

FLOOD CONTROL AGENDA ITEM NO. _____ November 21, 2017



Daniel Woldesenbet, Ph.D., P.E., General Manager

399 Elmhurst Street • Hayward, CA 94544 • (510) 670-5480 • www.acpwa.org

October 24, 2017

The Honorable Board of Supervisors
County Administration Building
1221 Oak Street
Oakland, California 94612

Dear Board Members:

SUBJECT: APPROVE CONVEYANCE OF AN AERIAL BRIDGE STRUCTURE EASEMENT TO WILLIAM LYON HOMES, INC., A CALIFORNIA CORPORATION (PRESIDENT: CARL MORABITO, LOCATION: SAN RAMON, CALIFORNIA) FOR \$13,890.40; AUTHORIZE PRESIDENT TO EXECUTE EASEMENT DEED TO EFFECT SAID CONVEYANCE AND RECORD (ZONE 5, LINE F-6 R/W – NO. 8322).

RECOMMENDATION:

It is recommended that your Board:

- A. Adopt a Resolution to approve the conveyance of an aerial bridge structure easement to William Lyon Homes, Inc., a California corporation, comprising 2,341 square feet located in Newark, that crosses over a portion of the Alameda County Flood Control and Water Conservation District's Line F-6 channel in Zone 5, for the sum of \$13,890.40; and
- B. Authorize the President to execute an Aerial Easement Deed (Bridge Structure) to effect said conveyance and record.

SUMMARY/DISCUSSION:

William Lyon Homes, Inc., is in the process of constructing a residential subdivision (Tract 8311) in Newark. One of the conditions of approval requires the extension of Central Avenue in order to provide adequate vehicle circulation in and out of the subdivision. The extension of Central Avenue necessitates the construction of a vehicle and pedestrian bridge across the District's Line F-6 channel in Zone 5. Additionally, utilities for this phase of the development will be installed within and attached to the bridge. The bridge easement providing for the extension of Central Avenue will eventually be transferred from the developer to the City of Newark upon construction and acceptance of the proposed roadway bridge by City of Newark and the Flood Control District.

Honorable Board of Supervisors
October 24, 2017

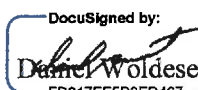
Page 2

The proposed aerial bridge structure easement has terms and conditions indemnifying the Flood Control District and requires any future owner or agency having title to said easement the costs of the design, construction, operation, repair, maintenance and replacement of the bridge should the District find that the proposed bridge interferes with the District's Line F-6 channel. The District and William Lyon have accepted the appraised value of \$13,890.40 as the fair market value of the property and the conveyance of the required aerial easement should now be consummated and the Aerial Easement Deed (Bridge Structure) recorded.

FINANCING:

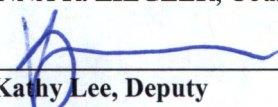
Funds received from this conveyance will be deposited in Fund No. 21807, Organization No. 270351 (Flood Control Zone 5), Revenue Account No. 470110.

Yours truly,

DocuSigned by:

Daniel Woldesenbet, Ph.D., P.E.
FD817EF5B35D467
Director of Public Works

DW:BP:ES

Approved as to Form
DONNA R. ZIEGLER, County Counsel

By 
Kathy Lee, Deputy

THE BOARD OF SUPERVISORS OF THE ALAMEDA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT, STATE OF CALIFORNIA

RESOLUTION NUMBER: R- 2017-357

**AUTHORIZE AND APPROVE THE CONVEYANCE OF AN AERIAL BRIDGE STRUCTURE
EASEMENT COMPRISING 2,341 SQUARE FEET TO WILLIAM LYON HOMES, INC., A
CALIFORNIA CORPORATION; EXECUTE EASEMENT DEED AND RECORD.**

WHEREAS, Alameda County Flood Control and Water Conservation District is the fee simple owner of the hereinafter described real property located in the City of Newark, said property being a portion of Line F-6 in Zone 5, and the flood control facilities therein that pass adjacent to the property of William Lyon Homes, Inc. consisting of an open channel contained by levees on each side with a maintenance access road on top of the west levee; and

WHEREAS, William Lyon Homes, Inc. is required by the City of Fremont to construct a bridge and provide an extension of Central Avenue across a portion of the aforesaid flood control facility, and said portion of District property is more particularly designated and described as follows:

SEE EXHIBIT "A" AND RELATED PLATS ATTACHED HERETO AND MADE A PART HEREOF.
(No. 8322)

WHEREAS, the conditions of approval for which William Lyon Homes, Inc. is constructing the bridge, require offering the bridge and the aerial easement conveyed by the District to the City of Newark for incorporation into its road system; and

WHEREAS, William Lyon Homes, Inc. has agreed to terms and conditions ensuring the bridge will not interfere with current flood control operations, and will bear the cost of accommodating any interference by the bridge with future flood control improvements to the Zone 5, Line F-6 channel, including, but not limited to, removal and replacement of said bridge, which terms and conditions would be binding on successors and assigns including the City of Newark; and

WHEREAS, William Lyon Homes, Inc. has offered the sum of Thirteen Thousand Eight Hundred Ninety and 40/100 Dollars (\$13,890.40) for said property, which amount the Director of Public Works has determined to be acceptable; and

WHEREAS, said real property was acquired for flood control purposes, but the airspace above the channel is not necessary to be retained for present flood control uses, and any future flood control needs are preserved through the terms and conditions of the easement document, and the conveyance of said described property in the aerial bridge structure easement with terms and conditions outlined in attached Exhibit "B" will not conflict or interfere with the Alameda County Flood Control and Water Conservation District property for flood control purposes.

NOW, THEREFORE, BE IT RESOLVED, that this Board of Supervisors does and it hereby finds and determines that the airspace above the channel is not necessary to be retained for present flood control purposes, and any future flood control needs are preserved through the terms and conditions of the easement document, and the conveyance of said described property in the aerial bridge structure easement with terms and conditions outlined in attached Exhibit "B" will not conflict or interfere with the Alameda County Flood Control and Water Conservation District property for flood control purposes.

BE IT FURTHER RESOLVED, that pursuant to the authority of Section 25526.5 of the Government Code of the State of California, that this Board of Supervisors does and it hereby approves the conveyance of the aerial bridge structure easement hereinafter described to William Lyon Homes, Inc.; and

BE IT FURTHER RESOLVED, that the President of this Board of Supervisors be and he is authorized and directed to execute on behalf of Alameda County Flood Control and Water Conservation District, a body corporate and politic, GRANTOR, a Grant of Aerial Easement Deed conveying to William Lyon Homes Inc., a California corporation, GRANTEE, an aerial bridge structure easement as set forth therein; and

BE IT FURTHER RESOLVED, that the aerial bridge structure easement is conveyed on the terms and conditions set forth in the Grant of Aerial Easement Deed and by said reference is made a part hereof as though fully set forth herein; and

BE IT FURTHER RESOLVED, that upon execution of said Grant of Aerial Easement Deed the same shall be delivered to the Director of Public Works for recordation thereafter at the office of the Recorder of Alameda County; and

BE IT FURTHER RESOLVED, that the proceeds from said conveyance shall be deposited in Fund 21807, ORG 270351 (Zone 5), Revenue Account 470110.

THE FOREGOING was **PASSED** and **ADOPTED** by a majority vote of the Alameda County Board of Supervisors this **21st** day of **November, 2017**, to wit:

AYES: Supervisors Carson, Haggerty, Miley, Valle & President Chan – **5**

NOES: None

EXCUSED: None



PRESIDENT, BOARD OF SUPERVISORS

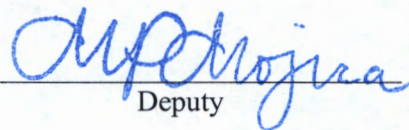
File: 30033
Agenda No: 36
Document No: R-2017-357



I certify that the foregoing is a correct copy of a Resolution adopted by the Board of Supervisors, Alameda County, State of California

ATTEST:
Clerk, Board of Supervisors

By: _____



Deputy

EXHIBIT "A"

COUNTY OF ALAMEDA DESCRIPTION

ZONE 5 LINE F-6

GRANT OF BRIDGE EASEMENT

Map: RF-2182
APN: 92-115-4 (Por.)

DESC.NO. 8322
DATE: AUGUST 16, 2017
JOB: 1496-21

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF NEWARK, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION PARCEL 1, AS SAID PARCEL 1 IS DESCRIBED IN THAT CERTAIN GRANT DEED TO ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT (ACFC&WCD), RECORDED OCTOBER 28, 1965, ON REEL 1629 AT IMAGE 695, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWESTERN CORNER OF SAID PARCEL 1 (RE 1629 IM 695) SAID POINT ALSO BEING THE SOUTHEASTERN CORNER OF PARCEL R AS SAID PARCEL R IS SHOWN AND SO DESIGNATED ON THE OFFICIAL MAP OF TRACT 8085, FILED FOR RECORD MAY 4, 2016 IN BOOK 339 OF MAPS AT PAGE 76;

THENCE, FROM SAID POINT OF COMMENCEMENT, ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL 1 (SAID LINE ALSO BEING THE NORTHEASTERLY LINE OF SAID PARCEL R), NORTH 21°47'49" WEST, 335.37 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE, FROM SAID POINT OF BEGINNING, CONTINUING ALONG SAID SOUTHWESTERLY LINE, NORTH 21°47'49" WEST, 37.00 FEET;

THENCE, LEAVING SAID SOUTHWESTERLY LINE, NORTH 68°12'11" EAST, 46.84 FEET;

THENCE, ALONG THE ARC OF A TANGENT 38.50-FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 19°58'42", AN ARC DISTANCE OF 13.42 FEET TO THE NORTHEASTERLY LINE OF SAID PARCEL 1, (SAID LINE ALSO BEING THE SOUTHWESTERLY LINE OF WILLOW STREET);

THENCE, ALONG SAID NORTHEASTERLY LINE, SOUTH 21°47'49" EAST, 50.69 FEET;

THENCE, LEAVING SAID NORTHEASTERLY LINE, ALONG THE ARC OF A NON-TANGENT, 48.50-FOOT RADIUS CURVE TO THE LEFT, FROM WHICH THE CENTER BEARS SOUTH 18°15'34" WEST, THROUGH A CENTRAL ANGLE OF 40°03'23", AN ARC DISTANCE OF 33.91 FEET;

THENCE, SOUTH 68°12'11" WEST, 28.79 FEET TO SAID POINT OF BEGINNING;

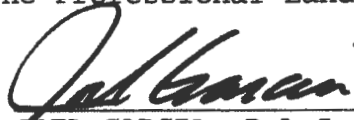
CONTAINING 2,342 SQUARE FEET OR 0.05 ACRES OF LAND, MORE OR LESS.

THIS DESCRIPTION IS BASED ON THE CALIFORNIA COORDINATE SYSTEM, ZONE 3 (NAD 83). MULTIPLY DISTANCES SHOWN BY 1.000062 TO OBTAIN GROUND DISTANCES.

ATTACHED HERETO IS A PLAT TO ACCOMPANY LEGAL DESCRIPTION, AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION

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


JOEL GARCIA, P.L.S.

L.S. NO. 5285

08-16-2017





CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	38.50'	19°58'42"	13.42'
C2	48.50'	40°03'23"	33.91'

LINE TABLE		
NO	BEARING	LENGTH
L1	N21°47'49"W	37.00'
L2	N68°12'11"E	46.84'
L3	S21°47'49"E	50.69'
L4	S68°12'11"W	28.79'

QOE PROPERTIES, LLC
092-0116-035

PARCEL 1
ACFC & WCD
REEL 1629
IMAGE 695

PARCEL R
339 M 76

8322
BRIDGE EASEMENT
AREA = 2,342 SF±

CENTRAL
AVENUE

S18°15'34"W (R)

WILLOW
STREET

WINDY PACIFIC
PARTNERS III
092-0116-066

LEGEND

POB = POINT OF BEGINNING
POC = POINT OF COMMENCEMENT
(R) = RADIAL

— LOT LINE
- - - EASEMENT LINE

8322 ALAMEDA COUNTY DESCRIPTION NUMBER

REFERENCES

1. COUNTY FILE DRAWING RF-723
2. COUNTY FILE DRAWING RF-940



08-16-2017

COUNTY OF ALAMEDA ★ PUBLIC WORKS AGENCY
SURVEY DEPARTMENT

GRANT OF BRIDGE EASEMENT

ZONE 5 LINE F-6
GRANT OF BRIDGE EASEMENT
ALAMEDA COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT TO THE CITY OF NEWARK

Carlson, Barbee & Gibson, Inc.

CIVIL ENGINEERS • SURVEYORS • PLANNERS

SAN RAMON • (925) 866-0322
SACRAMENTO • (916) 375-1877

DRAWN: CBG: NA

DATE: AUGUST 16, 2017

FILE NO: RF-2182

SCALE: 1"=40'

JOB NO. CBG: 1496-021

SHEET NO: 1 OF 1

CHECKED: AL JORDAN

APPROVED:

Exhibit "B"

The grant of aerial easement is made upon the express conditions hereunder, which are binding between Alameda County Flood Control and Water Conservation District, a body corporate and politic (hereinafter referred to as "District" or "Grantor") and William Lyon Homes, Inc., a California corporation (hereinafter referred to as "William Lyon" or "Grantee") along with the parties' successors and assigns hereto:

1. District and William Lyon recognize that the use of the property described in Exhibit "A" is for flood control and that such use is primary and paramount to all other uses and obligations of said property.
2. This easement is being granted to William Lyon to fulfill Conditions of Approval for Tract Map 8311 that were required by the City of Newark (hereinafter "City") for traffic circulation.
3. This easement is granted solely for the construction and maintenance of a roadway bridge over the open natural creek channel of the District known to the District as Line F-6 in Zone 5, which bridge is to become part of the City street system, a public use.
4. Said easement may transfer to City (through an assignment or other agreement), upon the construction and acceptance of a bridge span for vehicle and pedestrian crossing in the airspace over the District's property, as described in said Exhibit "A" and as required by the conditions of approval for Tract Map 8311.
5. William Lyon, and its successors and assigns, shall bear all costs associated with the bridge to be constructed over the property of the District described in said easement, including, but not limited to, the design, construction, replacement, repair, and operation and maintenance of the bridge.
6. Plans and specifications for the design, construction, replacement, repair, and operation and maintenance of the bridge shall be subject to the approval of the District and the City, and shall comply with all relevant laws and regulations.
7. The bridge shall be constructed, maintained, and operated so as not to interfere with the primary and paramount purpose of the property for flood control. District and its successors and assigns shall have the right to require William Lyon and its successors and assigns to bear all costs associated with resolving any conflict between the bridge and the District's current or future flood control operations, including costs relating to modification, removal, and relocation of the bridge. Future flood control operations may include, but are not limited to, increasing capacity of the District's Line F-6 channel, which could be required to prevent flooding or to prevent restrictions of flood or storm water movement to and along natural drainage patterns. District agrees to notify William Lyon and its successors and assigns in writing of any such conflict and the parties will use their good faith efforts to resolve the same using the least restrictive alternative/solution.
8. No permanent easement rights for utilities, including rights to ingress or egress thereto are granted to any party over, under or upon said easement. The parties anticipate that William Lyon may construct facilities on the bridge on behalf of public or private utilities prior to the transfer of this easement to the City. Said facilities shall be constructed in accordance with plans and specifications approved by the District and the City. William Lyon shall not grant to any public or private utility any right, title or interest in any facility it constructs on their behalf. After William Lyon transfers to the City all rights, title and interest to this easement, then the City may, and not before, grant or otherwise devise any and all interest in any utility facility constructed on the bridge to any public or private utility to be maintained pursuant to franchise and or in accordance with the City's

encroachment ordinance or franchise agreement. All utilities requiring access in or on any structure constructed therein upon shall be required to obtain a revocable encroachment permit from the District, which approval shall not be unreasonably withheld. However, after the City accepts the bridge, City, as Grantee, may install, or allowed to be installed, any utilities pursuant to franchise and the City's applicable encroachment permit regulations.

9. GRANTOR shall be held harmless from and against any and all costs, expenses, losses, damages, liability, claims, and causes of action, liability for damages, injury to or death of any persons in any way arising from this easement or the use of the bridge, and Grantee shall defend and indemnify Grantor, the County of Alameda, their Boards of Supervisors, officers, employees, and agents from and against any liability, except to the extent such liability is caused by the sole negligence or willful misconduct of Grantor.
10. The purchase price paid for said easement is a one-time payment of \$13,890.40.
11. If said easement is not used by William Lyon, its successors and assigns, by December 31, 2022, for the purposes described herein, i.e., the construction of a bridge to become part of the City street system, then this easement shall revert to the Grantor as if this Grant of Easement had never occurred, provided however, that Grantor shall not be required to return any monetary consideration described herein.
12. It is understood and agreed that the easement right being granted is for an aerial bridge span structure and no supporting facilities shall be placed on District property. Minimum clearance from top of bank shall be 2.7 feet vertical clear as depicted on sheet 25 of 53 Improvement Plans/Central Avenue between Station 19+00 to 20+00.

Recording Requested By:

County of Alameda Public Works Agency
Right of Way Services Section

And When Recorded Mail To:

County of Alameda Public Works Agency
Right of Way Services Section
399 Elmhurst Street
Hayward, CA 94544-1395 – QIC 50507

Documentary Transfer Tax \$ _____ R & T Code 11922
Alameda County Flood Control and Water Conservation District

By: _____
City of Newark Unincorporated ☐

Recording Fee \$0.00 Govt. Code 27383

Space Above This Line For Recorder's Use

GRANT OF AERIAL EASEMENT
(Bridge Structure)

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a body corporate and politic, GRANTOR,

does hereby GRANT unto

WILLIAM LYON HOMES, INC., a California Corporation, GRANTEE,

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

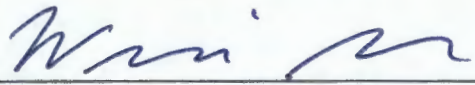
a perpetual, non-exclusive aerial easement and right of way to construct, maintain, operate, inspect, repair and replace a bridge structure and appurtenances thereto over and across all that certain real property designated as "No. 8322" and described in Alameda County Flood Control and Water Conservation District Board of Supervisors' Resolution No. 2017- 357, adopted November 21, 2017, a certified copy of which is attached hereto and is a part hereof.

This Grant of Aerial Easement is made contingent upon the terms and conditions contained in Exhibit "B" attached hereto and made a part hereof and is binding upon the Grantee, their successor and assigns.

IN WITNESS WHEREOF, this instrument is duly executed pursuant to said resolution.

Dated: DEC - 5 2017

ALAMEDA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

By: 
Wilma Chan, President, Board of Supervisors
Alameda County Flood Control and Water
Conservation District, State of California

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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)

County of Alameda)

On December 5, 2017 before me, Cheryl D. Perkins, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared _____

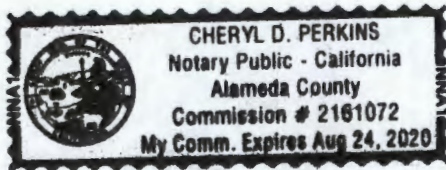
Wilma Chan

Name(s) 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.



Signature _____

Cheryl D. Perkins
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____