

RESOLUTION NO. 4378

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF SOLEDAD AUTHORIZING THE EXECUTION OF AN
EASEMENT AGREEMENT ASSOCIATED WITH THE
FRONT STREET/OAK STREET INTERSECTION
TRAFFIC SIGNAL PROJECT**

WHEREAS, on June 3, 2009, the City Council authorized the City Manager to enter into a contract for the construction of traffic signals at the intersection of Front and Oak Streets; and

WHEREAS, in order to complete the Traffic Signal Project, it is necessary for the City to acquire an easement on property located at 960 Front Street, owned by Emilio and Dennis Peverini; and

WHEREAS, an "Easement Agreement" allowing signal related equipment to be located on the subject property, and providing ongoing access rights to the property for purposes of maintaining such equipment, has been negotiated and prepared and reviewed by the parties and their respective legal counsel.

NOW THEREFORE, BE IT HEREBY RESOLVED, by the City Council of the City of Soledad that the Council hereby authorizes the City Manager to enter into an "Easement Agreement," in the form attached hereto as Exhibit "A" and by this reference incorporated herein, for the purpose of completing construction related to the Front Street/Oak Street Intersection Traffic Signal Project. The City Manager is further authorized to carry out all actions necessary to effectuate the terms and conditions of said Agreement.

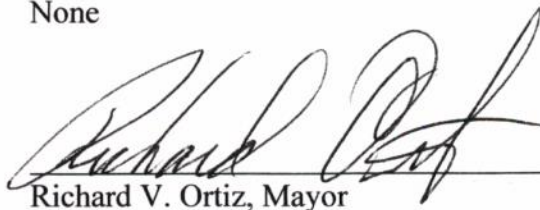
PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 17th of June, 2009, by the following vote:

AYES, and in favor thereof, Councilmembers: Richard J. Perez, Juan Saavedra, Patricia Stephens, Mayor Pro Tem Martha Camacho, Mayor Richard Ortiz

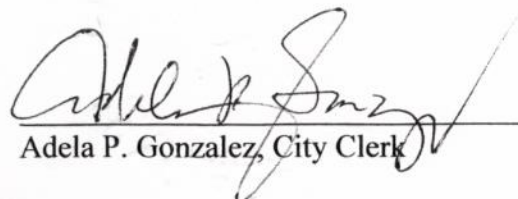
NOES, Councilmembers: None

ABSENT, Councilmembers: None

ABSTAIN, Councilmembers: None


Richard V. Ortiz, Mayor

ATTEST:


Adela P. Gonzalez, City Clerk

EASEMENT AGREEMENT

This **Easement Agreement** (this "AGREEMENT") is entered into, by and between the undersigned property owner EMILIO PEVERINI, _____, _____) and _____ ("OWNER") and the CITY OF SOLEDAD ("CITY").

RECITALS

This Easement Agreement is entered into on the basis of the following facts, understandings, and intentions of the Parties:

A. CITY desires to commence a traffic signalization improvement project at the intersection of Front and Oak Streets that will include the installation of a traffic signal detector loop, conduits and conductors on the Peverini property (the "PROJECT").

B. In order to construct the PROJECT and perform the on-going maintenance as described herein, CITY needs to acquire a Project Easement ("PROJECT EASEMENT") and a Temporary Construction Easement ("TCE") (hereinafter collectively "EASEMENT AREA") in and to a portion of the property located at 960 Front Street, Soledad, California, APN: 022-038-006 (hereinafter "PARCEL") owned by OWNER. The part of the PARCEL affected by CITY's PROJECT is its southern driveway, which provides access to and from the intersection of Front and Oak Streets.

C. OWNER has agreed to grant to CITY the EASEMENT AREA, consisting of a TCE and a PROJECT EASEMENT for the purposes of constructing the PROJECT improvements on the PARCEL and for on-going maintenance, repair and re-construction of the PROJECT improvements. The TCE and PROJECT EASEMENT cover the same area of the PARCEL.

D. The legal description of both the TCE and PROJECT EASEMENT is attached to this AGREEMENT and is incorporated by this reference as **Exhibit "A."** Upon the Parties' execution of this AGREEMENT, OWNER shall execute the Grant of Easement, including both the TCE and PROJECT EASEMENT, attached hereto as **Exhibit "B"** and incorporated by this reference. CITY shall record said executed Grant of Easement with the County of Monterey's Recorder's Office.

E. CITY's PROJECT is in response to increased traffic volume in the vicinity due to development and to improve traffic flow from and onto Oak Street. Through its PROJECT, CITY will install traffic signals, including a signal light that will control traffic coming in and out of the PARCEL's southern driveway, to ensure ongoing ingress and egress to the PARCEL. CITY will also install signal loops and conduits in the Easement Area.

F. Currently Front Street, also known as SR 146, is part of the State highway system and is controlled by Caltrans.

G. Pursuant to Caltrans Design Standards and Policies, OWNER's southern driveway may not provide both ingress and egress to the PARCEL, unless certain traffic improvements are made. These improvements include a new right turn lane on Front Street, an extended retaining wall, and relocation of a number of underground utilities on Front Street. However, if Caltrans dedicates Front Street to CITY such that it becomes a CITY-owned street, CITY's standards would allow for two-way traffic (ingress and egress) to the PARCEL over the PARCEL's existing southern driveway, if controlled by a traffic signal.

H. Even though Caltrans directed that the PARCEL's southern driveway be converted to an entrance only access, or be eliminated altogether, CITY obtained approval from Caltrans to allow the PARCEL's existing southern driveway to remain open to two-way traffic for ingress and egress to the PARCEL through the use of temporary stop signs which CITY has installed.

I. The Parties agree the estimated value of the EASEMENT AREA is Twelve Thousand Dollars (\$12,000.00), based on a recent appraisal CITY conducted of similar property in Soledad, California.

J. OWNER agrees to grant the EASEMENT AREA to CITY in exchange for CITY's commitment to 1) provide on-going maintenance of the PROJECT and associated improvements to keep both ingress and egress via the PARCEL's existing driveway open, 2) to pay all on-going electricity costs and any other costs required to keep the PROJECT improvements (i.e. traffic signals) functional; and (3) to reimburse Owner for one-half of their attorney fees incurred in reaching this Agreement, including fees incurred for meetings with the City, reviewing this Agreement and granting the Easements to the CITY, up to an amount not to exceed Two Thousand Five Hundred Dollars (\$2,500.00).

K. CITY agrees to maintain both ingress and egress open to the PARCEL over the PARCEL's existing southern driveway, whether it be through the continued use of the stop signs in place at the intersection, or by operating a new traffic signal (the PROJECT) at the intersection, or by making certain off-site traffic improvements including a new right turn lane on Front Street.

L. Upon completion of the construction of PROJECT and associated improvements, CITY and/or its agents, employees, contractors and/or consultants will require continued access upon the PERMANENT EASEMENT for the purposes of locating the PROJECT improvements and maintaining the PROJECT improvements.

M. OWNER desires to enter into this AGREEMENT to assist CITY in performing the PROJECT and to assure on-going ingress and egress to the PARCEL over the PARCEL's existing southern driveway.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES OF THE PARTIES, OWNER AND CITY HEREBY AGREE AS FOLLOWS:

Section 1. Grant of Use.

(a) Pursuant to the Grant of Easement, OWNER will convey to CITY, and its agents, employees, contractors, subcontractors and consultants (collectively, "AGENTS"), its successors and assigns, a permanent, non-revocable, non-exclusive easement to erect, lay, construct, install, operate, inspect, repair, maintain, house, replace, improve and remove traffic signalization hardware and appurtenances thereto ("PROJECT EASEMENT") as required for the PROJECT described above, and a temporary non-exclusive construction easement ("TCE") in connection with construction of the PROJECT, over, under, in, across and through a portion of OWNER's property identified as APN 022-038-006 (the "PARCEL"), as more particularly described in the Grant of Easement, attached hereto and incorporated by this reference as **Exhibit "B,"** together with the necessary incidental rights of ingress and egress to access the PROJECT over the PARCEL, subject to the conditions and restrictions set forth in this AGREEMENT and the attached Grant of Easement.

(b) Pursuant to the Grant of Easement, the TCE shall include all rights reasonably necessary in connection with the construction of the PROJECT including traffic signalization hardware and appurtenances within the PROJECT EASEMENT. CITY shall use all reasonable efforts to minimize the impact and use of the temporary construction easement on OWNER's operations and services. Said TCE shall terminate upon the earlier to occur: 1) the completion of the construction of the PROJECT or 2) June 1, 2011. Upon termination of the TCE, the uses related to the construction of the PROJECT will cease and CITY's use will then be limited to the uses described by the PROJECT EASEMENT.

(c) Pursuant to the Grant of Easement, OWNER further grants to CITY the right to install any and all appliances or devices necessary for the proper repair, maintenance, operation, replacement and improvement of said PROJECT improvements, including, but not limited to, such devices as may be necessary for the control of the traffic signals, provided such appliances or devices do not have any material adverse impact on OWNER's operations, in OWNER's sole discretion.

(d) CITY agrees to keep the Project operational and City, at City's sole cost and expense, shall be responsible for the on-going maintenance, repair and re-construction of the PROJECT improvements and to pay all on-going service charges and electricity costs and for any other necessary utilities to keep the traffic signals functional.

(e) CITY agrees to maintain both ingress and egress open to the PARCEL through the PARCEL's existing southern driveway, whether it be through the continued use of the stop signs in place at the intersection of Oak and Front Streets, or by operating a new traffic signal at the intersection, or by making certain off-site traffic improvements including a new right turn lane on Front Street.

Section 2. Use of the EASEMENT AREA. CITY and its AGENTS shall use the EASEMENT AREA for the purpose of installing traffic signals, including a signal light that will control traffic coming in and out of the PARCEL's southern driveway, to ensure the existing southern driveway remains available for two-way (ingress and egress) traffic, including but not limited to the installation of signal loops and conduits. CITY has the on-going duty to maintain the PROJECT improvements located on the PARCEL, including painting and striping. Therefore, CITY and its AGENTS shall also use the EASEMENT AREA for on-going maintenance, repair and re-construction of the PROJECT improvements, including the traffic signal facilities.

Any amendments or alterations to the use of the EASEMENT AREA pursuant to this AGREEMENT must be approved in writing by OWNER and CITY prior to performance of the work.

Section 3. Terms of Agreement/Termination.

(a) The rights granted pursuant to this AGREEMENT allow CITY and its AGENTS to perform the work and on-going maintenance described in Section 2.

(b) The exact date of commencement will be determined based on the PROJECT's construction schedule. The CITY or its AGENTS will provide OWNER at least five (5) working days notice before commencement of the PROJECT ("Commencement Date").

(c) While work is being performed, vehicle and pedestrian access to and from the PARCEL shall be maintained.

(d) CITY agrees to maintain both ingress and egress open to the PARCEL's existing southern driveway, whether it be through the continued use of the stop signs in place at the intersection of Oak and Front Streets, or by operating a new traffic signal at the intersection, or by making certain off-site traffic improvements including a new right turn lane on Front Street.

(e) Pursuant to the Grant of Easement, OWNER covenants that no trees, buildings, structures or other improvements, which would interfere with CITY's use of the EASEMENT AREA for the PROJECT shall be located on the EASEMENT AREA.

(f) CITY and its AGENTS, only when necessary for safety reasons during construction, may have sole possession of the EASEMENT AREA, once construction of the PROJECT has commenced through completion of the construction of the PROJECT.

(g) Pursuant to the Grant of Easement, following the completion of any work by CITY in the EASEMENT AREA, CITY shall cause the surface of the EASEMENT AREA to be returned to the condition that immediately predated the CITY's entry upon the PARCEL except as otherwise may be permitted by this Grant of Easement, including the housing of PROJECT improvements.

(h) Should the PROJECT traffic signals and appurtenances thereto described herein no longer be used by CITY or its successors and assigns, CITY shall remove the PROJECT improvements and return the EASEMENT AREA to its

pre-PROJECT condition, this AGREEMENT shall cease, the Easements herein described shall be abandoned and CITY or its successors and assigns shall execute a quitclaim deed to OWNER relinquishing all right title and interest in the EASEMENT AREA to OWNER.

(i) CITY shall record the executed Grant of Easement, attached hereto as **Exhibit "B,"** with the County of Monterey's Recorder's Office.

Section 4. Compliance With Laws. All activities performed on the EASEMENT AREA by CITY or its AGENTS shall be done in accordance with all laws, regulations and orders of any governmental or other regulatory entity with jurisdiction over the PARCEL.

Section 5. No Costs to Owner. CITY shall bear all costs and expenses of any kind or nature in connection with its use of the EASEMENT AREA, including but not limited to all costs of excavation, construction and installation of the PROJECT including the traffic signals and related hardware, and of maintenance of the PROJECT including the traffic signals and related hardware. CITY is fully responsible for electricity charges, and any other utilities needed, for the life of the PROJECT. City shall reimburse Owner for one-half of their attorney fees incurred in reaching this Agreement, including attorney fees incurred for meetings with the City, reviewing this Agreement and granting the Easements to the CITY, up to an amount not to exceed Two Thousand Five Hundred Dollars (\$2,500.00).

Section 6. Repair of Damage. If any portion of the EASEMENT AREA or the PARCEL, or any other property of the OWNER, its employees or any third parties located on the PARCEL, is damaged by any of the activities conducted by CITY or its AGENTS resulting from the construction, maintenance or repair of the PROJECT, CITY shall, at CITY's own cost and expense, repair any and all such damage and restore said property to the same condition it was in before it was damaged. Such repair shall be done immediately if the damage creates an unsafe condition to persons or property, or, if the damage does not create an unsafe condition and is outside the EASEMENT AREA, within 60 days from the date of the damage; if the damage does not create an unsafe condition and is inside the EASEMENT AREA, prior to the completion of the work described in Section 2 above.

Section 7. Indemnity. CITY agrees to indemnify, hold harmless and defend OWNER from and against any and all claims, judgments, losses, costs, damages, including personal or property damage, penalties, fines or liabilities, including any third party claims against the OWNER, which may be suffered or incurred by OWNER or third any parties caused by, arising out of, or in any way connected with CITY or CITY's AGENTS use of the EASEMENT AREA, or the exercise of the rights and privileges granted in this AGREEMENT, except claims arising out of intentional or negligent acts of OWNER.

Section 8. Improvements. Upon CITY's completion of the construction of the PROJECT improvements on the EASEMENT AREA, this AGREEMENT as to the Temporary Construction Easement and temporary uses of the PARCEL

shall cease, however, CITY shall continue to be liable to owner for the Indemnity requirements set forth in Section 7 above and City shall remain responsible for all improvements relating to the PROJECT within the EASEMENT AREA, and this AGREEMENT shall continue as long as the PROJECT EASEMENT remains in place and OWNER shall not be liable to CITY or any third party for any and all claims, judgments, losses, costs, damages, including personal or property damage, penalties, fines or liabilities, including any third party claims against the OWNER, which may be suffered or incurred by OWNER or any third parties caused by, arising out of, or in any way connected with CITY or CITY's AGENTS use of the EASEMENT AREA, or the exercise of the rights and privileges granted in this AGREEMENT, except claims arising out of intentional or negligent acts of OWNER.

Section 9. Insurance. CITY is self insured through a Joint Powers Authority, the Monterey Bay Area Self Insurance Authority, and will maintain said insurance or the equivalent thereof, during the life of this AGREEMENT.

Section 10. Entry Upon City's Authority. This AGREEMENT granted to CITY shall include all AGENTS of CITY. All work performed on the PARCEL, all AGENTS entering the EASEMENT AREA, and all property and equipment used and placed on the EASEMENT AREA by CITY or its AGENTS in furtherance of the permission granted herein is presumed to be with the express authorization of CITY.

Section 11. California Law. This agreement shall be construed and interpreted in accordance with the Laws of the State of California.

Section 12. Severability. Except as otherwise specifically provided for in this AGREEMENT, invalidation of any provision of this AGREEMENT, or of its application to any person, by judgment or court order, shall not affect any other provision of this AGREEMENT or its application to any other person or circumstance, and the remaining portions of this AGREEMENT shall continue in full force and effect, unless enforcement of this AGREEMENT as invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purposes of this AGREEMENT.

Section 13. Authority. Each person executing this AGREEMENT on behalf of a party represents and warrants that such person is duly authorized to do so and has full right and authority to enter into this agreement and bind CITY or OWNER, as the case may be, to all of their respective obligations hereunder.

Section 14. Effective Date. OWNER and CITY agree that this AGREEMENT shall be deemed to be effective on the first day of use by CITY and/or its AGENTS after notice has been given as required in Section 3.

Section 15. Successors and Assigns. This AGREEMENT shall bind and inure to the benefit of the successors and assigns of the Parties hereto.

Section 16. Breach or Default of Agreement. Should any party to this AGREEMENT fail to perform any term or provision, violate any term or provision, or prevent another party from performing any term or provision, resulting in a breach or default of this AGREEMENT, the non-defaulting party may pursue all

available judicial remedies. The prevailing party in any action or proceeding relating to the subject matter of this Agreement or the enforcement of the parties' rights and obligations hereunder shall be entitled to recover its or their actual attorneys' fees and costs as determined by the court.

Section 17. Miscellaneous. This AGREEMENT may be amended or modified only by a written amendment signed by each of the Parties hereto. No waiver by a party of any of the provisions of this AGREEMENT shall be effective unless in writing and signed by an officer or their authorized representative, and only to the extent expressly provided in such written waiver. This AGREEMENT may be executed in one or more counterparts, each of which shall be an original but all of which together shall be deemed to constitute a single agreement. The paragraph headings of this AGREEMENT are for convenience of reference and shall be disregarded in the interpretation of this AGREEMENT.

Section 18. Notices and Contacts. All questions, issues, or necessary contact under this AGREEMENT shall be directed to CITY's Agent, _____ at () _____. Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to any other party shall be in writing and may be served in any one of the following ways: personally, overnight delivery (such as Federal Express), or via facsimile transmission to:

Owner:

c/o Dennis Peverini
960 Front Street
Soledad, CA 93960
(831) 678-2692
(831) 678 - 1801

With copies to:

Christine Kemp, Esq.
Noland, Hamerly, Etienne & Hoss
A Professional Corporation
333 Salinas Street
P.O. Box 2510
Salinas, CA 93901
(831) 424-1414 Phone
(831) 424-1975 Fax

City:

Peter Le P.E.
City Engineer
City of Soledad
248 Main Street
Soledad, CA 93960
(831) 223-5175 Phone
(831) 678-3965 Fax

With copies to:

Michael F. Rodriguez
Meyers, Nave, Riback, Silver & Wilson, LLP
555 12th Street, Suite 1500
Oakland, CA 94607
(510) 808-2000 Phone
(510) 444-1108 Fax

**IN WITNESS WHEREOF, OWNER and CITY execute this AGREEMENT
at City of Soledad, California, as of the date set forth below:**

"GRANTEE"

"OWNER"

CITY OF SOLEDAD

PEVERINI

By: _____

Name: _____

Name: _____

Its: _____

Name: _____

Date: _____

Name: _____

Date: _____

APPROVED AS TO FORM.

By: _____

Dated: _____, 2009

Michael F. Rodriguez
For City of Soledad

By: _____

Dated: _____, 2009

Christine Kemp
For Owner

1248241.4