



_____ CALENDAR
Agenda Item # ____

AGENDA REPORT SUMMARY

Meeting Date: March 24, 2020

Subject: Easement and Covenant Agreement for the Los Altos Community Center Project (California Water Service Company)

Prepared by: Peter Maslo, Project Manager

Reviewed by: James Sandoval, Engineering Services Director

Approved by: Chris Jordan, City Manager

Attachment:

1. Exhibit A – Location of the Easement for the California Water Service Company

Initiated by:

Staff – CIP Project CF - 01002

Previous Council Consideration:

October 22, 2019; July 9, 2019; April 23, 2019; March 12, 2019; September 11, 2018; July 10, 2018; March 13, 2018; December 12, 2017; September 26, 2017, August 22, 2017; May 23, 2017; April 25, 2017

Fiscal Impact:

None

Environmental Review:

Not applicable

Policy Question(s) for Council Consideration:

None

Summary:

- Staff recommends approval of an Easement and Covenant Agreement with California Water Service Company for the Los Altos Community Center.

Staff Recommendation:

Authorize the City Manager to execute an Easement and Covenant Agreement between the City of Los Altos and California Water Service Company for the Los Altos Community Center project.

Reviewed By:

City Manager

CJ

City Attorney

JH

Finance Director

SE



Subject: Los Altos Community Center – Easement and Covenant Agreement

Purpose

Execute the Easement and Covenant Agreement between the City of Los Altos and California Water Service Company for the Los Altos Community Center project.

Background

The existing fire hydrant doesn't provide enough coverage for the new Los Altos Community Center building. The Santa Clara County Fire Department is requiring installation of an additional public hydrant to provide sufficient fire suppression coverage for the new Los Altos Community Center facility.

Discussion/Analysis

Staff is working with Noll & Tam's subcontracted civil engineering consulting firm BKF on the necessary documents for the recordation of the easement for the California Water Service Company water service.

Options

- 1) Authorize the City Manager to execute an Easement and Covenant Agreement between the City of Los Altos and California Water Service Company.

Advantages: An Easement and Covenant Agreement is required by California Water Service Company for the construction and maintenance of the required water service.

Disadvantages: N/A

- 2) Do not authorize the City Manager to execute an Easement and Covenant Agreement between the City of Los Altos and California Water Service Company.

Advantages: N/A

Disadvantages: The City would violate Santa Clara County Fire Department's requirement and the project would incur costly delays.

Recommendation

The staff recommends Option 1.

RECORDING REQUESTED BY

AND WHEN RECORDED RETURN TO:

This is a conveyance of an easement and the consideration and value is less than \$100.00

The undersigned Grantor declares that the documentary transfer tax due is \$ _____, computed on full value of property conveyed.

EASEMENT AND COVENANT AGREEMENT

By this instrument dated _____, 2020 (the “Agreement”),

_____ (“Grantor”) hereby grants, subject to the terms and conditions set forth in this Agreement, to CALIFORNIA WATER SERVICE COMPANY, a California public utility water corporation, (“Grantee”), a non-exclusive easement in gross, consisting of the right from time to time to construct, reconstruct, install, inspect, maintain, repair, replace, remove, operate and use facilities of the type hereinafter specified, together with a right of way for such facilities and ingress to and egress from such facilities, upon, across and/or under the lands situated in the **County of** , State of California, described in Exhibit A attached hereto and made a part hereof:

The strip(s) or parcel(s) of land described in **Exhibit A** are referred to in this Grant of Easement as the “Easement Area” and is shown on the map attached hereto as **Exhibit B**.

The Easement Area and the facilities installed by Grantee thereon shall be used by Grantee for the conveyance, distribution and/or storage of water, and the installation, operation, inspection, maintenance, repair, improvement, replacement and removal of such pipes, conduits, meters, valves, fittings, boxes, vaults, hydrants, pipeline markers, and other facilities as Grantee deems necessary in connection with Grantee’s business as a public utility water company in its reasonable discretion.

Grantor hereby reserves, for itself, its successors and assigns, the right to use the surface of the Easement Area for parking, landscaping, walkways, signs and driveways; provided that Grantor shall not erect or construct any building, improvement, fencing or structure, plant trees (collectively, “Improvements”) or otherwise conduct activities in the Easement Area which may reasonably or materially impair or prevent Grantee’s use of the Easement Area for the purposes specified herein. To the extent removal of Improvements from the Easement Area is necessary for Grantee to exercise its rights under this instrument, Grantor shall be solely responsible for the costs of removal of such Improvements, and Grantee shall have no obligation to repair or replace any such Improvements. Grantor shall not, without Grantee’s consent, engage in any activity that will damage or is reasonably likely to damage, Grantee’s facilities and equipment in the Easement Area. Without limiting the foregoing, Grantor shall not, without Grantee’s consent, perform or permit any digging, tunneling or other forms of construction activity on the Easement Area which would substantially disturb, or are likely to substantially disturb the compaction and unearthen Grantee’s facilities located within the Easement Area or endanger the lateral support to such facilities and Grantor agrees that it shall be responsible for any such damage, except to the extent such damages have been caused by Grantee’s negligence.

Grantee hereby agrees that Grantee shall vacate the Easement Area and any improvements constructed by Grantee thereon and relocate its facilities to a reasonable alternative Easement Area, at Grantor's sole cost and expense upon ninety (90) days written notice from Grantor to Grantee. Upon such relocation, Grantee shall deliver to Grantor a quitclaim deed releasing Grantee's interest in the vacated Easement Area.

Grantee agrees, at its sole cost, to keep all facilities and equipment of Grantee in the Easement Area in good condition and repair, subject only to ordinary wear and tear. In the event Grantee damages the surface of the Easement Area or improvements thereon, permitted by this Agreement and installed by or for Grantor, Grantee shall, at its cost, repair the damage caused by the activities of Grantee and restore the surface of the Easement Area, as reasonably as possible, to the condition in which such surface area and improvements existed at the commencement of the activities of Grantee which caused such damage. In no event shall Grantee be obligated to repair damage caused by activities or causes other than the activities of Grantee, its agents, officers, representatives or employees.

NEITHER PARTY WILL BE LIABLE (UNDER ANY THEORY OR CIRCUMSTANCE) FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES.

The terms hereof shall be binding upon, and inure to the benefit of the successors and assigns of the parties hereto. As used herein, the term "Grantor" shall include all subsequent owners of the land subject to the easement granted hereby. The terms hereof shall run with Grantee's Easement Area. As used herein, the term "Grantee" shall include all subsequent owners of the easement in gross granted hereby.

That Grantor covenants that Grantor has good right and title to grant the foregoing easement, and that Grantor and its successors and assigns shall warrant and defend the same unto Grantee, its successors and assigns, forever, against the lawful claims and demands of all persons. That Grantee, its successors and assigns, hereby release and forever discharge Grantor and its past and present agents, employees, officers, directors, shareholders, tenants, successors, and assigns (the "Released Parties"), and each of them, from any and all claims, causes of action, proceedings, losses, damages, liability, costs, and expenses (including, without limitation, any fines, penalties, judgments, and attorneys' fees and costs) for damage to property and for injuries to or death of any person (including, but not limited to, the property and employees of each party, and Grantee's tenants, guests, invitees, licensees, agents and contractors) related to the condition of, or conditions on, the Easement Area or the use of the Easement Area by any person ("Claims"). The release shall apply regardless of the cause of the Claims, except to the extent arising out of the negligence or wrongful acts of Grantor or the other Released Parties.

Grantee shall indemnify, defend and hold harmless Grantor and the Released Parties from and against any and all Claims sustained by Grantor and/or the Released Parties arising out of the negligence or wrongful acts of Grantee, its tenants, subtenants or any of their respective agents, employees or invitees on or about the Easement Area; provided, however, the obligations hereunder shall not apply to any Claims to the extent arising out of the negligence or wrongful acts of Grantor or the other Released Parties.

Grantee shall maintain in full force and effect a policy or policies of commercial general liability insurance insuring Grantee against any liability arising out of the use of the Easement Area. Such insurance shall be in an amount not less than \$1,000,000 combined single limit for injury to or death of one or more persons in an occurrence, and for damage to tangible property (including loss of use) in an occurrence; shall name Grantor and its affiliates and lenders as additional insureds; and shall be written as primary policies, not contributing with or in excess of any coverage which Grantor may elect to carry. Upon Grantee's execution of this Agreement, Grantee shall deliver to Grantor a certificate of insurance evidencing the above coverage with limits not less than those specified above.

All notices required or permitted herein shall be made and given in writing to the parties at the respective addresses set forth below and 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. Either party may change its address for the purpose of providing notice by delivering written notice to the other party which specifies the new address.

Grantor:

1 North San Antonio Road
Los Altos, CA 94022
Attention: City Manager

Grantee:

California Water Service Company

Attention: _____

This Agreement shall be governed by and construed in accordance with the law of the State of California. Invalidation of all or a portion of any provision of this Agreement by judgment or court order shall in no way affect the remaining portion of such provision or any other provision which, to the extent possible, shall remain in full force and effect. This Agreement shall not be amended except by written agreement executed by Grantor and Grantee.

GRANTOR:

By: _____
(Signature)

Name:

Title:

GRANTEE:

By: _____
(Signature)

Name:

Title:

Proj. No. _____

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, _____,
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)

EXHIBIT A

Legal Description

EXHIBIT B

Depiction of Easement



REVIEWED
OK ✓

February 12, 2020
Project No. 20170208

EXHIBIT A
PUBLIC WATER EASEMENT
LEGAL DESCRIPTION

All that certain real property situate in the City of Los Altos, County of Santa Clara, State of California, being a portion of the lands described in that certain Quitclaim Deed, recorded December 17, 2002 as Document Number 16690221, Official Records of said County, and being more particularly described as follows:

Area 1:

Being a strip of land having the uniform width of 20 feet, the centerline of which being more particularly described as follows:

BEGINNING at the southeasterly corner of said lands described in said Quitclaim Deed, said corner being also the southwesterly corner of lands described in that certain Grant Deed, recorded December 20, 2007 as Document Number 19688564, Official Records of said County, said corner also being on the northerly right-of-way line of Hillview Avenue;

Thence along said northerly right-of-way line and along the southerly line of said lands described in said Quitclaim Deed, North 89°59'11" West, 101.00 feet to a point hereinafter known as **Point A**, and the **TRUE POINT OF BEGINNING** of Area 1;

Thence at a right angle, North 00°00'49" East, 154.53 feet to the **POINT OF TERMINUS** of Area 1;

Containing an area of 3,091 square feet, more or less.

Area 2:

Being a strip of land having the uniform width of 20 feet, the centerline of which being more particularly described as follows:

BEGINNING at aforementioned **Point A**;

Thence North 00°00'49" East, 18.00 feet to the **TRUE POINT OF BEGINNING** of Area 2;

Thence at a right angle, South 89°59'11" East, 30.00 feet to the **POINT OF TERMINUS** of Area 2;

Excepting therefrom that portion that lies within the bounds of said Area 1;

Containing an area of 400 square feet, more or less.




ENGINEERS
SURVEYORS
PLANNERS

100+
YEARS

February 12, 2020
Project No. 20170208

A plat showing the above described parcel is attached hereto and made a part hereof as Exhibit B.

This legal description was prepared by me or under my direction in conformance with the requirements of the Professional Land Surveyors' Act.



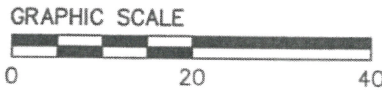
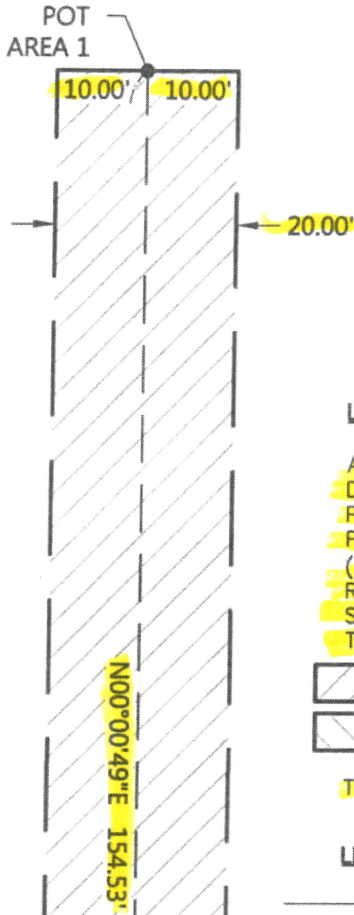
David C. Jungmann
PLS 9267



2/12/2020
Date

END OF DESCRIPTION

LANDS OF
RAMGOPAL
(PARCEL 2)
(228 PM 49)
APN 170-42-008



LEGEND

- APN ASSESSOR'S PARCEL NUMBER
- DN DOCUMENT NUMBER
- POB POINT OF BEGINNING
- POT POINT OF TERMINUS
- (R#) DENOTES RECORD BEARING
- R.O.W. RIGHT OF WAY
- SQ.FT. SQUARE FEET
- TPOB TRUE POINT OF BEGINNING
- EASEMENT AREA 1 = 3,091± SQ.FT.
- EASEMENT AREA 2 = 400± SQ.FT.

TOTAL EASEMENT AREA = 3,491± SQ.FT.

LINETYPES

- LOT LINE
- EASEMENT CENTERLINE
- EASEMENT LINE

RECORD REFERENCE

R1 BOOK 17 OF MAPS, PAGE 38, OFFICIAL RECORDS OF SANTA CLARA COUNTY

LANDS OF
LOS ALTOS
COMMUNITY
FOUNDATION
(DN 19688564)
APN 170-42-003

LANDS OF THE
CITY OF LOS ALTOS
(DN 16690221)
APN 170-42-029



[Signature] 02/12/2020

