# RESOLUTION 2016-XXX

**RESOLUTION OF NECESSITY OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, TO ACQUIRE PROPERTY BY EMINENT DOMAIN FOR TEMPORARY CONSTRUCTION AND PUBLIC ACCESS EASEMENT REQUIRED TO BUILD THE BERRY STREET REPLACEMENT BRIDGE PROJECT AND AUTHORIZING COMMENCEMENT OF LITIGATION TO ACQUIRE PROPERTY BY EMINENT DOMAIN AND TO SEEK AN ORDER OF POSSESSION (CODE OF CIVIL PROCEDURE SECTION 1245.220) (LESTRANGE PROPERTY, 1328 BERRY ST., CALISTOGA, CALIFORNIA, APN 011-222-001)**

**WHEREAS,** the City Council has determined that the City of Calistoga ("City") needs to acquire certain property interests in order to construct the Berry Street Bridge Replacement Project ("Project").

**NOW, THEREFORE BE IT RESOLVED,** that the City Council of the City, by vote of two-thirds or more of its members, FINDS, DETERMINES, DECLARES, AND RESOLVES the following:

1. The City intends to construct the Berry Street Bridge Replacement Project (the "Project"), which is intended to improve public safety by replacing the old Berry Street bridge structure and providing temporary pedestrian and bicycle access across Napa River during construction. The Project is for a public use.

2. To complete construction on the Project, the City must acquire a temporary construction and pedestrian access easement ("Easement") consisting of approximately 1,750 square feet on privately owned property commonly known as 1328 Berry Street, Calistoga, CA, APN 011-222-001 ("Property"), and more particularly described and shown on Exhibit A and Exhibit B attached to this Resolution and incorporated herein. The Easement is necessary to the completion of the Project. The City is authorized to acquire the Easement by eminent domain for the public use set forth herein in accordance with the California Constitution, Article 1, Section 19; the California Eminent Domain Law, Code of Civil Procedure Section 1230.010 *et seq.*, including, but not limited to, sections 1240.010 through 1240.050 inclusive, and sections 1240.110, 1240.120, 1240.220, 1240.320, 1240.330, 1240.350, 1240.410, 1240.510, 1240.610, 1240.650; Government Code Section 38730, and other provisions of law.

3. The Easement shall be non-exclusive and shall commence after no fewer than fifteen (15) days written notice is provided by the City to the Property owner reflecting the City's intent to make use of the Easement. The Easement shall terminate two (2) years after the day it is created by the City's notice or immediately upon written notice by the City to the Property owner that the City no longer requires use of the Easement, whichever is sooner. In no event shall the Easement exist after May 31, 2020.

4. On December 2, 2016, the City mailed a Notice of Hearing on the intent of the City Council of the City of Calistoga to adopt a resolution of necessity for acquisition by eminent domain of the Easements, which notice is attached hereto as Exhibit C, and incorporated herein. The Notice of Hearing was mailed to all persons whose name(s) appear on the last Equalized County Assessment Roll as having an interest in the Property, and to the addresses appearing on the Roll. The Notice of Hearing advised the persons of their right to be heard on the matters referred to in the Notice of Hearing on the date and at the time and place stated.

5. The hearing referenced in the Notice of Hearing was held on December 20, 2016, at the time and place stated in the Notice of Hearing. All interested parties were given an opportunity to be heard. The hearing was then closed.

6. Based upon the evidence presented at the hearing, the City Council of the City of Calistoga finds, determines, declares, and resolves each of the following:

A. The public interest and necessity require the proposed Project;

B. The proposed Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;

C. The interest in property sought to be acquired by eminent domain is necessary for the proposed Project;

D. The City has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the property described herein, as well as any other matter regarding the right to take said property by eminent domain, including but not limited to, making the offer required by Government Code Section 7267.2(a);

E. The City has fully complied with the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, for acquiring the property described herein when the City on August 12, 2016, approved the Final Mitigated Negative Declaration for the Berry Street Bridge Replacement Project; and

F. The Easement herein described is a portion of the Property located at 1328 Berry St., Calistoga, CA (approximately 1,750 square feet), which will be the site for temporary access to the construction site and a temporary pedestrian bridge.

7. The City Attorney is hereby authorized to acquire in the name of the City the Easement described in this Resolution in accordance with the provisions of California Eminent Domain Law, to commence an action in eminent domain, to deposit the probable amount of compensation with the State Treasury, to apply to the Superior Court for an order permitting the City to take immediate possession and make immediate use of the property for the Project, and to take all necessary steps to acquire the property under the law.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Calistoga at a regular meeting held this **20th day of December 2016** by the following vote:

**AYES:**
**NOES:**
**ABSENT:**
**ABSTAIN:**

_____
**CHRIS CANNING, Mayor**

**ATTEST:**

_____
**KATHY FLAMSON, City Clerk**

List of Exhibits:
A. Legal Description of the subject property
B. Map showing subject property
C. Notice of Hearing

**RESOLUTION 2016-XXX**

**RESOLUTION OF NECESSITY OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, TO ACQUIRE PROPERTY BY EMINENT DOMAIN FOR TEMPORARY CONSTRUCTION EASEMENT REQUIRED TO BUILD THE BERRY STREET REPLACEMENT BRIDGE PROJECT AND AUTHORIZING COMMENCEMENT OF LITIGATION TO ACQUIRE PROPERTY BY EMINENT DOMAIN AND TO SEEK AN ORDER OF POSSESSION (CODE OF CIVIL PROCEDURE SECTION 1245.220) (MEYER PROPERTY, 1341 BERRY ST., CALISTOGA, CALIFORNIA, APN 011-171-010)**

**WHEREAS,** the City Council has determined that the City of Calistoga ("City") needs to acquire certain property interests in order to construct the Berry Street Bridge Replacement Project ("Project").

**NOW, THEREFORE BE IT RESOLVED,** that the City Council of the City, by vote of two-thirds or more of its members, FINDS, DETERMINES, DECLARES, AND RESOLVES the following:

1. The City intends to construct the Berry Street Bridge Replacement Project (the "Project"), which is intended to improve public safety by replacing the old Berry Street bridge structure and providing temporary pedestrian and bicycle access across Napa River during construction. The Project is for a public use.

2. To complete construction on the Project, the City must acquire a temporary construction easement ("Easement") consisting of approximately 50 square feet on privately owned property commonly known as 1341 Berry Street, Calistoga, CA, APN 011-171-010 ("Property"), and more particularly described and shown on Exhibit A and Exhibit B attached to this Resolution and incorporated herein. The Easement is necessary to the completion of the Project. The City is authorized to acquire the Easement by eminent domain for the public use set forth herein in accordance with the California Constitution, Article 1, Section 19; the California Eminent Domain Law, Code of Civil Procedure Section 1230.010 *et seq.*, including, but not limited to, sections 1240.010 through 1240.050 inclusive, and sections 1240.110, 1240.120, 1240.220, 1240.320, 1240.330, 1240.350, 1240.410, 1240.510, 1240.610, 1240.650; Government Code Section 38730, and other provisions of law.

3. The Easement shall be non-exclusive and shall commence after no fewer than fifteen (15) days written notice is provided by the City to the Property owner reflecting the City's intent to make use of the Easement. The Easement shall terminate two (2) years after the day it is created by the City's notice or immediately upon written notice by the City to the Property owner that the City no longer requires use of the Easement, whichever is sooner. In no event shall the Easement exist after May 31, 2020.

4. On December 2, 2016, the City mailed a Notice of Hearing on the intent of the City Council of the City of Calistoga to adopt a resolution of necessity for acquisition by eminent domain of the Easements, which notice is attached hereto as Exhibit C, and incorporated herein. The Notice of Hearing was mailed to all persons whose name(s) appear on the last Equalized County Assessment Roll as having an interest in the Property, and to the addresses appearing on the Roll. The Notice of Hearing advised the persons of their right to be heard on the matters referred to in the Notice of Hearing on the date and at the time and place stated.

5. The hearing referenced in the Notice of Hearing was held on December 20, 2016, at the time and

place stated in the Notice of Hearing. All interested parties were given an opportunity to be heard. The hearing was then closed.

6. Based upon the evidence presented at the hearing, the City Council of the City of Calistoga finds, determines, declares, and resolves each of the following:

A. The public interest and necessity require the proposed Project;

B. The proposed Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;

C. The interest in property sought to be acquired by eminent domain is necessary for the proposed Project;

D. The City has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the property described herein, as well as any other matter regarding the right to take said property by eminent domain, including but not limited to, making the offer required by Government Code Section 7267.2(a);

E. The City has fully complied with the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, for acquiring the property described herein when the City on August 12, 2016, approved the Final Mitigated Negative Declaration for the Berry Street Bridge Replacement Project; and

F. The Easement herein described is a portion of the Property located at 1341 Berry St., Calistoga, CA (approximately 50 square feet), which will be the site for temporary access to the construction site.

7. The City Attorney is hereby authorized to acquire in the name of the City the Easement described in this Resolution in accordance with the provisions of California Eminent Domain Law, to commence an action in eminent domain, to deposit the probable amount of compensation with the State Treasury, to apply to the Superior Court for an order permitting the City to take immediate possession and make immediate use of the property for the Project, and to take all necessary steps to acquire the property under the law.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Calistoga at a regular meeting held this **20th day of December 2016** by the following vote:

**AYES:**
**NOES:**
**ABSENT:**
**ABSTAIN:**

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**CHRIS CANNING, Mayor**

**ATTEST:**

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**KATHY FLAMSON, City Clerk**

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