

RESOLUTION NUMBER R- 309442

DATE OF FINAL PASSAGE DEC 16 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 FRIARS RD/SR-163 INTERCHANGE IMPROVEMENT PROJECT NO. 72782; 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 City of San Diego (City), in coordination with the California Department of Transportation (CalTrans) District 11 and the Federal Highway Administration (FHWA), is undertaking a major right-of-way and traffic improvement project involving multiple roads, freeways, and properties located at and near the Friars Road and State Route 163 intersection, and referred to as the "Friars Road/State Route 163 Interchange Improvements Project" (Project); and

WHEREAS, the Friars Road/SR-163 interchange experiences significant congestion due to residential development in Mission Valley, traffic generated from several nearby shopping malls, existence of four significant weave areas on SR-163 and Friars Road, and the close proximity to the SR-163/I-8 freeway-to-freeway interchange; and

WHEREAS, the City entered into a Cooperative Agreement, dated October 14, 2003, with the State of California (Agreement) for the purpose of assigning respective responsibilities between the City and CalTrans for different aspects of the Project, including a duty of mutual cooperation to implement the Project; and

WHEREAS, the Project is being implemented in separate phases with the acquisition of rights-of-way constituting the initial phase of the Project; and

WHEREAS, the City is authorized to and agreed, pursuant to Resolution R-2014-813, to conduct all rights-of-way and property acquisition processes and actions required for the Project including obtaining Resolutions of Necessity should efforts to negotiate with and acquire property from affected property owners not be successful;

WHEREAS, a fee interest acquisition of approximately 3408.92 square feet over a portion of APN 437-291-29; a permanent retaining wall easement of approximately 96.29 square feet over a portion of APN 437-291-29, and a temporary construction easement over approximately 20,103.19 square feet over portions of APNs 437-291-29 and 437-291-30 (more specifically described in Exhibit 1 attached hereto) (combined, the real property interests to be acquired are also referred to as the "Acquisition Area") are necessary to complete the Project; 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 \$348,300.00; and

WHEREAS, the City negotiated with the property owners 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 the negotiations with the property owner have not been successful as of the date of this Resolution; 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 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 Final Environmental Impact Report No. 72782 for the Project on June 17, 2010; and

WHEREAS, the acquisition of the real property rights set forth in Exhibit 1 is a critical component for the implementation of the Project, as a whole; and

WHEREAS, the acquisition of the real property interests proposed is the narrowest right-of-way possible while still adhering to the legal requirements for right-of-way and traffic lane widths; and

WHEREAS, the freeway connections and surface improvements planned under this Project are needed to serve Mission Valley's transportation needs; and

WHEREAS, numerous community meetings took place to obtain community input on the Project; and

WHEREAS, on November 28, 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; 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 December 16, 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 Exhibit 1 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 in Exhibit 1 consisting of a fee interest acquisition of approximately 3408.92 square feet over a portion of APN 437-291-29;

a permanent retaining wall easement of approximately 96.29 square feet over a portion of APN 437-291-29, and a temporary construction easement over approximately 20,103.19 square feet over portions of APNs 437-291-29 and 437-291-30 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).

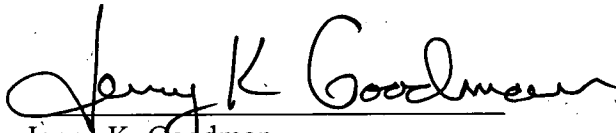
BE IT FURTHER RESOLVED, that an offer to acquire the real property interests, pursuant to California Government Code section 7267.2, at the appraised fair market value, has been made to each party claiming an ownership interest(s) in the property interests sought.

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 \$348,300.00 from CIP S-00851, Friars Road/SR-163 Interchange Improvement Project, Fund 400169 (TransNet), to acquire the property interests found necessary for the Project, and for deposit into the State Treasury's State Condemnation Fund, as necessary,

to obtain possession of the Acquisition Area. 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

JKG:mc  
12/02/14  
Or.Dept:READ  
Doc. No. 913405

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of DEC 16 2014.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Passed by the Council of The City of San Diego on DEC 16 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"/>
Lorie Zapf	<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"/>
Chris Cate	<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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Date of final passage DEC 16 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 *May Semando*, Deputy

Office of the City Clerk, San Diego, California

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