

RESOLUTION NUMBER R- 309242

DATE OF FINAL PASSAGE SEP 30 2014

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE ACQUISITION OF REAL PROPERTY INTERESTS FOR THE CONSTRUCTION OF THE TIERRASANTA (VIA DOMINIQUE) PUMP STATION DESIGN H115441; AUTHORIZING THE CITY ATTORNEY TO COMMENCE PROCEEDINGS IN EMINENT DOMAIN AND TO ACQUIRE AN ORDER FOR IMMEDIATE POSSESSION; AND AUTHORIZING EXPENDITURE OF FUNDS FOR THE REAL PROPERTY INTERESTS TO BE ACQUIRED

WHEREAS, the Tierrasanta (Via Dominique) Pump Station Design H115441 ("Project") is part of the City of San Diego, Public Works Department's ("City") Water Main Replacement Program as mandated by the California Department of Public Health; and

WHEREAS, the Project is part of the Public Utilities Department's Capital Improvements Program, CIP No. S-12040, Tierrasanta (Via Dominique) Pump Station, Fund 700010, Water; and

WHEREAS, the existing Tierrasanta Temporary Pump Station located at 11100 Clairemont Mesa Blvd. has exceeded its life cycle and is in need of replacement; and

WHEREAS, inefficient or failing pump stations create potential health and safety issues to the community; and

WHEREAS, the Project will demolish the existing Tierrasanta Temporary Pump Station and replace it with a new 14 million gallon dual pump station to be located at 4701 Seda Drive and will include installation of approximately 3,000 feet of new 20-inch PVC water main along Clairemont Mesa Boulevard; and

WHEREAS, the Project will provide mandated levels of fire protection to the Tierrasanta community; and

WHEREAS, the Project will have the capacity to provide reliable water service for the projected 3.8% population growth anticipated by 2030; and

WHEREAS, the Project will combine the pumping requirements of both the existing Tierrasanta Temporary Pump Station and the Via Dominique Pump Stations at one location; and

WHEREAS, a fee interest acquisition of approximately 24,204.47 square feet of an adjoining portion of land identified as APN 373-342-02 (more specifically described in Attachment 1), along with a temporary easement over approximately 4,565.43 square feet (more specifically described in Attachment 2) for a temporary construction area (combined, the real property interests are also referred to as the "Acquisition Area") are necessary to complete the Project; and

WHEREAS, the proposed location of the Project will have minimal negative impact to native vegetation, no private residences are located directly adjacent to the Project boundaries, no extensive grading work or structure support devices will be required, there is adequate site access and yard area for maintenance utility equipment and vehicles, and there is sufficient space for surge protection tanks and an emergency generator; and

WHEREAS, the proposed location of the Project will allow for the construction of the Project with minimal disruption to the current operations of the two existing pump stations; and

WHEREAS, the Acquisition Area is owned by the Villa Dominique Townhomes Association ("Association"), a California mutual benefit non-profit corporation; and

WHEREAS, the entire adjoining parcel, which includes the Acquisition Area, is encumbered with an Open Space Easement as well as typical utility easements and its existing highest and best use is as open space; and

WHEREAS, the City is vested with the power of eminent domain by Article I, Section 19 of the California Constitution, California Government Code section 37350.5, and San Diego Charter section 220, to acquire real property interests necessary for a public purpose; and

WHEREAS, the First Amended and Restated Declaration of Covenants, Conditions and Restrictions for Villa Dominique Townhome Association (recorded as Instrument No. 79-485669 of Official Records) requires an affirmative vote of at least 75% of the owners to sell any portion of the Association property; and

WHEREAS, the City obtained a fair market value appraisal of the Acquisition Area and determined that the total probable compensation to be paid for acquisition of the real property interests sought is \$24,500;

WHEREAS, the City negotiated with the Board of Directors for the Association and made offers to purchase the real property interests necessary for the Project at an amount consistent with the appraised fair market value of the property in compliance with California Government Code section 7267.2(a), and Association rejected the offer to purchase as of the date of this Resolution; and

WHEREAS, the City completed appropriate environmental review of the Project in compliance with the California Environmental Quality Act of 1970 (CEQA) (Pub. Res. Code Section 21000 et seq.), as amended, and the State CEQA Guidelines thereto (California Code of Regulations, Title 14, Chapter 3, Section 15000 et seq.) and certified a Mitigated Negative Declaration No. 317092 and adopted a Mitigation Monitoring and Reporting Program on July 14, 2014; and

WHEREAS, on September 15, 2014, the City mailed a notice of hearing, and of its intent to adopt this Resolution of Necessity, to the record owners of the Acquisition Area, and all other persons who may have an ownership interest in the property interests sought (see Attachment 3

for a copy of the notice); which notice of hearing advised said persons of their right to appear and be heard on the matters referred to therein, on the date and at the time of the place stated therein, and that a waiver of their right to appear and be heard will result upon their failure to file a written request to appear and be heard within 15 days after the date the City mailed the notice, all in compliance with California Code of Civil Procedure section 1245.235; and

WHEREAS, the hearing set out in said notice of hearing was held on September 30, 2014, at the time and place stated in the notice, and all interested parties were given an opportunity to appear and be heard on the following matters: (a) whether the public interest and necessity require the Project; (b) whether the Project is planned or located in a manner which is most compatible with the greatest public good and the least private injury; (c) whether the property interests proposed to be acquired are necessary for the Project; (d) whether an offer meeting the requirements of California Government Code section 7267.2 has been given; and (e) whether all other prerequisites for the exercise of eminent domain to acquire the property rights have been met; and

WHEREAS, the City Council, as a result of said hearing, has determined that the public health, safety and welfare require the City to acquire the property interests described in Attachments 1 and 2 for the Project; and

WHEREAS, under Charter section 280(a)(2), this Resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the public interest and necessity require acquisition of the property interests as set forth on Attachments 1 and 2

consisting of a fee interest of approximately 24,204.47 square feet over a portion of APN 373-342-02 and a temporary easement over approximately 4,565.43 square feet for a temporary construction area to complete the Project.

BE IT FURTHER RESOLVED, that the Project is planned or located in a manner most compatible with the public good and least private injury.

BE IT FURTHER RESOLVED, that the property interests proposed to be acquired are necessary for the Project and that such use is a public use authorized by law (inter alia, Charter section 220, California Code of Civil Procedure sections 1240.010, 1240.020, 1240.030, 1240.040, 1240.110, 1240.120, 1240.140, 1240.510, 1240.610 and 1255.410; California Government Code section 5023.1).

BE IT FURTHER RESOLVED, that the Project will enable the City to provide adequate and reliable water to the Tierrasanta community.

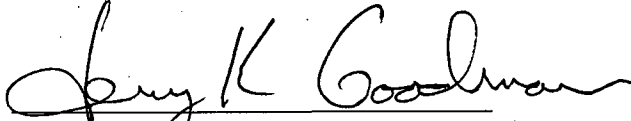
BE IT FURTHER RESOLVED, that an offer to acquire the real property interests, pursuant to California Government Code section 7267.2, at the appraised fair market value, has been made to each party claiming an interest(s) in the property interests sought.

BE IT FURTHER RESOLVED, that the City Attorney of the City of San Diego is hereby authorized and directed to commence an action in the Superior Court of the State of California, in and for the County of San Diego, in the name of and on behalf of the City of San Diego, against all claimants with any interest(s) in the real property interests sought, and to seek immediate possession of the real property interests sought pursuant to California Code of Civil Procedure section 1255.410.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized to expend funds in the amount of \$24,500 from CIP S-12040, Tierrasanta (Via Dominique) Pump Station, Fund 700010, Water, to acquire the property interests found necessary for the Project, and for

deposit into the State Treasury's State Condemnation Fund. This is the probable amount of compensation to be paid by the City for the necessary real property interests to be acquired.


APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Jenny K. Goodman
Deputy City Attorney

JKG1:mfc
9/10/2014
Or.Dept: Real Estate Assets Dept.
CC No. 3000007190
Doc. No. 860586

I hereby certify that the foregoing Resolution of Necessity was passed by the Council of the City of San Diego, at this meeting of SEP 30 2014.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

The City of San Diego
COMPTROLLER'S CERTIFICATE

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING CC 3000007190
 DEPT. NO.: 2112

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____

Purpose: _____

Date: _____ By: _____

COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Funded Program	Fund	Grant Number	G/L Account	Functional Area	Business Area	Fund Center or Cost Center	Internal Order or WBS Element	Original Amount
TOTAL AMOUNT									

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$24,500.00

Vendor: Villa Dominique Townhome Association

Purpose: To authorize the expenditure of funds not to exceed \$24,500.00 to Villa Dominique Townhome Association for site acquisition and temporary construction area permit for the Tierrasanta (Via Dominique) Pump Station project.

Date: August 29, 2014 By: Caryn McGriff

COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Funded Program	Fund	Grant Number	G/L Account	Functional Area	Business Area	Fund Center or Cost Center	Internal Order or WBS Element	Original Amount
001	S12040	700010		512204	OTHR-00000000-WU	2013		S-12040.03.02	\$24,500.00
TOTAL AMOUNT									\$24,500.00

FUND OVERRIDE

CC 3000007190

Passed by the Council of The City of San Diego on SEP 30 2014, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Harris	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage SEP 30 2014

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

(Seal)

By *Mary Fernandez*, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- **309242**