

RETURN TO:  
Real Estate Division  
Department of Public Works  
P.O. Box 4186, Civic Center Branch  
San Rafael, CA 94913-4186  
Attention: Eric Lueder

Project: Novato Creek Phase 8b  
Address: 1131 Court Road  
APN: 141-304-05

## RIGHT-OF-WAY CONTRACT

THIS CONTRACT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2005, by and between the MARIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a public district of the State of California, hereinafter referred to as "DISTRICT", and GERALD L. WALKUP, III and SANDRA M. LYMBURNER-WALKUP, hereinafter referred to as "OWNERS".

### W I T N E S S E T H:

#### RECITALS

- A. GERALD L. WALKUP and SANDRA M. LYMBURNER-WALKUP, are the owners of that certain real property situate in the City of Novato, County of Marin, State of California and commonly known as 1131 Court Road, and also referred to as Assessor Parcel Number 141-304-05.
- B. DISTRICT desires to acquire a permanent easement for flood control purposes and a temporary construction easement over a portion of OWNERS' property which are more particularly described on Exhibits "A" and "B," attached hereto and made a part hereof.
- C. OWNERS are willing to grant said easements and DISTRICT agrees to purchase said easements upon the terms and conditions herein below.

NOW, THEREFORE, IT IS MUTUALLY UNDERSTOOD AND AGREED as follows:

1. OWNERS shall convey the permanent flood control easement described in Exhibit "A" by depositing in an escrow designated by DISTRICT an Easement Deed suitable for recordation upon the following terms and conditions:

- a) DISTRICT shall deposit in escrow the sum of Twenty Seven Thousand Six Hundred Twenty Eight DOLLARS (\$27,628.00) payable contemporaneously with delivery of said deed as consideration for the easements and all improvements and landscaping therein.
- b) The easement shall be conveyed to DISTRICT free and clear of all liens and encumbrances, taxes and assessments, penalties and costs, leases and licenses (recorded or unrecorded), easements, rights-of-way, bonds and any and all restrictions of record other than items numbered 1 through 6 in Preliminary Report No. 1-225426-TJ supplemental dated as of March 10, 2004 issued by First American Title Company of Marin, attached hereto as Exhibit "C." Item No. 7 and 8 shall be cleared by subordination of the Deeds of Trust by the respective beneficiary.
- c) DISTRICT shall pay all escrow and recording fees incurred in this transaction including the cost of title insurance, if desired by DISTRICT. Evidence of title shall be a standard policy of title insurance issued by the title company that acts as escrow.

2. OWNERS shall convey the temporary construction easement (TCE) depicted on Exhibit "B" by their acceptance and signature of this agreement upon the following terms and conditions:

- a) District shall deposit into escrow the sum stated in paragraph 1.a) as consideration for the permanent easement and the TCE and all improvements and landscaping therein, excepting those improvements, if any, specifically noted herein that will remain or will be restored at the time construction is completed.
- b) OWNERS agree for the considerations herein to permit and allow DISTRICT, its agents and/or contractors to enter upon that portion of OWNERS' property, as depicted on Exhibit "B" on a temporary basis for a period of THIRTY (30) days for construction of the new boundary fencing. Execution of this agreement by the parties hereto shall serve as conveyance of the TCE's to the DISTRICT. Said TCE shall be for the construction of the boundary fencing. This permission becomes valid upon acceptance of this agreement by DISTRICT and will expire upon completion of the Project or in

no event later than thirty (30) days from commencement of construction of the fence on the property, whichever is sooner.

3. It is agreed and confirmed by the parties hereto that notwithstanding other provisions of this agreement, the right of possession and use of the property by the DISTRICT, including the right to remove and dispose of landscaping and improvements within the permanent easement area; and TCE, shall commence on the date that DISTRICT deposits the funds specified in paragraph 1.a) herein into escrow at First American Title Company of Marin, Escrow No. 1-225426, and the amount specified in paragraph 1.a) includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date.

4. OWNERS and DISTRICT understand and agree that the following issues will be addressed during construction of the project in the manner set forth herein:

- a) DISTRICT shall deliver notice of the construction start date with regard to OWNERS' property, not less than 24 hours in advance, in the manner as prescribed in paragraph 7, herein.
- b) DISTRICT's compensation to OWNERS includes payment for landscaping and trees. DISTRICT may at its sole discretion remove any or all of the trees and landscaping located within the permanent easement area.
- c) District's compensation to OWNERS includes the cost of moving the metal shed located within the permanent easement. OWNER shall make arrangements to move the shed prior to the commencement of construction. In the event that OWNER does not remove said shed from the permanent easement prior to construct, DISTRICT shall not be held liable for damages that may occur to the shed.
- d) As part of the project DISTRICT shall construct a new fence along the easement boundary. The new fence will include two (2) 2" x 12" wood planks at the base and four (4') of fence on top for a total fence height of approximately six (6') feet. OWNER has selected the following type of fencing to be installed above the 2" x 12" wood planking:  
**Standard Wood or Chain Link (circle one).**

5. The parties agree that placement of permanent improvements will not be permitted within the permanent easement area. Damages that may occur to DISTRICT's facilities as a result of OWNERS' actions will be the liability of the OWNERS.

6. If this property is secured by a mortgage or deed of trust, OWNER is responsible for payment of any demand under authority of said mortgage or deed of trust out of OWNERS' proceeds. Such amounts may include, but not be limited to, payments against principal, processing costs or fees, if any. Any demand in excess of the amount set forth in Paragraph 1 shall be the responsibility of OWNERS to resolve with the mortgage or deed of trust holder.

7. Any notice or demand which either the OWNERS or DISTRICT desire to serve upon the other may be served either personally or by depositing the notice or demand in the United States Post Office, postage prepaid, addressed as follows:

OWNERS: Gerald Walkup, III  
Sandra Lymburner-Walkup  
1131 Court Road  
Novato, CA 94947

DISTRICT: Marin County Flood Control and Water Conservation District  
3501 Civic Center Drive, Room 304  
San Rafael, CA 94903  
Attn: Tracy Clay

and

Real Estate Division  
Public Works Department  
County of Marin  
P.O. Box 4186  
San Rafael, CA 94913

8. The parties to this contract agree that the interests to be conveyed by OWNER do not consist of the residence of OWNERS. Therefore, OWNERS agree that they are not eligible to receive relocation assistance or benefits under the Uniform Relocation Assistance Act.

9. Real Estate commissions will not be paid by DISTRICT under this contract.

10. The parties have set forth the whole of their agreement herein. The performance of this agreement constitutes the entire consideration for the conveyance to DISTRICT of said interests in real property and shall relieve DISTRICT of all further obligations or claims on this account or on account of the location, grade or construction of the proposed public improvement. OWNERS, or OWNERS' representatives, have examined the draft plans showing the location and the proposed manner of construction of the DISTRICT improvement for which the property interests referred to herein are conveyed. Said draft plans have been reviewed by OWNERS or OWNERS' representatives with a representative of DISTRICT and OWNERS acknowledges that a full and complete explanation of the draft plans has been provided.

MARIN COUNTY FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT

\_\_\_\_\_  
Harold C. Brown, Jr.  
President, Board of Supervisors

Approved as to form.

ATTEST:

\_\_\_\_\_  
Chief Deputy County Counsel

\_\_\_\_\_  
Deputy Clerk

OWNER:

\_\_\_\_\_  
Gerald L. Walkup, III

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

\_\_\_\_\_  
Sandra M. Lymburner-Walkup

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