for the property or interest conveyed by above document when title to said property vests in the County free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded) and taxes, except:
 - a. 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.

- b. Covenants, conditions, restrictions and reservations of record, or contained in the above-referenced document.
- c. Easements or rights of way over said land for public or quasi-public utility or public street purposes, if any.
- d. Other approved exceptions, if any.

Pay all escrow and recording fees incurred in this transaction and, if title insurance is desired by the County, the premium charged therefor.

- (B) Have the authority to deduct and pay from the amount shown in Clause 2(A) above, any amount necessary to satisfy any bond demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid nondelinquent assessments which have become a lien at the close of escrow.
- 3. Any or all moneys payable under this contract, 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 entitled thereunder; said mortgagees or beneficiaries to furnish Grantor with good and sufficient receipt showing said moneys credited against the indebtedness secured by said mortgages or deeds of trust.
 - 4. The Grantor shall retain possession of the property conveyed up to and including the date of recording of the deed conveying title to County upon compliance by the Grantor with the conditions of this contract. All rents and all security money collected by Grantor applicable to any period thereafter shall be paid to the County. Either party hereto collecting rents or security money to which the other party is entitled shall forthwith pay such amount to the other as is necessary to comply with the provision of this clause.
 - 5. By this Agreement, County and Grantor establish an escrow (Escrow) with North American Title Company, 4255 Hopyard Road, Suite 1, Pleasanton, CA 94588 their Escrow No.54606-1135074-12 (Title Company). If, for any reason, the named Title Company is unable to handle this transaction through the Close of Escrow, the County's Real Property Agent assigned to oversee this property acquisition will select an alternate title company to handle the transaction, and notify Grantor in writing of the identity and address of the successor title company and the new escrow number. Thereafter, the successor company will be the Title Company for purposes of this Agreement.
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Grantor hereby authorizes County to prepare escrow instructions and file escrow instructions with said Title Company, on behalf of Grantor, in accordance with this Agreement. This includes authorization of the Title Company to withhold pro rata taxes, liens, and assessments on the property conveyed.

- (A) On or before the Close of Escrow, Grantor will deliver to County or into Escrow with said Title Company the following documents:
 - a. The Grant Deed, in recordable form and properly executed on behalf of Grantor, conveying to County the property in fee simple absolute, subject only to the Approved Exceptions NONE as shown on the preliminary title report No. 54606-1135074-12 (UPDATE NO. 1), dated October 24, 2014.
 - b. Copies of any effective leases, rental agreements, or any other agreements, if any, which the County has agreed in writing are to remain in effect after County takes title.
 - (B) Prior to the Close of Escrow, County will deposit the Purchase Price into Escrow with said Title Company.
6. Escrow shall close upon the conveyance of the property to the County (Close of Escrow). On the closing date, the Title Company shall close Escrow as follows:
- (A) Record the Grant Deed, marked for return to the County care of Debra L. Baker, Supervising Real Property Agent for the County (which shall be deemed delivered to the County);
 - (B) Issue the Title Policy, if requested to do so by the County;
 - (C) Prorate taxes, assessments, rents and other charges as provided by this Agreement;
 - (D) Disburse to the Grantor the Purchase Price, less prorated amounts and charges to be paid by or on behalf of Grantor;
 - (E) Prepare and deliver to the County and to the Grantor one signed copy of the Title Company's closing statement showing all receipts and disbursements of the Escrow.

If the Title Company is unable to simultaneously perform all of the instructions set forth above, the Title Company shall notify the Grantor and the County and retain all funds and documents pending receipt of further instructions from the County.

RIGHT OF WAY CONTRACT -- STATE HIGHWAY

RW 8-3 (Rev. 6/95)

Page 4 of 5

7. 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 the Grantor further agrees to hold the County harmless and reimburse the County for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of Grantors for a period exceeding one month.
8. 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.
9. 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 or hazardous wastes 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 or hazardous wastes, on, from, or under the property which may have occurred prior to Grantor taking title to the property.

The Purchase 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 waste which requires mitigation under Federal or State law, the County may elect to recover its clean-up costs from those who caused or contributed to the contamination.

10. Grantor intends to use the proceeds under IRC Section 1031.

CH
/1033
meeting
DLB

RIGHT OF WAY CONTRACT -- STATE HIGHWAY

RW 8-3 (Rev. 6/95)

Page 5 of 5

In Witness Whereof, the Parties have executed this agreement the day and year first above written.

CONTRA COSTA COUNTY
Recommended to the Board of Supervisors
for Approval:

By 
Supervising Real Property Agent

By _____
Principal Real Property Agent

GRANTOR

By Mary Catherine McGinley
TRUSTEE, Mary Catherine McKinley
McGinley

By 
TRUSTEE, Cestmir Hertus
HERSTUS CH

Date: 1-18-2014

APPROVED:

By _____
Julia R. Bueren
Public Works Director

Date: _____
(Date of Approval)