

RESOLUTION NO. 2016- 047

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA,
COUNTY OF NAPA, STATE OF CALIFORNIA, AUTHORIZING THE
CITY MANAGER TO EXECUTE A RIGHT OF WAY AGREEMENT AND
EASEMENT DEED FOR TEMPORARY USE OF A PORTION OF THE
PARKING LOT AT WASHINGTON AND GERARD FOR REPLACEMENT OF
THE LINCOLN AVENUE OVER THE NAPA RIVER**

WHEREAS, Cal Trans is proposing to replace the Lincoln Avenue Bridge over the Napa River in Calistoga; and

WHEREAS, Cal Trans is required to certify to the Federal Highway Administration that they have responsible control over all right of way where state and federal funds will be expended; and

WHEREAS, Cal Trans has determined that the City of Calistoga has title interest in the parking lot behind the Fire Station that they need for staging by their contractor; and

WHEREAS, in lieu of eminent domain and condemnation proceedings Public Works staff have negotiated with Cal Trans to minimize the area needed for staging during construction and have reached agreement in principle on the terms of the agreement and easement deed; and

WHEREAS, Cal Trans has requested that the City entering an agreement and execute an easement deed quitclaim for valuable consideration which has been established by Cal Trans at \$109,000. Cal Trans shall pay the City \$109,000 and shall have possession of the property as described in easement deed; and


WHEREAS, the City is seeking confirmation of the valuation via a second appraisal and upon Cal Trans receiving this appraisal, the State shall be open to negotiation; and

WHEREAS, the recommended action is not a project as defined by CEQA.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Calistoga that the City Manager is authorized to execute a Right-of-Way Agreement, deed of easement and other documents with the State of California for the temporary use of a proportion of the parking lot for construction staging subject to confirmation of valuation.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Calistoga at a regular meeting held this 21st day of June 2016, by the following vote:

AYES: Council members Barnes, Kraus, Lopez ORTEGA,
NOES: VICEMAYOR DUNSFORD, MAYOR CANNING
ABSTAIN: NONE
ABSENT: NONE



CHRIS CANNING, Mayor

ATTEST:



KATHY FLAMSON, City Clerk

RIGHT OF WAY CONTRACT - STATE HIGHWAY

RW 8-3 (6/95)

Calistoga , California

Dist.	Co.	Rte.	P.M.	Exp. Auth.
04	NAP	29	37.0	3G6409 0412000134

_____ , 20 16

CITY OF CALISTOGA

Grantor

Document No. 63120 in the form of an EASEMENT DEED covering the property particularly described in the above instrument has been executed and delivered to FELICE NINA DIAMZON, Right of Way Agent for the State of California.

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1. (A) The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said document and shall relieve the State of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.
- (B) Grantee requires said property described in Document No. 63120 for State highway purposes, a public use for which Grantee has the authority to exercise the power of eminent domain. Grantor is compelled to sell, and Grantee is compelled to acquire the property.

Both Grantor and Grantee recognize the expense, time, effort, and risk to both parties in determining the compensation for the property by eminent domain litigation. The compensation set forth herein for the property is in compromise and settlement, in lieu of such litigation.

2. The State shall:
 - (A) Pay the undersigned Grantor the sum of \$109,000.00 for the property or interest conveyed by above document when title to said property vests in the State subject to all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded) and taxes.
 - (B) Pay all escrow and recording fees incurred in this transaction, and, if title insurance is desired by the State, the premium charged therefor. Said escrow and recording charges shall not, however, include documentary transfer tax.

3. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this contract, legal possession of the property by the State, shall commence on close of escrow date controlling this transaction, and that the amount shown in Clause 2(A) herein includes, but is not limited to, full payment for such possession, including damages, if any, from said date.
4. Physical possession of the property including the right to remove and dispose of improvements will commence on April 1, 2017 and terminate on December 31, 2019 for parcel 63120-2, and terminate on December 31, 2018 for parcel 63120-3. Grantor shall have use of the property until State takes physical possession. In case of unpredictable delays in construction, upon written notification, the terms of the Temporary Easement may be extended by an amendment to this Right of Way contract. Grantor shall be compensated based on the fair market value at the time of the extension. Payment shall be made to the grantor for the extension prior to the expiration of the original period. At least 72 (seventy-two) hours advance written notice will be given before entry on said parcel.
5. The undersigned Grantor warrants that it is the owner in fee simple of the property as described in Document No. 63120 above and it has the exclusive right to grant these property rights.
6. In consideration of the State's waiving the defects and imperfections in all matters of record title, the undersigned Grantor covenant and agree to indemnify and hold the State of California harmless from any and all claims that other parties may make or assert on the title to the premises. The Grantor's obligation herein to indemnify the State shall not exceed the amount paid to the Grantor under this contract.
7. State and any authorized contractor agrees to indemnify and hold harmless Grantor from any liability arising out of State's operations under this agreement. State and any authorized contractor further agrees to assume responsibility for any damages proximately caused by reason of State's operations under this agreement and State and its authorized contractor will, at its option, either repair or pay for such damage.
8. All work done under this agreement shall conform to all applicable building, fire and sanitary laws, ordinances, and regulations relating to such work, and shall be done in a good and workmanlike manner. All structures, improvements or other facilities, when removed, and relocated, or reconstructed by the State, shall be left in as good condition as found.
9. Grantor warrants that there are no oral or written leases on all or any portion of the property exceeding a period of one month, and the Grantor agrees to hold State harmless and reimburse State for any and all of its losses and expenses occasioned by reason of any lease of said property held by any tenant of the Grantor for a period exceeding one month.

11. This Right of Way Contract shall be binding upon and inure to the benefit of the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the Grantor.
12. This Agreement and any subsequent amendments may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
13. The seller hereby represents and warrants that during the period of Seller's ownership of the property, there have been no disposals, releases or threatened releases of hazardous substances or hazardous waste on, from, or under the property. Seller further represents and warrants that Seller has no knowledge of any disposal, release, or threatened release of hazardous substances or hazardous waste on, from, or under the property which may have occurred prior to Seller taking title to the property. Seller shall be held harmless for any existing conditions prior to taking title to the property.

The acquisition price of the property being acquired in this transaction reflects the fair market value of the property without the presence of contamination. If the property being acquired is found to be contaminated by the presence of hazardous waste which requires mitigation under Federal or State law, the State may elect to recover its clean-up costs from those who caused or contributed to the contamination.

14. This transaction will be handled through an internal escrow by the State of California, Department of Transportation, District 4 Office, P.O. Box 23440, Oakland, California 94623-0440.

In Witness Whereof, the Parties have executed this agreement the day and year first above written.



City of Calistoga Grantor
Dylan Feik
City Manager

RECOMMENDED FOR APPROVAL:

By _____
FELICE NINA DIAMZON
Associate Right of Way Agent
Acquisition Services

STATE OF CALIFORNIA
Department of Transportation

By _____
JASPREET SINGH
District Branch Chief
Acquisition Services

By _____
MARK L. WEAVER
Deputy District Director
Right of Way and Land Surveys

No Obligation Other Than Those Set Forth Herein Will Be Recognized

RECORDING REQUESTED BY
STATE OF CALIFORNIA

WHEN RECORDED RETURN TO
DEPARTMENT OF TRANSPORTATION
PO BOX 23440, MS-11A
OAKLAND, CA 94623-0440
Attn: Acquisitions Services

Space above this line for Recorder's Use

EASEMENT DEED

District	County	Route	Postmile	Number
04	Nap	29	37.0	63120

City of Calistoga, a municipal corporation,

hereinafter called GRANTOR, hereby grants to the State of California, Department of Transportation, hereinafter called STATE, easements for purposes stated herein, upon, over and across that real property in the City of Calistoga, County of Napa, State of California, described as follows:

See Exhibit "A", attached.

Transfer Tax Not Applicable: R & T Code 11922

STATE BUSINESS: Free

This is to certify that this document is presented for recordation by the State of California under Government Code 27383 and is necessary to complete the chain of title of the State to property acquired by the State of California.

DISTRICT DIRECTOR

BY _____

MARK L. WEAVER
Deputy District Director
Right of Way and Land Surveys

Number
63120

EXHIBIT "A"

All that real property situated in the City of Calistoga, County of Napa, State of California, being those portions of Block "C" and Gerard Street as shown on that certain map entitled "Map of Calistoga, showing its extensions, surroundings and the Hot Sulphur Springs, Napa County, Cal.", filed March 1, 1871, in the Office of the County Recorder of Napa County, described as follows:

PARCEL 1 (63120-2):

A TEMPORARY EASEMENT for construction purposes and incidents thereto, upon, over, and across that parcel of land, being a portion of said Block "C", more particularly described as follows:

COMMENCING at the southeasterly corner of that parcel of land described in the Director's Deed recorded on October 5, 1967 in Book 774 of Official Records at Page 175, in the Office of the County Recorder of Napa County; thence along the easterly line of the last said parcel, North 20°14'36" East, 12.02 feet to the POINT OF BEGINNING; thence continuing along the last said line and its northerly prolongation, North 20°14'36" East, 40.97 feet; thence North 88°45'28" East, 18.46 feet; thence South 8°51'18" East, 32.08 feet to the northerly line of that parcel of land described in the Grant Deed recorded on December 2, 2014, as Document Number 2014-0025093, in the Office of the County Recorder of Napa County; thence along the last said line, South 79°14'28" West, 38.24 feet to the POINT OF BEGINNING.

CONTAINING 948 square feet, more or less.

Rights to the above described temporary easement shall cease and terminate on December 31, 2019. Said rights may also be terminated prior to the above date by STATE upon notice to GRANTOR.

Number
63120

PARCEL 2 (63120-3):

A TEMPORARY EASEMENT for construction purposes and incidents thereto, upon, over, and across that parcel of land, being those portions of said Block "C" and said Gerard Street, more particularly described as follows:

COMMENCING at the southeasterly corner of Lot 13 of said Block "C"; thence along the easterly line of said Lot 13, North 20°08'56" East, 26.94 feet; thence South 70°12'07" East, 13.43 feet to the POINT OF BEINNING; thence South 20°27'08" West, 49.88 feet; thence South 84°33'47" West, 126.16 feet; thence North 20°14'36" East, 103.67 feet to a line which bears North 70°12'07" West from the POINT OF BEGINNING; thence along last said line, South 70°12'07" East, 113.88 feet to the POINT OF BEGINNING.

CONTAINING 8,734 square feet, more or less.

Rights to the above described temporary easement shall cease and terminate on December 31, 2018. Said rights may also be terminated prior to the above date by STATE upon notice to GRANTOR.

The bearings and distances used in the above descriptions are on the California Coordinate System of 1983, Zone 2, Epoch 1991.35. Multiply the above distances by 1.0000582 to obtain ground level distances.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.


Signature: *Jonathon T Murphey*
Licensed Land Surveyor

Date: 12 FEBRUARY 2016



Number
63120

Dated: 6/21/16

City of Calistoga


Dylan Fejk
City Manager

This is to certify that the State of California, acting by and through the Department of Transportation (according to Section 27281 of the Government Code), accepts for public purposes the real property described in this deed and consents to its recordation.

Dated _____

MALCOLM DOUGHERTY
Director of Transportation

By _____
MARK L. WEAVER, Attorney in Fact
Deputy District Director
Right of Way and Land Surveys

Number
63120

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 NAPA

On JUNE 21, 2016 before me, KATHLEEN M. FLAMSON, NOTARY PUBLIC ,
Here insert Name and Title of the Officer

personally appeared -DYLAN FEIK- ,

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 Kathleen M. Flamson (Seal)

