



**AGENDA**  
**NOTICE AND CALL OF SPECIAL MEETING**  
**OF THE LAKEPORT CITY COUNCIL ALSO SITTING AS THE**  
**BOARD OF DIRECTORS OF THE CITY OF LAKEPORT MUNICIPAL**  
**SEWER DISTRICT**  
**Monday, September 26, 2016**  
**5:30 P.M.**  
**City Council Chambers, 225 Park Street, Lakeport, California 95453**

**TO THE MEMBERS OF THE BOARD OF DIRECTORS OF THE CITY OF LAKEPORT MUNICIPAL SEWER DISTRICT:**

**NOTICE IS HEREBY GIVEN** that a Special Meeting of the Lakeport City Council sitting as the Board of Directors of the City of Lakeport Municipal Sewer District is hereby called to be held on **Monday, September 26, 2016, at 5:30 p.m.** in the City Council Chambers in City Hall located at 225 Park Street, Lakeport, California, for the purpose of discussing and acting on the following:

1. **EASEMENT DEED AND RIGHT OF WAY AGREEMENT:** Accept an Easement Deed from, and a Right of Way Agreement with, Donica, LLC, a California Limited Liability Company, for property located at 818 Lakeport Blvd, Lakeport (APN 025-472-05).
2. **FEE WAIVER AGREEMENT:** Ratify a Fee Waiver Agreement with Donica, LLC, a California Limited Liability Company, for property located at 818 Lakeport Blvd. Lakeport, CA (APN 025-472-05) with payment of \$10,220.00 for the easement and up to \$10,000.00 in future development fees applicable to the property expiring 9/14/2021.

Dated: September 23, 2016

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Hilary Britton, Deputy City Clerk



# CITY OF LAKEPORT

City Council   
City of Lakeport Municipal Sewer District   
Lakeport Redevelopment Successor Agency

STAFF REPORT	
<b>RE:</b> Ratify a Fee Waiver Agreement between Donica LLC and City of Lakeport and City of Lakeport Municipal Sewer District No. 1	<b>MEETING DATE:</b> 09/26/2016
<b>SUBMITTED BY:</b> Margaret Silveira, City Manager	
<b>PURPOSE OF REPORT:</b> <input type="checkbox"/> Information only <input type="checkbox"/> Discussion <input checked="" type="checkbox"/> Action Item	

## WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council and CLMSD Board are being asked to ratify the purchase of an Easement to allow for the construction and maintenance of a sewer force main pipe line and a fee waiver agreement with Donica, LLC, a California Limited Liability Company, for property located at 818 Lakeport Blvd. Lakeport, CA (APN 025-472-05).

## BACKGROUND/DISCUSSION:

Donica, LLC, the owners of the above referenced property, has agreed to grant to the CLMSD an underground easement, over, under, and across the referenced property for the construction and maintenance of a sanitary sewer force main pipeline.

In recognition of the owner's willingness to grant the Easement, the City is willing to compensate the owner \$20,222.00: \$10,222.00 payable at the granting of the Easement and \$10,000 to offset development fees related to potential future development. The waiver of development fees will expire on 9/14/2021.

## FISCAL IMPACT:

None  \$20,220.00 Budgeted Item?  Yes  No

Budget Adjustment Needed?  Yes  No If yes, amount of appropriation increase: \$

Affected fund(s):  General Fund  Water OM Fund  Sewer OM Fund  Other:

Comments: Account Number: 604-3070-990000. The \$10,220.00 was budgeted as part of the USDA Sewer Main project. The \$10,000 in waiver of potential development fees requires a budget in account 304-3070-99000 (Sewer Fund).

## SUGGESTED MOTIONS:

Move to ratify a Fee Waiver Agreement with Donica, LLC, a California Limited Liability Company, for property located at 818 Lakeport Blvd. Lakeport, CA (APN 025-472-05) with payment of \$10,220.00 for the easement and up to \$10,000.00 in future development fees applicable to the property expiring 9/14/2021.

**Attachments:** 1. Fee Waiver Agreement

## FEE WAIVER AGREEMENT

THIS FEE WAIVER AGREEMENT ("Agreement") is made and entered into as of 9/14, 2016, by and between DONICA, LLC, a California limited liability company, ("Owner"), on the one hand, and the CITY OF LAKEPORT and CITY OF LAKEPORT MUNICIPAL SEWER DISTRICT NO. 1, public entities of the state of California (together, "City"), on the other hand (collectively, the "Parties") with reference to the following facts:

A. Owner is the owner of real property known as 818 Lakeport Blvd., APN #025-472-05, located in the City of Lakeport, County of Lake, State of California; more particularly described on Exhibit "A" attached (the "Property").

B. City is the owner of a sewer main that runs underneath the Property pursuant to a separate easement. As part of upgrading and slightly enlarging the sewer main, City has negotiated a separate utility and temporary construction easement (the "Easement") with Owner, a copy of which is attached as Exhibit B. The Easement includes the right of City's contractor to use an empty parking lot on the Property to store supplies and equipment while the contractor upgrades the sewer main.

C. City needs access to improve, maintain, and enlarge the sewer main for health and safety reasons.

D. In recognition of Owner's willingness to grant the Easement, City is willing to pay Owner \$10,220.00, and to grant to Owner personally a waiver of potential future development fees applicable to the Property for a five year basis, pursuant to this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. City will pay Owner \$10,220.00 within 10 days after execution of this Agreement as partial consideration for the Easement.

2. As further consideration for the Easement, City agrees to waive up to a total of ten thousand U.S. dollars (\$10,000) of fees imposed either by the City or the City of Lakeport Municipal Sewer District that are applicable to any development Owner may apply to build on the Property until August 17, 2021. The types of City-imposed fees covered by this Agreement include the following:

- Sewer lateral connection fees
- Sewer expansion fees
- Water expansion fees
- Storm drainage fees
- Encroachment permit fees
- Planning application fees
- Plan check review fees
- Building permit fees

- Environmental review fees

3. Fees are considered waived under this Agreement at the time they would originally be incurred for a development application. At the time of any such application, Owner shall inform City of this Agreement and City shall provide Owner in writing the amount of fees waived. City shall maintain records to account for the cumulative total of all fees waived to Owner hereunder.

4. This Agreement to waive development fees does not apply to any fees assessed by other local government bodies, such as school impact fees or fire mitigation fees, or to any fees imposed by third parties, whether public or private, including fees for third-party consultants necessary to prepare environmental review documents or cultural resources monitoring studies.

5. This Agreement is personal to Owner, and does not run with the Property.

6. Owner's rights under this Agreement may not be assigned by Owner to any other party. If Owner transfers all or any portion of the Property to another party before August 17, 2021, or before City has waived up to \$10,000 in fees, City's obligations under this Agreement will be of no further effect.

7. If Owner decides to develop any part of the Property, nothing in this Agreement exempts Owner from City's normal development application processes and environmental review, with the exception of paying the above-referenced fees.

8. The amount of fees waived pursuant to this Agreement will be determined by referencing City's then current fee schedule for each type of fee at the time Owner applies for a permit.

9. All other rights of the Parties shall remain unchanged.

10. If legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs and attorneys' fees expended in such action. The venue for any litigation shall be Lake County, California and Consultant hereby consents to jurisdiction in Lake County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.

11. Notices to Owner shall be given at the following address: P.O. Box 2063 WINDSOR, CA 95492. Notices to City shall be given to City Clerk, City of Lakeport, 225 Park St., Lakeport, CA 95453.

12. This Agreement and the Exhibits hereto represents the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between them with respect to the matters contained in this Agreement. Each party enters into this Agreement based solely upon the representations

set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

13. If any part of this Agreement is declared invalid for any reason, such invalidity shall not affect the validity of the remainder of the Agreement.

14. This Agreement is intended for the benefit of Owner and City only, no other party shall have the rights of a third-party beneficiary under this Agreement.

IN WITNESS WHEREOF, this Agreement is executed by THE CITY OF LAKEPORT and CITY OF LAKEPORT MUNICIPAL SEWER DISTRICT NO. 1, authorizing such execution, and by OWNER.

CITY OF LAKEPORT and CITY OF LAKEPORT DONICA, LLC  
MUNICIPAL SEWER DISTRICT NO. 1

By: Margaret Silveira  
Margaret Silveira, City Manager  
Date: 9-19-16

By: Walter J. Riveras, Managing Member  
Name, Level of Officer  
Date: 9-14-16

By: \_\_\_\_\_  
Name, Level of Officer  
Date: \_\_\_\_\_

Attest:

By: Kelly Buendia  
Kelly Buendia, City Clerk  
Date: 9/19/2016

Approved as to form:

By: David J. Ruderman  
David J. Ruderman, City Attorney  
Date: 9/20/16

**EXHIBIT A: LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LAKEPORT, COUNTY OF LAKE,  
STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

APN: 025-472-05

## EXHIBIT A

THAT PORTION OF PARCEL 1 AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN BOOK 39 OF PARCEL MAPS, AT PAGES 22-24, LAKE COUNTY RECORDS, SITUATE IN THE CITY OF LAKEPORT, COUNTY OF LAKE, STATE OF CALIFORNIA, INCLUDED WITHIN A STRIP OF LAND 20 FEET IN WIDTH, THE NORTHERLY SIDELINE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF STATE HIGHWAY 29 AS SHOWN ON THAT MAP FILED FOR RECORD IN BOOK 32 OF RECORD OF SURVEYS, AT PAGE 40, LAKE COUNTY RECORDS, SAID POINT BEING THE INTERSECTION OF SAID RIGHT OF WAY LINE AND THE PROLONGATION OF THE SOUTHERLY LINE OF THAT "FIRST" DESCRIBED EASEMENT RECORDED IN BOOK 1002 OF OFFICIAL RECORDS, AT PAGE 242, LAKE COUNTY RECORDS, FROM WHICH A 2" ALUMINUM CAP STAMPED "CALTRANS R/W LS7554" BEARS N.35°58'51"W., 261.30 FEET MORE OR LESS, THENCE ALONG SAID PROLONGATION N.71°56'05"E., 80.59 FEET TO A POINT ON THE WESTERLY LINE OF SAID PARCEL 1, SAID POINT BEING THE **TRUE POINT OF BEGINNING**, THENCE CONTINUING ALONG SAID PROLONGATION N.71°56'05"E., 269.00 FEET TO THE **POINT OF TERMINATION**.

THE SIDELINES OF SAID STRIP SHALL BE LENGTHENED OR SHORTENED SO AS TO BEGIN AT THE WESTERLY LINE OF SAID PARCEL 1 AND TO TERMINATE AT A LINE RUNNING THROUGH SAID POINT OF TERMINATION THAT BEARS S.5°46'50"W., CONTAINING SOME 0.12 ACRES MORE OR LESS.

**TOGETHER WITH A TEMPORARY CONSTRUCTION EASEMENT, THE LOCATION OF WHICH IS DESCRIBED AS FOLLOWS:**

THAT PORTION OF PARCEL 1 AS SHOWN ON THAT PARCEL MAP FILED FOR RECORD IN BOOK 39 OF PARCEL MAPS, AT PAGES 22-24, LAKE COUNTY RECORDS, SITUATE IN THE CITY OF LAKEPORT, COUNTY OF LAKE, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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PROLONGATION N.71°56'05"E., 269.00 FEET; THENCE S.5°46'50"W., 21.87 FEET TO THE TRUE POINT OF BEGINNING, THENCE S.5°46'50"W., 139.05 FEET; THENCE S.80°25'46"W., 68.19 FEET; THENCE N.54°12'25"W., 145.02 FEET TO A POINT LYING 20.00 FEET DISTANT, AS MEASURED AT RIGHT ANGLES FROM SAID SOUTHERLY LINE, THENCE PARALLEL TO SAID SOUTHERLY LINE N.71°56'05"E., 209.20 FEET TO THE POINT OF BEGINNING, CONTAINING SOME 0.39 ACRES MORE OR LESS.

SAID TEMPORARY CONSTRUCTION EASEMENT SHALL TERMINATE UPON COMPLETION OF CONSTRUCTION, BUT IN ANY EVENT SAID TEMPORARY CONSTRUCTION EASEMENT SHALL TERMINATE NO LATER THAN ONE YEAR FROM THE TIME IT IS GRANTED.



**EXHIBIT B: EASEMENT**

RECORDING REQUESTED BY:

Board of Directors

CLMSD

AND WHEN RECORDED MAIL TO:

City Clerk

255 Park Street

Lakeport, CA 95453

This document is being recored free per Government Code 27383. The undersigned declares that the Documentary Franchise Tax is \$0. By: \_\_\_\_\_

EASEMENT DEED

By the instrument dated SEPTEMBER 14, 2016, 2016 for value received, Donica, LLC, a California Limited Liability Company, grant(s) to the City of Lakeport Municipal Sewer District, a public entity of the State of California:

1) An easement for the installation, construction, reconstruction, maintenance, repair, use and operation of an underground sanitary sewer force main pipeline, together with any fixtures, devices, and/or related appurtenances and work auxiliary thereto, over, under and across that certain real property situate in the City of Lakeport, State of California, described as follows:

Description is attached as EXHIBIT "A" and made a part hereof as if fully set forth herein.

2) A temporary easement to allow contractors working for the City of Lakeport Municipal Sewer District to use an empty parking lot on the property described in EXHIBIT "A" for storage of supplies and equipment needed for the installation of the above-referenced pipeline. Said temporary construction easement shall terminate upon completion of construction, but in any event said temporary construction easement shall terminate no later than one year from the time it is granted.

Donica, LLC, a California Limited Liability Company

Martín J. Riveras  
By:

Managing Member  
Title

Assessor's Parcel No. 025-472-05

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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 Sonoma

On September 14, 2016 before me, Patricia Mlekus, Notary Public,  
(here insert name and title of the officer)

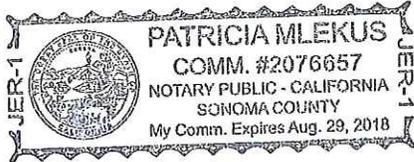
personally appeared Matthew J. Riveras,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their 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.

Patricia Mlekus  
Signature

(Seal)



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 Sonoma

On September 14, 2016 before me, Patricia Mlekus, Notary Public,  
(here insert name and title of the officer)

personally appeared Matthew J. Riveras,  
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.

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WITNESS my hand and official seal.

Patricia Mlekus  
Signature

(Seal)

