

RIGHT OF WAY CONTRACT -- STATE HIGHWAY

RW 8-3 (Rev. 6/95)

Page 1 of 7

Portions of APN: 003-100-012
Project Name: Byron Highway at Byer Road Safety Improvements
Project No.: 0062-6R4147
Federal Project No.: HSIPL 5928 (143)
Parcel Nos.: 4, 11

Grantors: Timothy S. Broderick, a single man, and James R. Boccio and Donna J. Boccio, Trustees of James R. Boccio and Donna J. Boccio Joint Living Trust dated March 28, 2003, and Krishna K.P. Moorthy and Subhashini K.P. Moorthy, husband and wife, as community property and Eric R. Norem, an unmarried man and Gary A. Norem, an unmarried man, and Cindi S. Brown, as Trustee of the Cindy Brown Exempt Trust created under the Franklin A. Maggiore and Patti Maggiore Family Trust dated October 3, 1996, and Timothy R. Maggiore, as Trustee of the Timothy Maggiore Exempt Trust created under the Franklin A. Maggiore and Patti Maggiore Family Trust dated October 3, 1996, and Cindi S. Brown and Martin A. Maggiore, as Co-Trustees of the Martin Maggiore Exempt Trust created under the Franklin A. Maggiore and Patti Maggiore Family Trust dated October 3, 1996, and Mark J. Maggiore, as Trustee of the Mark Maggiore Exempt Trust created under the Franklin A. Maggiore and Patti Maggiore Family Trust dated October 3, 1996,

_____, California

_____, 2021

Parcel No. Four, a Fee Interest, in the form of a Grant Deed and Parcel No. Eleven a Temporary Construction Easement covering the property described in the above instrument and Clause 4 below (Property) has been executed and delivered to Jann Edmunds, Senior 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) Grantors are the owners of Property identified as a portion of Assessor's Parcel Number 003-100-012.
- (C) Grantors are partners of Pacific Rim Orchards Partnership Agreement dated August 1, 2020 referred to herein as "Pacific Rim Orchards". Pacific Rim Orchards are the owners of 8 (eight) walnut trees identified in the Appraisal Report dated August 20, 2020 as Severance Damages.
- (D) County requires the Property for roadway 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.

2. The Purchase price for the Property is twenty thousand seven hundred thirty five Dollars (\$20,735.00) (the "Purchase Price"), which shall be allocated as follows:
 - 2.1. To Grantors: The County shall pay the Grantors the sum of twelve thousand seven hundred thirty five dollars and No/100 (\$12,735.00); and
 - 2.2. To Pacific Rim Orchards: The County shall pay Pacific Rim Orchards the sum of Eight thousand dollars and No/100 (\$8,000.00).
 - (A) County will pay the Purchase Price for the Property 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.
 - (B) Pay all escrow and recording fees incurred in this transaction and, if title insurance is desired by the County, the premium charged therefor.
 - (C) 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 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.
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4. Permission is hereby granted to the County, its contractors, and their authorized agents to enter upon Grantors land within that certain area described in Exhibit "A-1" attached hereto and made a part hereof, for the purposes of a Temporary Construction Easement (TCE) in connection with the Project.

The possession and use of the TCE, shall commence on July 1, 2021, and terminate on December 31, 2022. In case of unpredictable delays in construction, upon written notification, the terms of the TCE may be extended by an amendment to the Right of Way Contract. Grantors shall be compensated based on the fair market value at the time of extension. Payment shall be made to the Grantors for the extension prior to the expiration of the original period.

5. The Grantors shall retain title of the Property conveyed up to and including the date of recording of the deed conveying title to County upon compliance by the Grantors with the conditions of this contract. All rents and all security money collected by Grantors 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.
6. By this Agreement, County and Grantors establish an escrow (Escrow) with Chicago Title Company, 1200 Concord Avenue, Suite 400, Concord, CA 94520, their Escrow No. 36301736-363-LB-KD (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.

Grantors hereby authorize County to prepare escrow instructions and file escrow instructions with said Title Company, on behalf of Grantors, 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, Grantors 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 Grantors, conveying to County the property in fee simple absolute, subject only to the Approved Exceptions, 4, 6, 7, 8, 9, 13, and 14 as shown on the preliminary title report No. 36301736-363-LB-KD dated October 31, 2019.
 - b. Invoice, from Pacific Rim Orchards to Chicago Title Company in the sum of Eight thousand dollars and No/100 (\$8,000.00).
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- (B) Copies of any effective leases, rental agreements, or any other agreements, if any, which County has agreed in writing are to remain in effect after County takes title.
 - (C) Prior to the Close of Escrow, County will deposit the Purchase Price into Escrow with said Title Company.
7. 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 Jann Edmunds, Senior 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 Grantors 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 Grantors 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 Grantors and the County and retain all funds and documents pending receipt of further instructions from the County.

8. Grantors warrant that there are no oral or written leases other than Pacific Rim Orchards on all or any portion of the property exceeding a period of one month and the Grantors further agree 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.
9. The undersigned Grantors hereby agree and consent to the dismissal of any eminent domain action in the Superior Court wherein the herein described land is included and also waive any and all claims to any money that may now be on deposit in said action.
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10. The Grantors hereby represent and warrant that during the period of Grantors' 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. Grantors further represent and warrant that Grantors 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 Grantors 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.

11. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this contract, the right of possession and use of the Parcel 4 by the County, including the right to remove and dispose of improvements, shall commence on July 1, 2021, or upon recordation of the Grant Deed whichever occurs first.
12. County shall indemnify, defend and hold harmless the Grantor, his agent and employees, of and from any and all claims, demands, costs, damages, losses, actions, or judgements which Grantor may pay or be required to pay by reason of any damage, including injury or death to any person or property suffered by any person, firm or corporation as a result of the negligent exercise by County or by its agents or employees of the right herein granted to it.

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RIGHT OF WAY CONTRACT -- STATE HIGHWAY

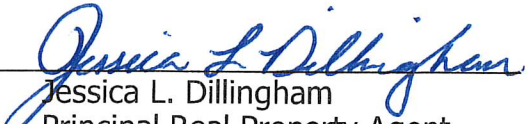
RW 8-3 (Rev. 6/95)

Page 6 of 7

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 
Jann Edmunds
Senior Real Property Agent

By 
Jessica L. Dillingham
Principal Real Property Agent


APPROVED:

By _____
Brian M. Balbas
Public Works Director

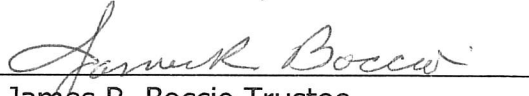
Date: _____
(Date of Approval)

SIGNED IN COUNTERPART

GRANTORS

By 
Timothy S. Broderick

James R. Boccio and Donna J. Boccio Joint Living
Trust dated March 28, 2003

By 
James R. Boccio Trustee

By 
Donna J. Boccio Trustee

By _____
Krishna K.P. Moorthy

By _____
Subhashini K.P. Moorthy

By _____
Eric R. Norem

By _____
Gary A. Norem

The Cindy Brown Exempt Trust created under the
Franklin A. Maggiore and Patti Maggiore Family
Trust dated October 3, 1996

By _____
Cindi S. Brown, Trustee

ADDITIONAL SIGNATURE PAGE TO FOLLOW

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Senior Real Property Agent

By _____
Timothy S. Broderick

James R. Boccio and Donna J. Boccio Joint Living
Trust dated March 28, 2003

By _____
Jessica L. Dillingham
Principal Real Property Agent

By _____
James R. Boccio Trustee

By _____
Donna J. Boccio, Trustee

APPROVED:

By *[Signature]*
Krishna K.P. Moorthy

By _____
Brian M. Balbas
Public Works Director

By *[Signature]*
Subhashini K.P. Moorthy

Date: _____
(Date of Approval)

By _____
Eric R. Norem

By _____
Gary A. Norem

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James R. Boccio Trustee

By _____
Donna J. Boccio, Trustee

APPROVED:

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Krishna K.P. Moorthy

By _____
Brian M. Balbas
Public Works Director

By _____
Subhashini K.P. Moorthy

Date: _____
(Date of Approval)

By Eric R. Norem
Eric R. Norem

By _____
Gary A. Norem

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Timothy S. Broderick

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Jessica L. Dillingham
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James R. Boccio Trustee

By _____
Donna J. Boccio, Trustee

APPROVED:

By _____
Krishna K.P. Moorthy

By _____
Brian M. Balbas
Public Works Director

By _____
Subhashini K.P. Moorthy

Date: _____
(Date of Approval)

By _____
Eric R. Norem

By _____

Gary A. Norem

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By _____
Timothy S. Broderick

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By _____
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Principal Real Property Agent

By _____
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Krishna K.P. Moorthy

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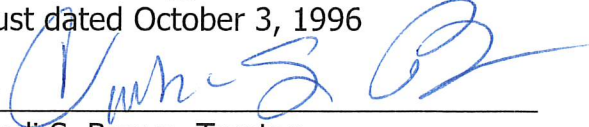
By _____
Subhashini K.P. Moorthy

Date: _____
(Date of Approval)

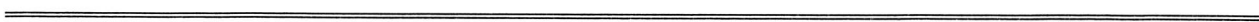
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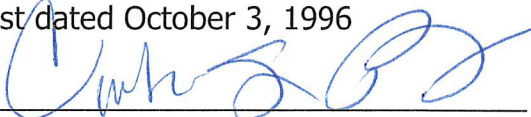


GRANTORS Cont'd.

The Timothy Maggiore Exempt Trust created under the Franklin A. Maggiore and Patti Maggiore Family Trust dated October 3, 1996


By 
Timothy R. Maggiore, Trustee

The Martin Maggiore Exempt Trust created under the Franklin A. Maggiore and Patti Maggiore Family Trust dated October 3, 1996

By 
Cindi S Brown, Co-Trustee

By 
Martin A. Maggiore, Co-Trustee

The Mark Maggiore Exempt Trust created under the Franklin A. Maggiore and Patti Maggiore Family Trust dated October 3, 1996

By 
Mark J. Maggiore, Trustee

Date: 1/21/2021
(Date signed by Grantors)

JE:

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Byron Highway (Road No. 9621)
Broderick, et.al.
Portion of APN 003-100-012
Drawing No. RW-9621-2020

EXHIBIT "A-1"

Real property in an unincorporated area of the County of Contra Costa, State of California, being a portion of the Northeast one-quarter of Section 4, Township 1 South, Range 3 East, Mount Diablo Meridian, also being a portion of the property described in the grant Deed to Timothy S. Broderick, et.al., recorded October 1, 2010 in Recorder's Series number 2010-0211374, Contra Costa County records, described as follows:

Parcel Eleven – Temporary Construction Easement

A temporary construction easement (TCE) for construction purposes and incidents thereto, upon, in, over and across the property described below for a period of eighteen months, to commence on July 1, 2021 and terminate on December 31, 2022.

Commencing at a standard street monument at the intersection of Byron Highway and Byer Road as shown on the Record of Survey map filed September 18, 2009 in Book 141 of Licensed Surveyors Maps at Page 40, said monument bears south 0°59'33" west distant 1791.97 feet from a standard street monument located at the intersection of Byron Highway and Hoffman Lane (the bearing of south 0°59'33" west being taken for purposes of this description); thence from said Point of Commencement, north 89°11'31" west, 14.00 feet to the westerly Right of Way line of Byron Highway; thence along said Right of Way line, north 00°59'33" east, 11.37 feet to the southerly line of said Broderick parcel (2010-0211374); thence along the southerly line of said parcel, north 89°16'45" west, 9.00 feet to the Point of Beginning; thence from said Point of Beginning, continuing along said southerly line north 89°16'45" west, 8.00 feet; thence leaving said line north 00°59'33" east, 19.24 feet; thence north 88°58'47" west, 7.00 feet; thence north 0°59'33" east, 130.00 feet; thence south 88°58'47" east, 10.00 feet; thence north 0°59'33" east, 149.19 feet to the northerly line of said parcel; thence along said northerly line, south 89°00'27" east, 5.00 feet; thence leaving said northerly line, south 0°59'33" west, 298.39 feet to the Point of Beginning.

Containing an area of 2,850 square feet of land, more or less.

This real property description has been prepared by me or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: James A. Stein

Licensed Land Surveyor
Contra Costa County Public Works Department

Date: 7/31/2020

