

RESOLUTION NO. 2017-125

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING THE CITY MANAGER TO EXECUTE AN EASEMENT AGREEMENT WITH SONOMA COUNTY WATER AGENCY AND RELATED ACTIONS

WHEREAS, the Residences at Five Creek ("Five Creek") project is located on a 15.29 acre site covered by the Stadium Area Master Plan ("SAMP"); and

WHEREAS, public improvements required as part of Five Creek include a new storm drain line and storm water outfall into Hinebaugh Creek; and

WHEREAS, review and approval from several outside agencies were required for the storm drain and outfall, which included review by the Sonoma County Water Agency ("SCWA"); and

WHEREAS, SCWA requires an easement be put in place for the portion of the outfall running through SCWA property as part of their approval process; and

WHEREAS, City and SCWA staff have reviewed and approved the easement agreement documents and improvement plan documents associated with the storm water outfall;

WHEREAS, the storm water outfall was captured in the initial Environmental Impact Report ("EIR") that was approved for the SAMP in 2008;

WHEREAS, a Mitigated Negative Declaration was approved by City Council on January 10, 2017 where the changes in the outfall construction were captured as part of several plan amendments;

WHEREAS, the proposed action will have no impact on the City's General Fund, because the cost of the easement appraisal and SCWA fees will be billed to the developer through the City's formal reimbursement agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rohnert Park that it does hereby approve the easement agreement with SCWA as shown in Exhibit A;

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to take all actions to effectuate the grant of the easement agreement by and on behalf of the City of Rohnert Park, including execution and recordation, if necessary, in substantially similar form to the easement and agreements attached hereto as Exhibit "A", and incorporated herein by this reference, subject to minor modifications by the City Manager and City Attorney.

BE IT FURTHER RESOLVED that the Finance Director is hereby authorized to take any and all actions necessary to record the transaction in accordance with generally accepted accounting principles ("GAAP").

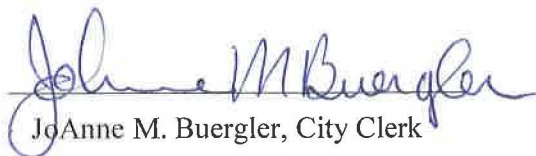
DULY AND REGULARLY ADOPTED this 24th day of October, 2017.

CITY OF ROHNERT PARK



Jake Mackenzie, Mayor

ATTEST:



JoAnne M. Buergler, City Clerk

Attachment: Exhibit A

AHANOTU: Aye BELFORTE: Aye CALLINAN: Aye STAFFORD: Aye MACKENZIE: Aye
AYES: (5) NOES: (0) ABSENT: (0) ABSTAIN: (0)

**RECORDED AT NO FEE PER
GOVERNMENT CODE § 6103
RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

City of Rohnert Park
Department of Public Works
600 Enterprise Dr.
Rohnert Park CA, 94928

Portion of APN: 143-040-017

EASEMENT AGREEMENT

This Easement Agreement ("Agreement") is made by and between the **Sonoma County Water Agency**, a body corporate and politic, organized and existing under and by virtue of the laws of the State of California (herein after referred to as the "Agency") and the **City of Rohnert Park**, a Municipal Corporation (herein after referred to as the "City").

RECITALS

WHEREAS, Agency is the owner of certain real property located within the City of Rohnert Park, County of Sonoma, State of California commonly known as the Hinebaugh Creek Channel, and being more particularly described as follows:

All that certain real property conveyed to the Sonoma County Water Agency by that certain Grant Deed recorded on October 15, 1965 in Book 2162, Page 777 Official Records of Sonoma County, California (herein after referred to as the "Agency Property").

WHEREAS, City wishes to obtain a permanent easement interest in portions of the Agency Property for the purpose of installation and maintenance of storm drain improvements required for the Residences at Five Creek Project (the "Project"), which property is particularly describe as follows:

That portion of the hereinabove described real property more particularly described in Exhibit "A" and shown for reference in Exhibit "A-1 attached hereto, and by this reference hereby made a part of this Agreement (hereinafter referred to as the "Easement Area").

NOW, THEREFORE, for good and valuable consideration, and in consideration of the mutual covenants, terms, conditions and restrictions contained herein, Agency and City covenant and agree as follows:

A G R E E M E N T

1. Grant of Non-Exclusive Easement. Agency hereby grants to City a non-exclusive easement over Easement Area of the nature, character and extent, and subject to the conditions, set forth in this Agreement.

2. Description of Easement over Agency Property. The easement granted over the Easement Area is a perpetual easement and right-of-way for the purpose of laying down, constructing, reconstructing, removing, replacing, repairing, maintaining, operating and using the Project, in accordance with improvement plans entitled: Residences at Five Creek Project dated, March 2017. Said easement shall exist in, under, along, and across the Easement Area and shall include the right, at all times to enter in, over and upon said Easement Area for all purposes described above in this paragraph; provided, however, that said use does not damage or unreasonably restrict Agency's full use of the Agency Property. Agency reserves the right to install, construct, operate, and maintain both its existing improvements and any future improvements on the Agency Property, so long as such future improvements do not unreasonably interfere with City's use of the Easement Area and the rights granted hereunder. This easement is granted on the condition that City's use of the easement does not damage or unreasonably restrict Agency's full use of existing Agency improvements. The grant of easement herein is subject and subordinate to the rights of Agency, and its successors and assigns, to use the Agency Property in the performance of its governmental and proprietary functions.

3. Term. The easement herein granted shall continue in perpetuity until termination of this Agreement.

4. Maintenance of Easement. City shall maintain all City improvements within the Easement Area at City's sole cost and expense. Any reconstruction or maintenance activities performed by City and related to the easement shall not unreasonably interfere with the Agency's continued use of the Agency's Property, including the Easement Area, for any purpose. City shall not materially alter or reconstruct the Project without first obtaining Agency's written approval of plans for such alteration or reconstruction, which shall not be unreasonably withheld, conditioned or delayed, provided such plans are consistent with the purpose of the easement granted herein and the Project. City shall promptly repair and restore to its original condition any of Agency's Property, including, but not limited to, the engineered channel and access road that may be damaged or destroyed in connection with City's use of the Easement Area.

5. Waste or Nuisance; Agency's Rights in Property. City shall not commit or suffer: (a) any waste or nuisance within the Easement Area; or (b) any action on the Easement Area in violation of any law or ordinance. City shall not undertake or permit any activity or use on the Easement Area that is inconsistent with the purpose of this Agreement, including, without limitation, the following activities: (a) constructing, reconstructing, replacing, repairing, or maintaining any building, structure, utilities, or other improvement other than as generally consistent with the Residences at Five Creek Project, dated, March 2017; (b) altering the surface or contour of the land in any manner not consistent with the Residences at Five Creek Project, dated, March 2017, including, but not limited to, excavating or removing soil, sand, gravel, rock, sod, trees, shrubs, plants or vegetation, without Agency's prior written approval, except as necessary to maintain and repair the Project in accordance with Paragraph 4; (c) degrading or eroding the soil or polluting any surface or sub-surface waters; (d) dumping, accumulating, or storing trash, ashes, garbage, waste, junk, non-operative vehicles, or other materials;

(e) damaging the integrity of the surface beyond normal wear and tear; (f) exploring for or developing and extracting minerals and hydrocarbons by any mining method, surface or otherwise; (g) parking any vehicle other than for maintenance and repair by the City; and (h) placing or leaving any personal property of City or City's tenants, other than is necessary for appropriate uses of the easement, such as signage.

6. Non-Liability of Agency; Indemnity. Agency and its officers, agents, and employees shall not be liable to City or any third party for any injury, loss, or damage arising out of or in connection with the use of the easement by City or its employees or contractors, granted herein. City agrees to defend, indemnify, hold harmless, and release Agency, and its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses that may be asserted by any person or entity, including City, relating to the laying down, constructing, reconstructing, removing, replacing, repairing, maintaining, operating and using the Project, or to the use of the easement granted herein by City or its employees or contractors, but excluding liability to the extent of the negligence or sole willful misconduct of Agency, its officers, agents or employees. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for the City or its agents under workers' compensation acts, disability benefit acts, or other employee benefit acts. City agrees to compensate Agency for any damage to Agency property as a result of the construction, operation, or maintenance of the Project. If future laws or regulations require a greater separation between the Project and any Agency improvements, City shall relocate the Project accordingly and be responsible for any costs associated with the relocation. The obligations of this Paragraph survive termination of the Agreement.

7. Enforcement. If through inspection or otherwise Agency determines that City is in violation of the provisions of this Agreement or that a violation is threatened, Agency shall give written notice to City of such violation and demand corrective action sufficient to cure the violation. If City fails to cure the violation within thirty (30) days after receipt of notice thereof from Agency, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Agency may bring an action to enforce the provisions of this Agreement, enjoin the violation, recover damages and enforcement costs for the violation, and require restoration of the easement to the condition that existed prior to the violation. If Agency reasonably determines that circumstances require immediate action to prevent or mitigate an imminent threat to public health or safety, Agency may pursue its remedies under this paragraph without waiting for the period for cure to expire, though Agency shall notify City as soon as possible, either prior to any action or immediately thereafter.

8. Enforcement Discretion. Enforcement of the provisions of this Agreement shall be at the discretion of the Parties, and any forbearance by a Party to exercise its rights under this Agreement, in the event of any breach of any provision of this Agreement by the other Party, shall not be deemed or construed to be a waiver by the Party of such provision or of any subsequent breach of the same or any other provision of this Agreement, or of any of the Party's rights under this Agreement. No delay or omission by a Party in the exercise of any right or remedy upon any breach by the other Party shall impair such right or remedy, or be construed as a waiver.

9. Access and Control. Nothing contained in this Agreement shall be construed as precluding Agency's right to grant access to third parties across the Easement Area, so long as any rights so granted are not inconsistent with the purpose of this easement or the rights granted to City herein.

10. Successors. This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective successors, heirs, assigns and transferees.

11. Amendment. If circumstances arise under which an amendment or modification of this Agreement would be appropriate, City and Agency shall be free to jointly amend this Agreement. Any such amendment shall be recorded in the Office of the Sonoma County Recorder.

12. Notices. Any notice, demand, request, approval, or other communication that either party desires or is required to be given under this Agreement shall be in writing and may be given by personal delivery or by mail. Notices, demands, requests, approvals, or other communications sent by mail should be addressed as follows:

Agency: Sonoma County Water Agency
Attention: General Manager
404 Aviation Boulevard
Santa Rosa, CA 95403

City: City of Rohnert Park
Department of Public Works
600 Enterprise Dr.
Rohnert Park Ca 94928

and when so addressed, shall be deemed given upon deposit in the United States Mail, registered or certified, return receipt requested, postage prepaid. In all other instances, notices, demands, requests, approvals, or other communications shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the persons to whom notices, demands, requests, approvals, or other communications are to be given by giving notice pursuant to this section.

13. Applicable Law and Forum. Interpretation and performance of this Agreement shall be governed by California law and any action to enforce the provisions of this Agreement, or the breach thereof, shall be brought and tried in the County of Sonoma.

14. No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create, and the parties do not intend to create, any rights in third parties.

15. Integration. This Agreement is the final and complete expression of the agreement between the parties and any and all prior or contemporaneous agreements written or oral are merged into this instrument.

16. Captions. The captions in this Agreement have been included solely for convenience of reference. They are not a part of this Agreement and shall have no effect upon its construction or interpretation.

17. Survival of Agreement. This Agreement, including all representations, warranties, covenants, agreements, releases and other obligations contained herein, shall survive the closing of this transaction and recordation of any deed or other document related hereto.

18. Title to Agency Property. It is understood that the City intends to perform its own title review and obtain title insurance for the easement rights to be acquired from the Agency. The Agency is authorized to grant and convey this easement, subject to any and all senior rights that may exist in and to the Agency Property.

IN WITNESS WHEREOF, Agency and City have executed this Agreement as set forth below.

SONOMA COUNTY WATER AGENCY:

Executed by the Sonoma County Water Agency this _____ day of _____, 2017, pursuant to authority granted by Agenda Item No. _____ dated _____, 2017:

Attest:

By: _____
By: _____
Shirlee Zane Clerk, Board of
Directors
Chair, Board of Directors

Reviewed as to Substance:

By: _____ Date: _____
General Manager

Approved as to Form:

By: _____ Date: _____
Deputy County Counsel

CITY OF ROHNERT PARK, a municipal corporation:

By: _____ Date: _____
City Manager

Resolution Number:

Approved as to Form:

Exhibit A to Resolution

By: _____
City Attorney

Date: _____

Exhibit A to Resolution

Exhibit "A"

Insert Legal Description from City

Exhibit A to Resolution
Exhibit "A-1"

Insert Plat of Legal Description

Exhibit A to Resolution

EXHIBIT "A"
LEGAL DESCRIPTION
EASEMENT AREA

Lying within the City of Rohnert Park, County of Sonoma, State of California and being a portion of the lands of Sonoma County Flood Control and Water Conservation District as recorded in Book 2162, Official Records, Page 777, Sonoma County Records said portion is more particularly described as follows:

BEGINNING at a point on the northerly line of said lands of Sonoma County Flood Control and Water Conservation District from which the southwest corner of Lot 1 as shown on Parcel Map No. 180 filed in Book 736 of Maps at Pages 30 through 32, Sonoma County Records, bears South 89°53'32" West 11.68 feet; thence along the northerly line of said lands of Sonoma County Flood Control and Water Conservation District, also being the southerly line of said Lot 1, South 89°53'32" West 11.68 feet to the southwest corner of said Lot 1; thence continuing along the northerly line of said lands of Sonoma County Flood Control and Water Conservation District, South 89°53'32" West 60.00 feet to the southeast corner Lot 28 as shown on that map entitled "Laguna Verde Industrial Subdivision" filed in Book 292 of Maps at Pages 26 through 28, Sonoma County Records; thence continuing along the northerly line of said lands of Sonoma County Flood Control and Water Conservation District, also being the southerly line of said Lot 28, South 89°53'32" West 28.93 feet; thence leaving said northerly line South 00°06'28" East 57.76 feet; thence North 89°53'32" East 15.00 feet; thence North 00°06'28" West 42.76 feet; thence North 89°53'32" East 53.66 feet; thence North 64°44'42" East 35.30 feet to the POINT OF BEGINNING.

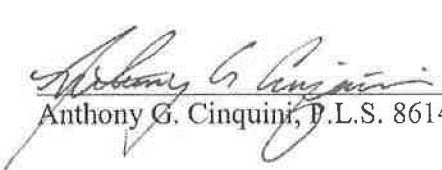
Containing 1,911 Square Feet more or less


Being a portion of APN 143-040-017

BASIS OF BEARING

Being South 89°34'00" East between found 2" brass disks stamped RCE 10578 in Monument Wells along the centerline of Business Park Drive as shown on that map entitled "Rohnert Park Business Park Subdivision" filed in for record in Book 375 of Maps, Pages 10 and 11, Sonoma County Records.

Prepared by Cinquini & Passarino, Inc.


Anthony G. Cinquini, P.L.S. 8614

 9-12-2017 Date

1360 North Dutton Avenue, Suite 150, Santa Rosa, CA 95401
Tel: (707) 542-6268 Fax: (707) 542-2106
www.cinquinipassarino.com
CPI No.: 7277-16

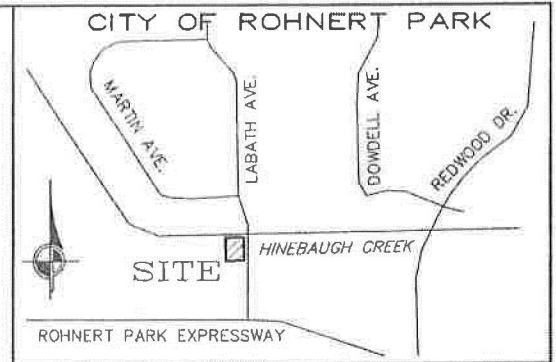
EXHIBIT 'A-1'

THIS DIAGRAM IS FOR GRAPHIC PURPOSES ONLY. ANY
ERRORS OR OMISSIONS SHALL NOT EFFECT THE LEGAL
DESCRIPTION.

LANDS OF
JACKSON-BEINING, LLC
APN 143-930-028
DN 2011-050678

LAGUNA VERDE
INDUSTRIAL SUBDIVISION
292 MAPS 26-28
S.C.R.
LOT 28

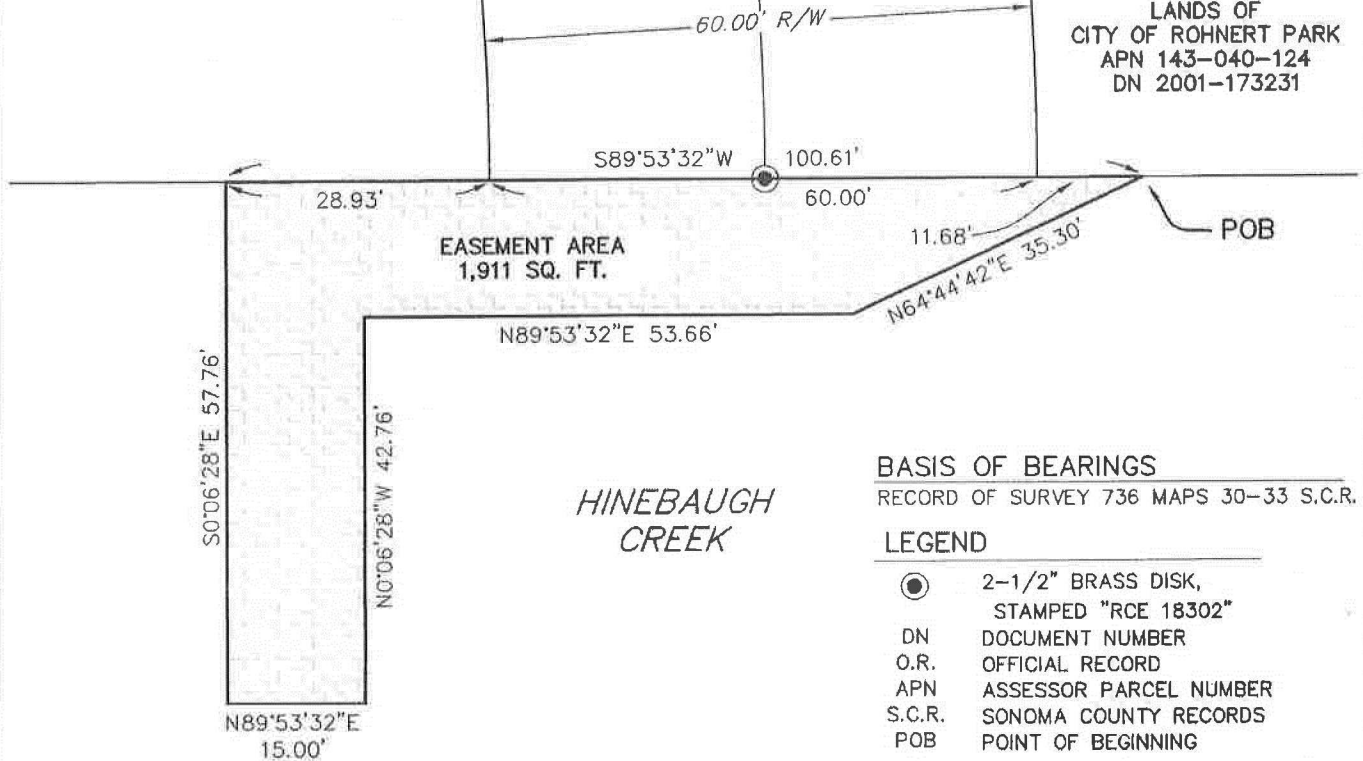
LABATH AVENUE



SITE MAP (NO SCALE)

PARCEL MAP NO. 180
736 MAPS 30-32
S.C.R.
LOT 1

LANDS OF
CITY OF ROHNERT PARK
APN 143-040-124
DN 2001-173231



BASIS OF BEARINGS

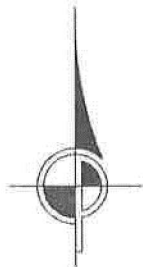
RECORD OF SURVEY 736 MAPS 30-33 S.C.R.

LEGEND

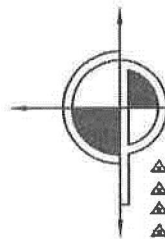
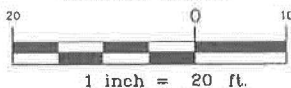
- 2-1/2" BRASS DISK,
STAMPED "RCE 18302"
- DN DOCUMENT NUMBER
- O.R. OFFICIAL RECORD
- APN ASSESSOR PARCEL NUMBER
- S.C.R. SONOMA COUNTY RECORDS
- POB POINT OF BEGINNING

□ = EASEMENT AREA

LANDS OF
SONOMA COUNTY FLOOD
CONTROL AND WATER
CONSERVATION
APN 143-040-017
DN 2162 O.R. 777



GRAPHIC SCALE



CINQUINI & PASSARINO, INC.
LAND SURVEYING

- ▲ BOUNDARY
- ▲ TOPOGRAPHIC
- ▲ CONSTRUCTION
- ▲ SUBDIVISIONS

1360 No. Dutton Ave.
Santa Rosa, Ca. 95401
Phone: (707) 542-6268
Fax: (707) 542-2106

WWW.CINQUINIPASSARINO.COM

JOB NAME: LOT 1-STADIUM LANDS

DRAWN BY: MD

CHECKED BY: AGC

DESCRIPTION: STORM DRAIN EASEMENT

SCALE: 1"=20'

DATE: 5/26/2017

JOB #: 7277-16

PAGE: 2 OF 2