

RIGHT OF WAY CONTRACT

RW 8-3 (Rev. 6/95)

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Portion of APN: 017-670-040
Project Name: Three Creeks Parkway
Restoration Project
Project No.: 7521-6D8176

Grantor: Carmel Estates Owners Association
Address: 607 Mission Fields Lane,
Brentwood, CA 94513

_____, California

_____, 2020

**RIGHT OF WAY CONTRACT BETWEEN CONTRA COSTA COUNTY
FLOOD CONTROL AND WATER CONSERVATION DISTRICT AND
GRANTOR NAMED HEREIN**

A document in the form of a Grant Deed, dated _____, 2020, covering the property particularly described in the above instrument (Property) has been executed and delivered to Jewel Lopez, Assistant Real Property Agent for Contra Costa County (County).

In consideration of covenants and conditions set forth in this Contract, effective _____, 2020, CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a flood control district organized under the laws of the State of California, ("District") and CARMEL ESTATES OWNERS ASSOCIATION, a California nonprofit mutual benefit corporation, ("Grantor") mutually agree as follows. The District and the Grantor are sometimes referred to herein together as the "Parties" and each as a "Party."

1. (A) The Parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for the property described in the Grant Deed ("Property"), and the performance of this Agreement shall relieve the District of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement to be located on the Property and other properties adjacent thereto.
- (B) District requires the Property described in the Grant Deed attached hereto and incorporated herein for reference for the construction of the Three Creeks Parkway Restoration Project ("Project"), a public use for which County has the authority to exercise the power of eminent domain. Grantor is compelled to sell and District is compelled to acquire the Property, under the terms of this Agreement.
2. The District shall:
 - (A) Pay the undersigned Grantor the sum of twenty nine thousand eight hundred and No/100 (\$29,800) (Purchase Price) for the Property when title to the Property vests in the District 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 exceptions approved in writing by the District, if any.
- (B) Pay all escrow and recording fees incurred in this transaction and, if title insurance is desired by the District, the premium charged therefor.
- (C) Have the authority to deduct and pay from the Purchase Price, 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 non-delinquent assessments, which have become a lien at the close of escrow.
- (D) Following the recording of the Grant Deed, the District will cause the Grant of Easement, substantially in the form attached as **Attachment 1**, to be recorded to grant the Grantor a permanent nonexclusive easement for the flowage of surface stormwater runoff over and upon the area more specifically described and depicted in Exhibits "A" and "B" of the Grant of Easement attached hereto and made a part hereof.
3. Any or all moneys payable under this contract, up to and including the total amount of unpaid principal and interest on note(s) secured by mortgage(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with the terms and conditions of said trust deed(s) or mortgage(s) shall, upon demand(s), be made payable to the mortgagee(s) or beneficiary(ies) entitled thereunder; said mortgagee(s) or beneficiary(ies) to furnish Grantor with good and sufficient receipt showing said moneys credited against the indebtedness secured by said mortgage(s) or deed(s) of trust.
4. The Grantor shall retain title to the Property conveyed up to and including the date of recording of the Grant Deed conveying title to District 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 District. If 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.
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5. By this Agreement, District and Grantor establish an escrow ("Escrow") with North American Title Company, their Escrow No. 54606-1547538-18 ("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 on behalf of the District 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.

Grantor hereby authorizes the District 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 District 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 District the Property in fee simple absolute, subject only to the Exceptions #7, #8, #11, and #12, as shown on the preliminary title report No. 54606-1547538-18, dated January 30, 2018 (the "Approved Exceptions").
- (B) On or before the Close of Escrow, the Grantor shall provide the District copies of any effective leases, rental agreements, or any other agreements, if any, which District has agreed in writing, are to remain in effect after District takes title to the Property.
- (C) Prior to the Close of Escrow, the District will deposit the Purchase Price into Escrow with the Title Company, and the District will deliver into Escrow with the Title Company the Grant of Easement, substantially in the form attached as **Attachment 1**, executed on behalf of the District.
6. Escrow shall close upon the conveyance of the Property to the District and the subsequent conveyance of the Easement to the Grantor ("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 District care of Jewel Lopez, Assistant Real Property Agent for the County (which shall be deemed delivery to the District);
- (B) Record the Grant of Easement, marked for return to Carmel Estates Owners Association care of Adrienne Bretao, Senior Vice President, Market Leader with Common Interest Management Services (which shall be deemed delivery to Grantor);
- (C) Issue the Title Policy, if requested to do so by the District;
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- (D) Prorate taxes, assessments, rents and other charges as provided by this Agreement;
- (E) Disburse to the Grantor the Purchase Price, less prorated amounts and charges to be paid by or on behalf of Grantor;
- (F) Prepare and deliver to the District and to the Grantor one signed copy of the Title Company's closing statement showing all receipts and disbursements of the Escrow, and one copy of each of the recorded Grant Deed and recorded Grant of Easement.

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 District and retain all funds and documents pending receipt of further instructions from the District.

7. Notwithstanding anything to the contrary herein, 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 District and Contra Costa County ("County") harmless and reimburse the District and County 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. The requirements of this Section 7 shall survive the Close of Escrow and shall not merge into the Grant Deed or the Grant of Easement.
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. Based on its actual knowledge, the Grantor hereby represents and warrants that, during the period of Grantor's ownership of the Property, there have been no known 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 actual 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 Grantor is selling the Property to District in its as-is, where-is, condition and without any representations, other than those above, regarding contamination or hazardous materials.

10. It is agreed and confirmed by the Parties hereto that, notwithstanding other provisions in this contract, the Grantor hereby grants to District the irrevocable right of possession and use of the Property, including the right to remove and dispose of improvements located thereon for purposes related to the Project, beginning January 1, 2020, and continuing until the Close of Escrow. The Purchase Price includes, but is not limited to, full payment for such possession and use, including damages, if any.
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- 11. The Grantor's representations and warranties set forth herein shall survive the Close of Escrow and shall not merge into the Grant Deed or Grant of Easement.

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

CONTRA COSTA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
Recommended to the Board of Supervisors
for Approval:

GRANTOR
CARMEL ESTATES OWNERS
ASSOCIATION

By _____
Jewel Lopez
Assistant Real Property Agent

By  _____
Fernando Huelga
Board Member

By _____
Jessica L. Dillingham
Principal Real Property Agent

By  _____
Veronica Miller
Board Member

APPROVED:

By  _____
Joseph Terry
Board Member

By _____
Brian M. Balbas
Chief Engineer

Date: 1-9-2020
(Date signed by Grantor)

Date: _____
(Date of Approval)

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

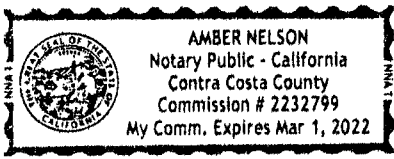
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Contra Costa }

On January 9, 2020 before me, Amber Nelson
Date Here Insert Name and Title of the Officer

personally appeared Veronica Wigton, Joseph Terry and
Name(s) of Signer(s)
Fernando Huelga

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Right of Way Contract
Document Date: January 9, 2020 Number of Pages: 5
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____
 Corporate Officer – Title(s): _____ Corporate Officer – Title(s): _____
 Partner – Limited General Partner – Limited General
 Individual Attorney in Fact Individual Attorney in Fact
 Trustee Guardian or Conservator Trustee Guardian or Conservator
 Other: _____ Other: _____
Signer is Representing: _____ Signer is Representing: _____