

RESOLUTION NUMBER R- 312178

DATE OF FINAL PASSAGE JAN 14 2019

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 HIGHLAND & MONROE AVENUE STORM DRAIN REPLACEMENT PROJECT; AUTHORIZING THE CITY ATTORNEY TO COMMENCE PROCEEDINGS IN EMINENT DOMAIN AND TO OBTAIN AN ORDER FOR IMMEDIATE POSSESSION; AND AUTHORIZING EXPENDITURE OF FUNDS FOR THE REAL PROPERTY INTERESTS TO BE ACQUIRED.

WHEREAS, the Highland & Monroe Avenue Storm Drain Replacement Project (Project) is a part of the City of San Diego (City) Public Works Department's Capital Improvements Program, with the Project located in the community of Kensington – Talmadge; and

WHEREAS, the Project involves the removal of an existing above ground pipe and associated rip rap and replacement with a new pipe, and the construction of two cleanouts located between 4386 and 4382 North Talmadge Drive and extending east to Aldine Drive; and

WHEREAS, the Project activity has been reviewed for consistency with the Final Mitigated Negative Declaration prepared for the Highland & Monroe Avenue Storm Drain Replacement Project (Project No. 442502, October 18, 2016), adopted by the City of San Diego's Development Services Department, and is part of a series of subsequent discretionary actions, and therefore not considered to be a separate project for purposes of CEQA review as defined in State CEQA Guidelines Section §15378(c); and

WHEREAS, the existing 12-inch corrugated metal pipe (CMP) storm drain, originally built in 1960, is unable to provide adequate service for several reasons, including the failure of

the CMP that occurred in 2010 (and was temporarily replaced with an 18-inch HDPE pipe), and has exceeded its useful life span, requiring replacement; and

WHEREAS, the Project will construct a 12-inch diameter above ground HDPE pipe and two cleanouts adjacent to Aldine Drive, with the capacity to handle the maximum discharge expected from the North Talmadge Drive area; and

WHEREAS, the Project is essential to permanently fix the failed existing CMP storm drain, which collects the storm water flow coming from North Talmadge Drive, and to avoid erosion at the 4382 and 4386 North Talmadge Drive residences; and

WHEREAS, the storm drain pipe serves as one of the main drainage systems that collects runoff in the Kensington - Talmadge community to prevent flooding in the area and these improvements will satisfy all the City's guidelines and industry standards and help prevent flooding issues in this part of the Kensington - Talmadge community; and

WHEREAS, the property area containing this current acquisition request has an existing City easement in place, and the replacement permanent drainage easement will occupy the same area, albeit slightly modified due to a large boulder located on the 4382 North Talmadge property, which necessitated a realignment; and

WHEREAS, the Project requires acquisition of a Temporary Construction Area and a permanent drainage easement over a portion of APN 465-332-08 more specifically described in Exhibit 1 and Exhibit 2 attached hereto (Acquisition Area) to provide for the construction and operation of the 12-inch diameter above ground HDPE and two cleanouts adjacent to Aldine Drive; 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 \$5,910.00; and

WHEREAS, the City negotiated with the property owner and made an offer to purchase the Acquisition Area 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, funds are available to acquire the necessary real property interests sought for the Project from CIP WBS B-12096, Fund 400869 (General Fund Commercial Paper) and Fund 400265 (GFCIP Contributions); 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 acquisition of the real property interests proposed is the least amount of real property necessary to complete the Project; and

WHEREAS, 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 January 14, 2019, 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 and Exhibit 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 in Exhibit 1 and Exhibit 2 consisting of a Temporary Construction Area and a permanent drainage easement over a portion of property located on APN 465-332-08 to implement 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,

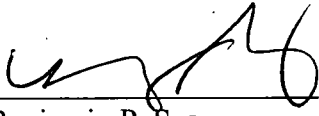
1240.040, 1240.110, 1240.120, 1240.140, 1240.510, 1240.610 and 1255.410; California Government Code section 5023.1).

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 as required from CIP WBS B-12096, Fund 400869 (General Fund Commercial Paper) and Fund 400265 (GFCIP Contributions) to acquire the property interests found necessary for the Project, and to deposit into the State Treasury's State Condemnation Fund, as necessary, the amount of \$5,910.00 as the probable amount of compensation owed 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. The Chief Financial Officer is further authorized to deposit, if necessary, additional funds that the Court or the parties in the anticipated eminent domain action deem necessary to increase the probable amount of compensation due to the property owner as a result of the acquisition of the property interests set forth herein and the resulting eminent domain litigation.

APPROVED: MARA W. ELLIOTT, City Attorney


By 

Benjamin P. Syz
Deputy City Attorney

BPS
December 18, 2018
Or.Dept: City Attorney
Doc. No.: 1895451

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JAN 14 2019.

ELIZABETH S. MALAND
City Clerk

By 

Deputy City Clerk

Passed by the Council of The City of San Diego on JAN 14 2019, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JAN 14 2019.

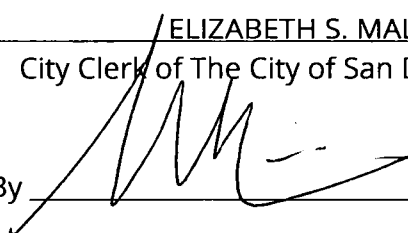
(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California

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