

RESOLUTION NO. 2013-030

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK ACCEPTING GRANT OF EASEMENT AND RIGHT OF WAY FROM MARK N. RUDOLPH AS CHIEF FINANCIAL OFFICER OF AMY'S KITCHEN RESTAURANT HOLDINGS, LLC (APN 045-075-002)

WHEREAS, Mark N. Rudolph is Chief Financial Officer of Amy's Kitchen Restaurant Holdings, LLC for Property located along Wilfred Avenue (APN 045-075-002).

WHEREAS, the widening of Wilfred Avenue/Golf Course Drive West is called for in the City's general plan.

WHEREAS, the City of Rohnert Park entered into a Joint Exercise of Powers Agreement ("JEPA") with Sonoma County representatives, and the Federated Indians of Graton Rancheria ("Tribe") to facilitate the road widening of Wilfred Avenue (hereinafter Wilfred Avenue Improvement Project).

WHEREAS, the JEPA provides for the Tribe, on behalf of the City, to facilitate the City's acquisition of right of way necessary for the Wilfred Avenue Improvement Project via voluntary grants.

WHEREAS, the Tribe has negotiated the purchase of the Grant of Easement and Right of Way needed from Amy's Kitchen Restaurant Holdings, LLC.

WHEREAS, the Grant of Easement and Right of Way includes a certificate of acceptance.

WHEREAS, the City desires to accept the Grant of Easement and Right of Way consistent with the Project.

WHEREAS, the Wilfred Avenue Improvement Project was previously approved by the City pursuant to a Notice of Exemption on September 25, 2012. The City filed a notice of exemption with the County Clerk on September 26, 2012 who posted it that same day through October 29, 2012. The acquisition of a perpetual easement proposed herein was anticipated in the approval of the Wilfred Avenue Improvement Project and is a subsequent action toward implementing said project. Accepting the proposed Grant of Easement and Right of Way does not involve any substantial changes to the Project, nor would such acceptance cause new or more severe environmental impacts. For those reasons, neither the obligation to comply with CEQA nor is the statute of limitations on that prior action are re-triggered by this action toward implementing the project.

WHEREAS, this action is exempt from compliance with the provisions of Government Code 65402 because this action involves a real property acquisition for street alignment purposes and is minor in nature.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rohnert Park that it does hereby resolve, determine, find and order as follow:

Section 1. Acceptance of Grant of Easement and Right of Way. The City Council of the City of Rohnert Park hereby accepts the attached Grant of Easement and Right of Way, in substantially similar form as provided for in the attachment hereto subject to minor modification by the City Attorney, which is incorporated by this reference, from Mark N. Rudolph as Chief Financial Officer of Amy's Kitchen Restaurant Holdings, LLC for property located at 58 Wilfred Avenue also known as Assessor Parcel Number 045-075-002.

Section 2. Section 65402 Compliance. The acquisition of said property is exempt from compliance with the provisions of Government Code 65402 because this action involves a real property acquisition for street alignment purposes and is minor in nature.

Section 3. Mayoral Authorization. The Mayor of the City of Rohnert Park is hereby authorized and directed to execute the attached Grant of Easement and Right of Way, which includes a certificate of acceptance, in substantially similar form as provided for in the attachment hereto, which is incorporated by this reference, for and on behalf of the City of Rohnert Park.

Section 4. City Clerk Authorization. The City Clerk of the City of Rohnert Park is hereby authorized and directed to cause a certified copy of this resolution to be recorded with the Grant of Easement and Right of Way in the office of the Recorder of the Sonoma County, State of California for and on behalf of the City of Rohnert Park.

DULY AND REGULARLY ADOPTED this 26th day of February, 2013.



CITY OF ROHNERT PARK

Pam Stafford
Pam Stafford, Mayor

ATTEST:

JoAnne Buergler
JoAnne Buergler, City Clerk

Attachment A:

Grant of Easement and Right of Way with Exhibits (legal description and plat map)

AHANOTU: AYE BELFORTE: ABSENT MACKENZIE: AYE CALLINAN: AYE STAFFORD: AYE
AYES: (4) NOES: (0) ABSENT: (1) ABSTAIN: (0)

Attachment "A"

**Recording Requested by
and when Recorded, return to:**

Department of Engineering
City of Rohnert Park
City Hall
6750 Commerce Blvd.
Rohnert Park, CA 94928-2411

**EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §27383**

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

GRANT OF EASEMENT AND RIGHT OF WAY

This Grant of Easement and Right of Way (this "**Agreement**") is made effective as of _____, 201__ ("**Effective Date**") by and between Amy's Kitchen Restaurant Holdings LLC, a California limited liability company ("**Grantor**") and the City of Rohnert Park, a municipal corporation ("**Grantee**").

Recitals

A. Grantor is the owner of that certain real property in the City of Rohnert Park, in the County of Sonoma, State of California, and identified as Assessor's Parcel No. 045-075-002 (the "**Property**").

B. Grantee is in the process of acquiring real property interests for the purpose, inter alia, of the construction of the Golf Course Drive West / Wilfred Avenue Widening Project, as provided for in the Joint Exercise of Powers Agreement by and between the Grantee, the County of Sonoma, and the Federated Indians of Graton Rancheria for the Implementation of Mitigation Measures for Widening Wilfred Avenue.

NOW THEREFORE, in consideration of the foregoing recitals and for good and valuable consideration, the receipt of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. Grant of Perpetual Easement. Grantor hereby grants and conveys to Grantee an exclusive, perpetual easement and right of way (the "**Perpetual Easement**") for public street and utility purposes, and for any and all public service facilities, including but not limited to electric, gas, telephone, cable, wires, fiber optics, water, storm drainage, sanitary sewer, etc., and all appurtenances thereto, including without limitation, sidewalks, curbs and gutters, with the right to enter upon the Easement Area (defined below) at any time for the installation, construction, removal, replacement, repair, use, operation, inspection, maintenance, or undertaking similar activities, as the Grantee may see fit, for use in connection therewith or appurtenant thereto, in, over, under, along and across that portion of Grantor's real property more particularly described in Exhibit A and depicted in Exhibit B, both attached hereto and incorporated herein by reference (the "**Easement Area**").

Schedule 1.1-2.

The Perpetual Easement includes the right of ingress to, and egress from the Easement Area, and the right at all times to enter in, over and upon the Easement Area and every part thereof to perform the actions stated above by the Grantee, its employees, its agents and its contractors with vehicles and equipment.

2. Grantor's Responsibilities. The Grantor and the Grantor's heirs, successors, and assigns shall not place or permit to be placed on the Easement Area any building, structure or other improvement, including but not limited to houses, garages, outbuildings, swimming pools, tennis courts, retaining walls, decks, and patios, nor allow to be done anything which may interfere with the full enjoyment by the Grantee of the rights herein granted.

3. Duration of Perpetual Easement. Grantee, its successors and assigns shall hold the Perpetual Easement forever, solely for the objects and purposes above stated and for no other object or purpose.

4. Grantee's Responsibilities. Grantee agrees that any pipe(s) installed within the Easement Area shall be constructed and maintained at a depth of at least eighteen (18) inches below the present surface of the ground. Grantee shall undertake, at Grantee's expense, all construction and installation work in the Easement Area in compliance with all applicable laws, rules, regulations, orders and requirements of any governmental authority or agency applicable to or affecting the Easement Area. At Grantee's expense, Grantee shall maintain, repair and replace all roadway, sidewalk, and related improvements that Grantee installs in the Easement Area. Grantee shall have the right, but not the obligation, to install trees, plants, shrubbery, groundcover and landscaping within the Easement Area; provided however, such right shall not impose upon Grantee any obligation to install, maintain, or improve any such landscaping.

5. Title and Lease Warranty. Grantor represents and warrants that to the best of Grantor's knowledge, Grantor is the sole fee owner of the Property, that Grantor is not under contract with any other party for the sale or other conveyance of the Property, that there are no oral or written leases in effect with respect to any portion of the Property, and that the Property is and will remain free and clear of all liens, encumbrances, and other title impediments of any nature, except those to which the Grantee has expressly agreed to in writing. Owner agrees to indemnify, defend with counsel approved by Grantee, hold harmless and reimburse Grantee and Grantee's elected and appointed officials, 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, incurred as a result of the failure of any of Grantor's representations or warranties contained in this paragraph to be correct. The provisions of this Section 5 shall survive the close of escrow and recordation of this Agreement.

6. Waiver. Grantor, for itself, its heirs, successors and assigns, hereby waives any and all claims for damages which may accrue to the Property by reason of its severance from that portion subject to this Agreement. Grantor acknowledges for itself, its heirs, successors and assigns that it has been advised to seek advice of counsel on the issue of waiver of severance damages and has either done so or has chosen not to do so despite being given such advice. The Grantee assumes no liability with respect to the Property, or occurrences thereon, as a

consequence of the grant of easement contemplated hereby, unless and until the Grantee has formally accepted such grant via a Certificate of Acceptance.

7. Miscellaneous.

7.1 Notices. All notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section.

Grantor:

Amy's Kitchen Restaurant Holdings LLC
1650 Corporate Circle, Suite 200
Petaluma, California 94954
Attention: Mark Rudolph, CFO

Grantee:

Department of Engineering, City of Rohnert Park
City Hall
6750 Commerce Blvd.
Rohnert Park, CA 94928-2411
Attention: _____

7.2 Entire Agreement. This Agreement constitutes the entire understanding of Grantor and Grantee with respect to the subject matter hereof and supersedes all prior oral or written communications with respect thereto.

7.3 Amendment. This Agreement may be terminated or modified only by the written consent of the Grantor and Grantee or their successors or assigns, evidenced by a document that has been fully executed, acknowledged and recorded in the Official Records of Sonoma County, California.

7.4 Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held by a court of competent jurisdiction, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

7.5 Authority. 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.

7.6 Recordation. Following execution by all parties, this Agreement shall be recorded in the Official Records of Sonoma County.

7.7 Assignment. Grantee may assign its rights hereunder to any third party without the prior written consent of Grantor or its successors or assigns. Any such assignment may, at the election of the assignee, be evidenced by an assignment document which may be recorded in the Official Records of Sonoma County. Grantor consents to any subsequent assignment recorded against the Property to reflect such assignment by Grantee.

7.8 Further Assurances. The Parties agree to execute, acknowledge and deliver to the other such other documents and instruments, and to undertake such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

7.9 Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of Sonoma County, California or in the Federal District Court for the Northern District of California.

7.10 Captions. The section headings used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained.


7.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE(S)

IN WITNESS WHEREOF, the duly authorized representatives of the Grantor and Grantee have executed this Agreement as of the date first written above.

GRANTOR

Amy's Kitchen Restaurant Holdings LLC,
a California limited liability company

By: 

Name: MARK N RUDOLPH

GRANTEE

By: _____

Gabriel A. Gonzalez,
City Manager

Approved as to form:

By: _____

Michelle Marchetta Kenyon,
City Attorney

See attached Acknowledgment
dated February 11, 2013.
Carol Tamagni, Notary Public

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest
in real property conveyed above is
hereby accepted by order of the
City Council of the City of Rohnert
Park pursuant to City Council Resolution
No. _____ dated _____
and the Grantee consents to recordation
thereof by its duly authorized officer.

CITY OF ROHNERT PARK,
a municipal corporation

By: _____

Dated: _____

STATE OF CALIFORNIA)

COUNTY OF)

On February 11, 2013 before me, Carol Tamagni - Notary Public, (here insert name and title of the officer), personally appeared Mark N. Rudolph, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Carol Tamagni (Seal)



STATE OF CALIFORNIA)

COUNTY OF)

On _____, 20____, before me, _____, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

RBF CONSULTING
500 Ygnacio Valley Road, Suite 300
Walnut Creek, California 94596

October 26, 2012
JN: 50-100964
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EXHIBIT "A"
LEGAL DESCRIPTION
RIGHT OF WAY AND UTILITY
EASEMENT
APN 045-075-002

That certain parcel of land situated in the County of Sonoma, State of California, being a portion of Lot 161, Santa Rosa Farms No. 2, filed on March 7, 1910 in Book 21 of Maps, at Page 14, in the Office of the County Recorder of said Sonoma County and being a portion of Lot 161 as described in the Grant Deed, from Dora Poletti and Alda Pineda to Atlantic Richfield Company, recorded on November 14, 2000, in Document Number: 2000119461 of Official Records, at said County Recorder's Office, more particularly described as follows:

A strip of land 40.00 feet wide, the northerly line of which is described as follows:

BEGINNING at the intersection of the easterly line of the 2.51 acre tract of land described in the deed to William M Nuckolls and wife, recorded in Book 570 of Official Records at Page 352 in said County Recorder's Office with the southerly right of way line of Wilfred Avenue as shown on said map (21 M 14);

Thence, easterly along said southerly right of way of Wilfred Avenue, South 89°35'41" East 267.43 feet, to the easterly right of way of Willis Avenue (formerly Bloom Avenue (21 M 14))

Sidelines shall be lengthened or shortened so as to terminate on said easterly line of the 2.51 acre tract of land (570 O.R. 352) and westerly line of Willis Avenue (formerly Bloom Avenue) as shown on said map (21 M 14).

CONTAINING 10,702 Square Feet, more or less.

BASIS OF BEARINGS The bearings and distances contained herein are based upon the Record of Survey filed December 16, 2011 in Book 747 of Maps at Pages 50-53, in said County Recorder's Office.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.



David Baumann, P.L.S. 7309
License Expires March 31, 2013



