

RESOLUTION NO. 2015-032

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING AND APPROVING THE CITY'S GRANT OF A MULTI-USE PATHWAY EASEMENT TO SONOMA MARIN AREA RAIL TRANSIT DISTRICT FOR PROPERTY BETWEEN 850-FEET NORTH OF EAST COTATI AVENUE AND COPELAND CREEK AND AUTHORIZING THE EXECUTION AND RECORDATION OF AN EASEMENT AGREEMENT

WHEREAS, the Sonoma Marin Area Rail Transit District (SMART) received support from voters in Sonoma and Marin Counties to develop rail service and Multi-Use Pathway (MUP) to that will benefit residents in both counties; and

WHEREAS, SMART analyzed the environmental impacts of the Multi-Use Trail in its Sonoma-Marin Area Rail Transit Project Final Environmental Impact Report, dated June 2006, in accordance with the California Environmental Quality Act, and found that the impacts were not significant or adopted a Statement of Overriding Considerations for the project with respect to significant impacts; and

WHEREAS, SMART has applied for and received a commitment of federal grant funds to construct the portion of the MUP that serves the City of Rohnert Park (City) in 2015; and

WHEREAS, SMART has identified a preferred alignment for the MUP that is located on City property between approximately 850-feet north of East Cotati Avenue and Copeland Creek; and

WHEREAS, the Planning Commission will be considering whether the conveyance of the easement to SMART is in conformity with the General Plan, as required by Government Code section 65402; and

WHEREAS, the City has reviewed the preferred alignment and agrees it provides benefits to the City in the form of increased separation of bicycle and pedestrian traffic from the rail traffic; and

WHEREAS, the City is conveying the easement in consideration of the public benefits to the City and its residents; and

WHEREAS, SMART has requested that the City provide it with an easement over the preferred alignment and such easement must be agreed to by March of 2015 to preserve the federal funding commitment; and

WHEREAS, both the City and SMART desire to enter into a Grant of Multi-Use Pathway Easement Agreement for the purposes of addressing the construction and maintenance of the MUP on City property.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rohnert Park that it does hereby authorize and approve the Grant of a Multi-Use Pathway Easement to Sonoma Marin Area Rail Transit District, a Public Agency, for constructing and maintaining a multi-use pathway, effective upon a finding by the Planning Commission that the conveyance is in conformity with the General Plan.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to take all actions to effectuate this agreement for and on behalf of the City of Rohnert Park upon a finding by the Planning Commission that the conveyance is in conformity with the General Plan, including execution of the Grant of Multi-Use Pathway Easement Agreement in substantially similar form to the agreement attached hereto as Exhibit "A," subject to minor modifications by the City Manager or City Attorney.

DULY AND REGULARLY ADOPTED this 24th day of February, 2015.



CITY OF ROHNERT PARK

Amy O. Ahanotu, Mayor

ATTEST:

JoAnne M. Buerger, City Clerk

Attachment: Exhibit A

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

This Document is Recorded
For the Benefit of the
City of Rohnert Park
and is Exempt from Fee
Per Government Code
Sections 61032 and 27383

When Recorded, Mail to:

City of Rohnert Park
130 Avram Ave.
Rohnert Park, CA 94928

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT OF MULTI-USE PATHWAY EASEMENT AGREEMENT

This MULTI USE PATHWAY EASEMENT AGREEMENT ("**Agreement**") is made and entered into effective as of this ____ day of _____ 2015, by and between THE CITY OF ROHNERT PARK, a municipal corporation (the "**Grantor**" or the "**City**"), and THE SONOMA MARIN AREA RAIL TRANSIT DISTRICT, a public agency created pursuant to California law, hereinafter called "SMART" (the "**Grantee**").

RECITALS

A. Grantee desires to construct a Multi Use Pathway and associated improvements (the "Pathway"); and

B. Grantor is the owner of that certain real property located in Rohnert Park, California, more particularly described in the legal description attached hereto as Exhibit "A" ("Grantor's Property"); and

C. Grantee has requested that Grantor grant a non-exclusive easement over Grantor's Property for use as a Multi Use Pathway, more particularly described in the legal description attached hereto as Exhibit "B" ("Easement Area"); and

D. Grantor is willing to grant to Grantee and Grantee is willing to accept a non-exclusive easement over that portion of the Grantor's Property defined as the Easement Area for use as a Pathway, on the terms and conditions as provided herein.

NOW THEREFORE, in consideration of the mutual covenants, terms, and conditions hereinafter set forth, Grantor and Grantee hereby agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee, its successors and assigns, a non-exclusive easement ("Easement") over and across the Easement Area for the purpose of enabling the Grantee to design, construct, install and maintain a Pathway

for use by the public on the terms and conditions set forth herein. Grantee agrees and acknowledges that the Easement Area is subject to an easement in favor of the Sonoma County Water Agency and that Grantee is obtaining any and all required consents to mutual use of the Easement Area. Grantee shall waive, release, indemnify, protect, defend and hold harmless Grantor and its officers, managers, directors, representatives, agents, employees, transferees, successors and assigns from and against all claims, losses, actions, demands, damages, costs, expenses (including, but not limited to, experts fees and reasonable attorneys' fees and costs) and liabilities of whatever kind or nature (collectively, "Claims"), that arise from or occur in whole or in part as a result of the shared use of the Easement Area.

2. Donation. This grant of Easement will provide public benefits to the citizens of Rohnert Park by creating and allowing for a Pathway for public use. This public use and benefit is adequate consideration for the grant of Easement and the Easement is therefore conveyed with no monetary consideration. It is mutually understood that Grantor is granting the Easement described herein to Grantee for no monetary consideration. Grantor, having initiated this donation, has been informed of the right to monetary compensation for the Easement Area and hereby waives such right to compensation.
3. Installation and Construction of Pathway. The Pathway is to be constructed by Grantee, at Grantee's sole cost and expense, in a good and workman-like manner by licensed contractors in accordance with plans and specifications approved by City, which approval shall not be unreasonably delayed, denied or conditioned. Grantee must obtain an encroachment permit from the City prior to beginning construction, which permit will include, among other things, the requirement of Grantee to provide liability insurance and a bond to ensure completion of the work. The City shall not unreasonably delay, deny or condition the issuance of the encroachment permit to the Grantee.
4. Restrictions on Use of Easement Area. The Easement Area shall not be used for any purpose other than as a Pathway. Unless agreed to by all Parties, no wall, fence or barrier of any kind which impairs or impedes access to, or use of, any of the Easement shall be constructed or maintained on to the Easement Area, nor shall the Parties do anything which shall prevent, impair or discourage the use of the Easement or the free access and pedestrian movement across the Easement Area.
5. Maintenance of the Easement Area. Grantee and its successors and assigns shall, at Grantee's sole cost and expense without reimbursement, be obligated to maintain, repair, reconstruct, and care for the Easement Area in perpetuity in accordance with this Agreement. Any damage caused by Grantee, or by any of Grantee's lessees, licensees, permittees, agents, employees, contractors and/or successors and assigns to the Easement Area shall be promptly repaired by Grantee, at its sole cost and expense.

6. Condition of Easement Area. Grantee accepts the Easement Area in its "AS-IS," "WHERE-IS" condition and "WITH ALL FAULTS." Grantor makes no representations or warranties of any kind or nature concerning the Easement Area.
7. Indemnification. Grantee shall, indemnify, protect, defend and hold harmless Grantor and its respective parent corporations, subsidiaries, affiliates, officers, managers, directors, representatives, agents, employees, transferees, successors and assigns (each, an "Indemnatee" and collectively, "Indemnitees") from and against all Claims, that arise from or occur in whole or in part as a result of the actions during the construction or maintenance of the Easement by Grantor or its employees, agents, representatives, contractors, subcontractors, consultants, or invitees, or the performance of, or failure to perform, Grantee's duties under this Agreement, including, but not limited to, Claims arising out of: (a) injury to or death of persons, including but not limited to employees of Grantor or Grantee; (b) injury to property or other interest of Grantor, Grantee, or any third party; (c) violation of any applicable federal, state, or local laws, statutes, regulations, or ordinances, including all of the foregoing relating to the environment and including any liability imposed by law or regulation without regard to fault, excepting only with respect to any Indemnatee, to the extent of any Claim arising from the gross negligence or willful misconduct of such Indemnatee. Without limiting the generality of the foregoing, Grantee shall indemnify, protect, defend and hold Indemnitees harmless from and against Claims arising out of or in connection with any labor performed on the Easement Area by, or at the request or for the benefit of, Grantee, excepting only with respect to any Indemnatee, to the extent of any Claim arising from the gross negligence or willful misconduct of such Indemnatee. In the event any action or proceeding is brought against any Indemnatee for any Claim against which Grantee is obligated to indemnify or provide a defense hereunder, Grantee upon written notice from Grantor shall defend such action or proceeding at Grantee's sole expense by counsel reasonably acceptable to Grantor.
8. Insurance. Prior to beginning any construction or use of the Easement Area, Grantee shall obtain and maintain through the life of the Easement, with an insurance company authorized to do business in California that has a rating of A:VII or better in the most recent edition of Best's Insurance Report, commercial general liability insurance with respect to the Easement Area for the joint benefit of City and Grantee in amounts of not less than \$1,000,000 for injury or death to any one person, and in an amount not less than \$2,000,000 for injury or death to more than one person in any one occurrence, and for property damage in an amount of not less than \$500,000 per occurrence. The amounts of such commercial general liability insurance may be increased from time to time as City may reasonably determine. City shall be named as an additional insured under the commercial general liability policy. Grantee's commercial general liability insurance policy shall contain language stating that it is primary and non-contributing with any insurance, self-insurance or joint self-insurance maintained by City. Each policy shall contain an endorsement that the policy shall not be cancelled or coverage reduced except upon 30 days (or 10 days for non-payment of premium) advance written notice to the City. Grantee shall furnish City with copies of certificates of insurance evidencing the existence and amounts of

such insurance, satisfactory to City, on an annual basis. To the maximum extent permitted by the insurance policy, Grantee hereby releases City from liability and waives all right to recover against City for any loss from perils insured against under Grantee's insurance policy, including any extended coverage and endorsements to said policies.

9. Rights of Grantor. Grantor shall retain the right for itself, and its personal representatives, heirs, successors, and assigns all rights accruing from its ownership of the Easement Area, including the right to engage in or permit or invite others to engage in all uses of the Easement Area that are not inconsistent with the terms of this Agreement.
10. No Assignment. Grantee may not assign its rights under this Agreement without the prior written consent of Grantor, which may be granted in Grantor's sole and absolute discretion.
11. Recordation and Binding on Successors. This Agreement shall be recorded in the Recorder's Office in the County of Sonoma and, upon such recordation, shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties, subject to the assignment provisions in Section 9.
12. Exclusivity. The Easement granted hereunder is non-exclusive and Grantor reserves the right to use and grant other easement rights in and to the Easement Area, subject to the terms of this Agreement, and provided that such easement rights shall not unreasonably interfere with the Easement rights granted hereunder.
13. Term of Agreement. This Agreement and the Easement contained herein may be terminated upon mutual written consent of the parties.
14. Attorneys' Fees and Governing Law. This Agreement may be enforced by an action at law or in equity and in the event that suit is brought for the enforcement of this Agreement or as the result of any alleged breach thereof, the prevailing party in such suit shall be entitled to recover reasonable attorneys' fees from the other party and any judgment or decree rendered in such suit shall include an award therefore. This Agreement shall be governed by, enforced and construed in accordance with the laws of the State of California.
15. Severability. If any provision of this Agreement is determined to be illegal or unenforceable, this determination shall not affect any other provision of this Agreement, and all other provisions shall remain in full force and effect.
16. Notices. All notices or demands which either party is required or desires to give to the other shall be given in writing by certified mail, return receipt requested with the appropriate postage paid, by personal delivery, by facsimile or by private overnight courier service to the address or facsimile number set forth below for the respective party, or such other address or facsimile number as either party may designate by written notice to the other. All such notices or demands shall be effective as of actual receipt or refusal of delivery. Should any act or notice required hereunder fall due on

a weekend or holiday, the time for performance shall be extended to the next business day.

17. Possession. It is agreed and confirmed by the parties hereto that, notwithstanding other provisions in this Agreement, the right of possession and use of the Easement by Grantee, including the right to remove and dispose of improvements, shall commence upon the date of full execution of this Agreement.
18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and when taken together they shall constitute one and the same Agreement.
19. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing signed by the parties to be charged.

If to Grantee: Sonoma Marin Area Rail Transit
5401 Old Redwood Highway #200
Petaluma, CA 94954
Attn: Real Estate Manager
Phone: 707-794-3069

If to Grantor: City of Rohnert Park
130 Avram Ave.
Rohnert Park, CA 94928
Attn: City Manager
Phone: 707-588-2227
Email: admin@rpcity.org

With a copy to: Michelle Marchetta Kenyon
Rohnert Park City Attorney
Burke, Williams & Sorensen
1901 Harrison Street, Suite 900
Oakland, CA 94612
Phone: 510-273-8780
Email: mkenyon@bwslaw.com

[Signatures on the Following Page]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the day and year first written.

GRANTEE:

Sonoma-Marín Area Rail Transit District,
a public agency

By: _____
Name: Farhad Mansourian
Title: General Manager

RECOMMENDED:

By: _____
Name: James Flagollet
Title: Legal Counsel

GRANTOR:

City of Rohnert Park,
a municipal corporation

By: _____
Name: Darrin Jenkins
Title: City Manager

APPROVED AS TO FORM:

By: _____
Name: Michelle Kenyon
Title: City Attorney

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me, _____,
Date (Name of Notary)

notary public, personally appeared _____
Name of Signer(s)

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.

(Notary Signature)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me, _____,
Date (Name of Notary)

notary public, personally appeared _____
Name of Signer(s)

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.

(Notary Signature)

EXHIBIT A
LEGAL DESCRIPTION OF GRANTOR'S PROPERTY

Parcel One

Being Lot D as shown on that map entitled "Colegio Vista Unit 3" filed for record in Book 184 of Maps Pages 47 through 49, Sonoma County Records.

APN 143-480-011

Parcel Two

Being Parcel A as shown on that certain map entitled "Unit No. 1 Llano Subdivision" filed for record in Book 204 of Maps, Pages 28 through 30 Sonoma County Records.

APN 143-622-037, 143-632-015 and 143-691-013

Parcel Three

Being Parcel A as shown on that certain map entitled "Union No. 2 Llano Subdivision" filed for record in Book 220 of Maps, Pages 50 through 52 Sonoma County Records.

APN 143-702-011 and 143-712-034

EXHIBIT B
LEGAL DESCRIPTION OF THE MULTI USE PATHWAY EASEMENT AREA
Page 1 of 2

Lying within the City of Rohnert Park, County of Sonoma, State of California, and being a portion of the lands of City of Rohnert Park, a political subdivision as described by Grant Deed recorded in Book 2763, Page 769, and a portion of the lands of City of Rohnert Park, a municipal corporation as described by Grant Deed recorded in Book 2873, at Page 987, Official Records of Sonoma County, respective, and being portion of the lands dedicated to the City of Rohnert Park, as Parcel "A" as shown on that certain map entitled "Unit No. 2 Llano Subdivision, filed for record in Book 220 of Maps, at Pages 50 through 52, Sonoma County Records, said portions being more particularly described as follows:

PARCEL ONE

Being a strip of land 25.00 feet in width, the westerly line of said strip being more particularly described as follows:

Beginning at the point of intersection of the Sonoma-Marin Area Rail Transit District (SMART) easterly right of way line and the most northerly corner of Lot D as shown on that certain map entitled "Colegio Vista Unit 3" filed for record in Book 184 of Maps, Pages 47 through 49, Sonoma County Records; thence South 25°39'20" East 693.39 feet along the common line between said lands of SMART and Lot D to a point on the common line of said Lot D and the northerly right of way line of Southwest Boulevard also being the Point of Terminus.

The easterly line of said 25.00 wide strip shall be extended or shortened so as to terminate to north at the northerly line of said Lot D and to the south at the northerly right of way line of said Southwest Boulevard.

Containing 0.39 Square Feet more or less

Being a portion of APN 143-480-011

PARCEL TWO

Being a strip of land 25.00 feet in width, the westerly line of said strip being more particularly described as follows:

Beginning at the point of intersection of the Sonoma-Marin Area Rail Transit District (SMART) easterly right of way line and the northwesterly corner of Parcel "A" as shown on that certain map entitled "Unit No. 1 Llano Subdivision" filed for record in Book 204 of Maps, Pages 28 through 30, Sonoma County Records, thence along the common line between said lands of SMART and the westerly line of said Parcel "A", South 25°39'20" East 1341.81 feet to a point on the common line between said Unit No. 1 Llano Subdivision and Unit No. 2 Llano Subdivision filed in Book 220 of Maps, Pages 50

EXHIBIT B
LEGAL DESCRIPTION OF THE MULTI USE PATHWAY EASEMENT AREA
Page 2 of 2

through 50-52, Sonoma County Records; thence along the common line between said lands of SMART and Unit No. 2 Llano Subdivision, South 25°39'20" East 1399.93 feet to a point that bears North 25°39'20" West 81.45 feet from the southerly boundary line of said Unit No. 2 Llano Subdivision and being the Point of Terminus.

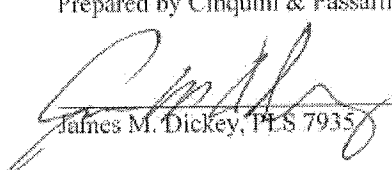
The easterly line of said 25.00 wide strip shall be extended or shortened so as to terminate to north at the common line of between Southwest Boulevard and said Parcel "A", and to the south at a point at right angle measurement 25.00 feet easterly of said Point of Terminus.

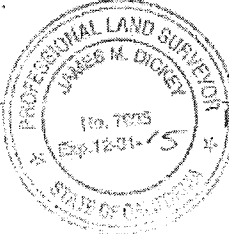
Containing 1.57 Acres more or less.

Being a portion of APN 143-622-037, 143-632-015, 143-691-013, 143-702-011 & 143-712-034.

Basis of Bearings: CCS83 Zone 2, Epoch 2008.00 and being the same as shown on the Record of survey filed in Book 741 of Maps, Pages 1 through 24, Sonoma County Records. All distances described herein are grid values.

Prepared by Cinquini & Passarino, Inc.

 James M. Dickey, PLS 7935

 4/17/2015 Date