

## ATTACHMENT C

Project: Nacimiento Lake Drive Bridge Project  
Grantors: Don Keith and Susan J. Johnston  
Parcel No.: 424-091-019  
Parcel No.: 424-091-020

### AGREEMENT FOR PURCHASE OF REAL PROPERTY

This Agreement for Purchase of Real Property is between the County of Monterey, a political subdivision of the State of California (GRANTEE), and Don Keith Johnston and Susan J. Johnston, husband and wife as joint tenants (GRANTORS).

#### **The parties hereby agree as follows:**

##### **1. PROPERTY:**

GRANTORS agree to sell and GRANTEE agrees to purchase certain land described in Exhibits "A", "B" and "C" (attached and incorporated by this reference) being a portion of property in Monterey County located at 76942 Nacimiento Lake Drive, Bradley California, further identified as APN 424-091-019 and APN 424-091-020 for use by GRANTEE on the Nacimiento Lake Drive Bridge Project (the Project Property). GRANTORS agree to grant a Permanent Roadway Easement and Temporary Construction Easement (TCE) on the terms and conditions set forth in this Agreement. The form of the Permanent Easement Deed is as depicted in Exhibits "A", "B", and "C".

##### **2. DELIVERY OF DOCUMENTS:**

Concurrently with the execution of this Agreement, the Permanent Easement Deed shall be executed and delivered by GRANTORS to Tom Ganyon, Senior Right of Way Agent for Bender Rosenthal, Inc., acting for the GRANTEE for the purpose of placing the Permanent Easement Deed into escrow. Prior to placing the Permanent Easement into escrow, the purchase of the Project Property must be approved by the Monterey County Board of Supervisors. The Permanent Easement Deed shall not be delivered in the manner described solely for the convenience of the parties. GRANTEE shall not be deemed to have accepted delivery of the Permanent Easement Deed until such time as the Permanent Easement Deed is recorded in the Official Records of Monterey County, California in accordance with written escrow instructions delivered to escrow by GRANTEE and GRANTOR. The Temporary Construction Easement Deed will not be recorded.

This transaction shall be handled through an escrow with Chicago Title Company, 50 Winham Street, Salinas, California 93901. Within five (5) days after this Agreement is executed by GRANTEE and GRANTORS, GRANTORS shall complete, execute and deliver to Escrow Holder (i) an affidavit executed by GRANTORS certifying that GRANTORS are not "foreign persons" within the meaning of Internal Revenue Code Section 1445(f)(3), and meeting the requirements of Internal Revenue Code Section 1445(b)(2), (ii) an original Withholding Exemption Certificate (California Form 590 or

590-RE, as applicable), fully executed by Grantor as required by the California Taxation and Revenue Code, certifying that GRANTOR is not subject to tax withholding under applicable California law, and (iii) register as a new vendor at the Monterey County web site: <http://www.in.co.monterey.ca.us/cao/vendorinfo.htm>.

**3. PURCHASE PRICE AND TITLE:**

The purchase price for the Permanent Easement and Temporary Construction Easement is FIVE THOUSAND DOLLARS (\$5,000). GRANTEE shall deliver the purchase price into escrow promptly after delivery of the Permanent Roadway and Temporary Construction Easement Deeds into escrow. GRANTORS shall, by Grant of Easement, grant to GRANTEE the Project Property, free and clear of tax liens that would render the Easements unsuitable for their intended purposes.

Escrow agent shall deliver the purchase price to GRANTORS, less GRANTOR'S share of prorated taxes, if any, and any amounts necessary to place title in the condition required by this Agreement, when title to the Project Property vests in GRANTEE free and clear of all tax liens. Good, marketable title to the Permanent Easements, subject to the Permitted Exceptions (Monterey County will take title subject to all exceptions other than tax liens) showing the Permanent Easement interests to the Permanent Easements vested in Grantee, subject only to the Permitted Exceptions. GRANTEE shall pay all costs of escrow and recording fees incurred in this transaction.

**4. PERMANENT EASEMENT:**

Permission is hereby granted to the GRANTEE and its authorized agents and contractors to enter on GRANTOR'S land, within the Permanent Roadway and Permanent Utility Easement areas described in the documents delivered herewith, for rights of way for the purpose of road improvements and bridge construction.

**5. TEMPORARY CONSTRUCTION EASEMENT:**

A Temporary Construction Easement (TCE) is needed for the purpose of: providing access for construction. Said temporary easement shall be for a period of twenty-four (24) months from the date of the deposit of funds in the full amount of the purchase price into escrow by GRANTEE as documented by Chicago Title Company. Permission is hereby granted to GRANTEE or its authorized agent to enter upon GRANTOR'S land where necessary within that certain area identified as a Temporary Construction Easement (TCE) for the purpose described above.

GRANTOR'S agree that upon the expiration of the TCE, GRANTEE has the option to extend the term of the TCE as to the entire TCE area, or any portion thereof for a period of time up to 12-months. The rate for the extended use of the TCE area shall be compensation at a nominal amount of \$23.33 per month as determined in the appraisal of



the subject property. GRANTEE shall provide GRANTORS with notice of its intent to extend the term of the TCE at least thirty (30) days prior to the expiration of the TCE.

It is further agreed and understood between GRANTORS and GRANTEE that GRANTEE or GRANTEE'S contractor shall be authorized to enter GRANTOR'S remainder property for the purpose of removing and/or replacing any improvements noted in the appraisal of the property requiring replacement if applicable. Said improvements will be temporarily replaced during the period of construction to retain the nature of the property and will be replaced in "Like Kind" by GRANTEE'S contractor at no expense to GRANTORS following construction of the project.

**6. PRORATION OF TAXES:**

GRANTORS authorize GRANTEE to deduct from the purchase price any amount necessary to satisfy any delinquent taxes, together with penalties and interest thereon which are to be cleared from the title to the Project Property.

**7. WARRANTY OF STATUS OF TITLE:**

As a covenant that will survive the close of escrow, GRANTORS warrant that GRANTORS are the sole owner of the Property, free and clear of all liens, claims, encumbrances, easements, encroachments by improvements on the Project Property, or rights of way of any sort except those accepted by GRANTEE in writing (see Escrow Instructions controlling this transaction).

**8. EASEMENTS WARRANTY:**

GRANTORS warrant to GRANTEE that the title conveyed to GRANTEE will not be encumbered by any easements, licenses, or other rights not disclosed by the public record.

**9. LEASE WARRANTY:**

GRANTORS warrant that there are no oral or written leases on any portion of the Project Property and GRANTEE further agrees to hold harmless and reimburse GRANTEE for any and all losses or expenses resulting or arising from any lease on the Project Property.

**10. POSSESSION:**

GRANTEE shall have the right of possession and use of the Permanent Easement areas including the right to remove and dispose of improvements upon deposit of the full amount of the purchase price into escrow by GRANTEE as documented by Chicago Title Company.

**11. IMPROVEMENTS:**

Except as may be otherwise provided herein, the purchase price for the Project Property includes compensation for any and all improvements situated within the Permanent Easement areas (Project Property) as described in the appraisal of the Project Property.

**12. WARRANTY AGAINST MATERIAL DEFECTS:**

GRANTORS have no knowledge, actual or constructive, of any material defects in the Project Property.

**13. HAZARDOUS WASTE MATERIAL:**

GRANTORS hereby represent and warrant that during the period of GRANTOR'S ownership of the Project Property, there have been no disposals, releases, or threatened releases of hazardous substances on, from, or under the Project Property. GRANTORS further represent and warrant that GRANTORS have no knowledge of any disposal, release, or threatened release of hazardous substances, on, from, or under the Project Property which may have occurred prior to GRANTOR'S taking title to the Project Property.

The acquisition price of the Project Property being acquired in this transaction reflects the fair market value of the Project Property without the presence of contamination. If the Project Property being acquired is found to be contaminated by the presence of hazardous substances which requires mitigation under Federal or State law, the GRANTEE reserves the right to recover its clean-up costs from those who caused or contributed to the contamination or from the GRANTORS.

GRANTORS shall indemnify, defend with counsel acceptable to GRANTEE and hold harmless GRANTEE and GRANTEE'S officers, representatives, agents, and employees from and against any and all suits, damages, costs, fees, claims, demands, causes of action, losses, liabilities and expenses, including without limitation attorneys' fees, arising in conjunction with or as a result of GRANTOR'S breach of any of its representations or warranties set forth in this Section 13, which representations and warranties shall survive close of escrow and recordation of the Permanent Easement Deed.

As used in this Agreement the term "hazardous substances" means any and all chemicals, substances, wastes or materials which have been or are hereafter determined by any federal, state or local governmental GRANTEE to be capable of posing risk of injury to health or safety, including, without limitation, petroleum, asbestos, polychlorinated biphenyls, radioactive materials, and radon gas. GRANTOR'S obligations pursuant to this Section 13 shall survive the close of escrow and recordation of the Permanent Easement Deed.



**14. SEVERABILITY:**

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force without being impaired or invalidated in any way.

**15. GOVERNING LAW:**

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**16. PUBLIC PURPOSE:**

GRANTEE requires the Project Property for a public use, for the Project, and GRANTEE can acquire the Project Property through the exercise of the power of eminent domain. GRANTORS are compelled to sell, and GRANTEE is compelled to acquire the Project Property. Both GRANTORS and GRANTEE recognize the expense, time, effort and risk to both GRANTORS and GRANTEE in resolving a dispute over compensation for the Project Property by eminent domain litigation; and, the compensation set forth herein is in compromise and settlement, in lieu of such litigation.

**17. AUTHORITY AND EXECUTION:**

Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

**18. ENTIRE AGREEMENT:**

This Agreement represents the full and complete understanding of the parties with respect to the Project Property and the Project. Any prior or contemporaneous oral or written agreements by and between the parties or their agents and representatives with respect to the Project Property or the Project are revoked and extinguished by this Agreement.

**19. NOTICES:**

All notices and demands shall be given in writing either by personal service or by registered or certified mail, postage prepaid, and return receipt requested. Notice shall be considered given when mailed. Notices shall be addressed as shown below for each party.

**To Grantors:**

Don Keith and Susan J. Johnston  
P. O. Box 52  
Bradley, CA 93426

**To Grantee:**

County of Monterey  
Benny J. Young  
Interim Director of Public Works  
& Facilities  
168 W. Alisal Street 2<sup>nd</sup> Floor  
Salinas, CA 93905

**20. COUNTERPARTS:**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

**AGREEMENTS FOR PURCHASE OF PROJECT PROPERTY ARE  
CONTINGENT UPON THE APPROVAL OF THE COUNTY OF MONTEREY.**

**IN WITNESS WHEREOF, the parties have executed this Agreement the day and year written below.**

**GRANTORS**

**Don Keith Johnston and Susan J. Johnston, husband and wife as joint tenants**

By: Don Keith Johnston Date: 5/11/17  
Don Keith Johnston

By: Susan J. Johnston Date: 5/11/17  
Susan J. Johnston

**GRANTEE**

**County of Monterey**

By: \_\_\_\_\_  
Benny J. Young  
Interim Director of Public Works & Facilities

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

APPROVED AS TO FORM:  
County Counsel

By: Mary Grace Perry  
Mary Grace Perry  
Deputy County Counsel

Date: May 25, 2017