

BOS AGMT. NO. 18-028  
DOT AGMT. NO. 170052

**County of Mendocino**  
**Department of Transportation**

**ACQUISITION OF RIGHT OF WAY AGREEMENT**

THIS AGREEMENT made and entered on this 27<sup>th</sup> day of March 2018, by and between Constellation Brands U.S. Operations, Inc., a New York corporation, hereinafter referred to as "OWNER" and the COUNTY OF MENDOCINO, a political subdivision of the State of California, hereinafter referred to as "COUNTY."

WHEREAS, in conjunction with DOT Project No. A-1101, on CR 104, at approximately Milepost 0.97, hereinafter referred to as "PROJECT," plans for replacing the bridge over Ackerman Creek on North State Street, north of the city of Ukiah, situated at the above mentioned location, will involve and require acquisition, by COUNTY, of certain lands and rights affecting the real property of OWNER as follows:

- a) acquire in fee of 0.006 acres, (269 square feet), more or less, of certain lands of OWNER, and which is more particularly described in Exhibit "A-1" and as depicted as Parcel 1 on Exhibit "B" attached hereto and fully incorporated herein (The "Property").
- b) acquire non-exclusive easements for public utility purposes of 0.01 acres, (411 square feet), more or less, of certain lands of OWNER, and which is more particularly described in Exhibit "A-2" and as depicted as Parcels 2 and 3 on Exhibit "B" attached hereto and fully incorporated herein (collectively, the "Public Utility Easements").
- c) temporarily acquire a non-exclusive vegetation management easement of 0.57 acres, (24,930 square feet), more or less, of certain lands of OWNER, as identified and depicted as Parcel 4 on Exhibit "B" attached hereto and fully incorporated herein (the "Temporary Vegetation Management Easement").
- d) temporarily acquire a non-exclusive temporary construction easement of 1.13 acres, (49,080 square feet), more or less, over certain lands of OWNER, as identified and depicted as Parcel 5 on Exhibit "B" attached hereto and fully incorporated herein (the "Temporary Construction Easement").

NOW THEREFORE, in consideration of the covenants hereinafter set forth, the parties hereto agree as follows:

1. OWNER represents and warrants that they are owner in fee simple of the real property described in Exhibits "A-1" and "A-2", and as depicted on Exhibit "B", and of the real property identified and depicted as Temporary Vegetation Management Easement and Temporary Construction Easement on Exhibit "B" attached hereto, said property lying within the unincorporated area of the County of Mendocino, State of California.

2. OWNER agrees to sell to COUNTY the Property, as described in Exhibit "A-1" and depicted on Exhibit "B". The property, being a portion of Assessor's Parcel No. 169-242-12, is not a separate legal parcel and is not in compliance with the California Subdivision Map Act. COUNTY is a municipal corporation and exempt from compliance with the California Subdivision Map Act and local subdivision or platting laws or regulations. OWNER agrees to grant to COUNTY the non-exclusive Public Utility Easements, as described in Exhibit "A-2" and depicted on Exhibit "B". The Property and the Public Utility Easements shall be conveyed to COUNTY subject to (a) all title matters of record, (b) all applicable law, ordinances, rules and governmental regulations, (c) all matters which would be apparent from an inspection of the site, and (d) all matters which would be disclosed by a survey.
3. OWNER understands and agrees that any and all delinquent taxes shall be deducted from the compensation provided for herein and all current taxes are to be pro-rated and transferred as of the date of the recordation of the Grant Deed (the "Closing Date") for the herein described lands and rights set forth in the aforementioned Exhibits "A-1" and "A-2", and as depicted on Exhibit "B". Real estate taxes and assessments, if any, imposed by governmental authority that are not yet due and payable shall be prorated as of the Closing Date based upon the most recent ascertainable assessed values and tax rates, and the overall percentage of the applicable assessor's parcel reflected by the Property (0.029%, based on the Property being 0.006 acres and the applicable assessor parcel, 169-242-12, being 20.5 acres). OWNER shall receive a credit for any such taxes and assessments paid by OWNER and applicable to any period after the Closing Date.
4. COUNTY agrees to compensate OWNER in the total amount of Five Thousand Five Hundred Dollars (\$5,500.00) for those certain lands and rights as set forth herein and described in the aforesaid Exhibits "A-1" and "A-2" and as depicted on Exhibit "B", and for the use of those certain lands identified and depicted as Temporary Construction Easement and Temporary Vegetation Management Easement on Exhibit "B" and as described in Clauses 5 and 6 below. Upon execution of this Agreement and recordation of the Grant Deed, COUNTY shall pay said amount to OWNER; provided, however, that if PROJECT must be cancelled, no transfer of title shall occur, no Grant Deed will be recorded, and COUNTY shall have no obligation to compensate OWNER.
5. It is understood and agreed by and between the parties hereto that a portion of the amount payable under Clause 4 above is compensation in full for the actual possession and use of the Temporary Construction Easement area identified on Exhibit "B" attached hereto and incorporated herein by this reference. Said right to enter to be effective as of the PROJECT'S Right of Way Certification date for a period of twenty-four (24) months. In the case of unpredictable delays in construction, the term of this Temporary Construction Easement may be extended at the option of the COUNTY for another twenty four (24) month period, and shall be reappraised upon written notification from COUNTY to OWNER, and payment of current market value will be paid in advance for the two-year extension. This Temporary Construction Easement shall also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the parties. It is mutually understood that COUNTY shall leave all area of OWNERS' property affected by said Temporary Construction Easement in a neat and workmanlike condition upon completion of PROJECT. COUNTY shall cause any liens or encumbrances related to COUNTY'S use of the Temporary Construction Easement to be discharged prior to completion of the PROJECT.



6. It is understood and agreed by and between the parties hereto that a portion of the amount payable under Clause 4 above is compensation in full for the actual possession and use of the Temporary Vegetation Management Easement area identified on Exhibit "B" attached hereto and incorporated herein by this reference for a period of sixty (60) months. Said right to enter upon the lands identified as a Temporary Vegetation Management Easement area to be effective on the first term expiration date of the Temporary Construction Easement mentioned in Clause 5 above. This Temporary Vegetation Management Easement shall also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the parties. It is mutually understood that COUNTY shall leave all area of OWNERS' property affected by said Temporary Vegetation Management Easement in a neat and workmanlike condition upon expiration of the easement term. COUNTY shall cause any liens or encumbrances related to COUNTY'S use of the Temporary Vegetation Management Easement to be discharged prior to expiration of the easement term.
7. COUNTY will perform the following work under the terms of the PROJECT:
  - a. Restore, conform and pave, at no cost to OWNER, the private access road encroachment areas to the proposed PROJECT improvements. Upon completion of construction of said road approaches any area within the County right-of-way will be considered as a permitted encroachment on the County roadway and is to be maintained, repaired and operated as such by OWNERS in accordance with and subject to the laws of the State of California and the County of Mendocino and the rules and regulations of said County.
8. This transaction will be handled by Redwood Empire Title Company of Mendocino County, 405 South Orchard Avenue, Ukiah, CA 95482, through Escrow No. 20161061DN.
9. OWNER warrants that there are no oral or written leases on all or any portion of the Property exceeding a period of one month, and OWNER agrees to hold COUNTY harmless and reimburse COUNTY for any and all of the losses and expenses occasioned by reason of any lease of said Property held by any tenant of OWNER for a period of one month.
10. COUNTY agrees to release, hold harmless, and defend OWNERS from any and all claims of damage or injury due to the actions of COUNTY, its agents, employees, and/or contractors while constructing PROJECT and while making use of the Temporary Construction Easement and the Temporary Vegetation Management Easement.
11. The compensation set forth in Paragraph 4 of this Agreement comprises full compensation for the lands and rights as described in the aforesaid Exhibits "A-1" and "A-2" to be conveyed by OWNER to COUNTY and as depicted on Exhibit "B" attached hereto and fully incorporated herein.

THE PARTIES HERETO HAVE set forth the whole of their Agreement. The performance of this Agreement constitutes the entire consideration of said document and shall relieve COUNTY of all further claims on this account or on account of the location, grade, or construction of the proposed public improvements.

IN WITNESS WHEREOF, this Agreement has been executed.

OWNER:

CONSTELLATION BRANDS U.S.  
OPERATIONS, INC.

BY:

Jeffrey H. LaBarge  
Senior Vice President

DATE  
2/26/2018

RECOMMENDED FOR APPROVAL BY:

Howard N. Dashiell  
HOWARD N. DASHIELL  
Director of Transportation  
County of Mendocino

DATE  
2/28/18

**INSURANCE REVIEW:**

BY:

Carmel J. Angelo  
RISK MANAGEMENT

**FISCAL REVIEW**

Janette Ravn  
Deputy CEO/Fiscal

**EXECUTIVE REVIEW:**

APPROVAL RECOMMENDED

Janette Ravn

**CARMEL J. ANGELO**  
CHIEF EXECUTIVE OFFICER

I hereby certify that according to the provisions of Government Code sections 25103, delivery of this document has been made.

**CARMEL J ANGELO**  
Clerk of the Board

By:

Karla Van Hagen  
**DEPUTY**

MAR 28 2018

APPROVED AS TO FORM:

**KATHARINE L. ELLIOTT**  
County Counsel

Anna Livi  
Deputy  
DATE  
9/14/17

COUNTY OF MENDOCINO

BY:

Dan Hamburg  
DAN HAMBURG, Chair  
Board of Supervisors

DATE  
MAR 28 2018

ATTEST: CARMEL J. ANGELO  
Clerk of Said Board

BY:

Karla Van Hagen  
Deputy

DATE

MAR 28 2018

**NO OBLIGATIONS OTHER THAN THOSE SET FORTH HEREIN WILL BE  
RECOGNIZED.**

**SPACE BELOW FOR OFFICIAL USE:**



EXHIBIT "A-1"

A PORTION OF THE 20.46 ACRE PARCEL SHOWN ON THE RECORD OF SURVEY RECORDED ON MAY 7, 1991 IN MAP CASE 2, DRAWER 53, PAGE 11, OFFICIAL RECORDS OF MENDOCINO COUNTY, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL, THENCE ALONG THE WESTERLY LINE OF SAID PARCEL, SAID WESTERLY LINE ALSO BEING THE EASTERLY RIGHT OF WAY LINE OF NORTH STATE STREET (C.R. 104) AS SHOWN ON THE RECORD OF SURVEY RECORDED IN DRAWER 80, OF MAPS, PAGES 86 TO 93, OFFICIAL RECORDS OF MENDOCINO COUNTY, N10°08'54"E, 72.51 FEET; THENCE LEAVING SAID WESTERLY LINE S79°35'34"E, 3.87 FEET; THENCE S10°24'26"W, 72.53 FEET MORE OR LESS TO THE SOUTHERLY LINE OF SAID PARCEL; THENCE ALONG SAID SOUTHERLY LINE N79°16'46"W, 3.54 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

CONTAINING A TOTAL OF 269 SQUARE FEET, MORE OR LESS.

PTN. APN 169-242-12

BEARINGS ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983 (CCS83), ZONE 2, EPOCH DATE OF 1991.35.

THIS DESCRIPTION WAS PREPARED UNDER MY DIRECTION IN CONFORMANCE WITH SECTION 8726 OF THE BUSINESS AND PROFESSIONS CODE OF THE STATE OF CALIFORNIA.

 4/6/17  
JAMES A. THORNTON / DATE  
PLS L8926



**EXHIBIT "A-2"**

**PUBLIC UTILITY EASEMENT**

PORTIONS OF THE 20.46 ACRE PARCEL SHOWN ON THE RECORD OF SURVEY RECORDED ON MAY 7, 1991 IN MAP CASE 2, DRAWER 53, PAGE 11, OFFICIAL RECORDS OF MENDOCINO COUNTY, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**PARCEL 1**

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL, THENCE ALONG THE WESTERLY LINE OF SAID PARCEL, SAID WESTERLY LINE ALSO BEING THE EASTERLY RIGHT OF WAY LINE OF NORTH STATE STREET (C.R. 104) AS SHOWN ON THE RECORD OF SURVEY RECORDED IN DRAWER 80, OF MAPS, PAGES 86 TO 93, OFFICIAL RECORDS OF MENDOCINO COUNTY, N10°08'54"E, 54.17 FEET; THENCE LEAVING SAID RIGHT OF WAY LINE S79°35'34"E, 3.79 FEET TO THE POINT OF BEGINNING;  
THENCE S79°35'34"E, 14.00 FEET; THENCE S10°24'26"W, 12.50 FEET; THENCE N79°35'34"W, 14.00; THENCE N10°24'26"E, 12.50 FEET TO THE POINT OF BEGINNING.

CONTAINING 175 SQUARE FEET, MORE OR LESS.

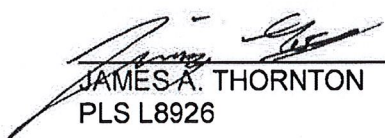
**PARCEL 2**

COMMENCING AT THE SOUTHWEST CORNER OF SAID 20.46 ACRE PARCEL, THENCE ALONG THE WESTERLY LINE OF SAID 20.46 ACRE PARCEL N10°08'54"E, 295.74 FEET TO THE POINT OF BEGINNING;  
THENCE ALONG SAID WESTERLY LINE N10°08'54"E, 12.50 FEET; THENCE LEAVING SAID WESTERLY LINE S79°35'34"E, 18.93 FEET; THENCE S10°24'26"W, 12.50 FEET; THENCE N79°35'34"W, 18.88 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

CONTAINING 236 SQUARE FEET, MORE OR LESS.

BEARINGS ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983 (CCS83), ZONE 2, EPOCH DATE OF 1991.35.

THIS DESCRIPTION WAS PREPARED UNDER MY DIRECTION IN CONFORMANCE WITH SECTION 8726 OF THE BUSINESS AND PROFESSIONS CODE OF THE STATE OF CALIFORNIA.

  
JAMES A. THORNTON  
PLS L8926

4/6/17  
DATE





