

RESOLUTION NO. 2023- _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, DETERMINING THAT PUBLIC INTEREST AND NECESSITY REQUIRE ACQUISITION OF FEE INTEREST AND PERMANENT EASEMENT AND RIGHTS OF WAY FOR PUBLIC STREET PURPOSES OVER, UNDER, THROUGH AND ACROSS PORTIONS OF APN: 574-130-05, OWNED BY SUKHWINDER SINGH, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY, FOR THE CONSTRUCTION OF A STORM DRAIN PIPELINE BETWEEN ARMSTRONG AVENUE AND LAVERNE AVENUE AND AUTHORIZING EMINENT DOMAIN PROCEEDINGS FOR PUBLIC USE AND PURPOSE

WHEREAS, the City of Fresno proposes to continue East McKinley Avenue between North Fowler Avenue and North Armstrong Avenue, hereinafter called the “Project”; and

WHEREAS, it appears necessary and desirable that the City of Fresno acquire a fee interest portion and a permanent easement and right of way for public street and other purposes over, under, through and across real property more particularly described as Assessor’s Parcel Number (APN) 574-130-05, hereinafter called the “Subject Property,” for construction of the Project and related purposes; and

WHEREAS, the City Council adopted an Official Plan Line for McKinley Avenue between North Sunnyside Avenue and North Temperance Avenues on December 8, 2016; and

WHEREAS, it is necessary to acquire a fee interest portion and a permanent easement and right of way over, under, through and across the Subject Property in

order to construct a storm drain pipeline between Armstrong Avenue and Laverne Avenue; and

WHEREAS, the design of the Project has been reviewed and it has been determined that the Project cannot be constructed without acquiring the fee interest portion and permanent easement and right of way being sought; and

WHEREAS, the current ownership of the Subject Property is as follows:

Assessor's Parcel Number 574-130-05, address of 2045 North Armstrong Avenue, Fresno, Ca and currently owned by Sukhwinder Singh.

WHEREAS, the fee interest portion and permanent easement and right of way to be acquired over, under, through, and across the Subject Property, and its general location and extent are described and depicted in attached Exhibit "A" and Exhibit "B," and

WHEREAS, the fee interest portion and permanent easement and right of way acquisitions from the Subject Property are necessary to construct a storm drain pipeline between Armstrong Avenue and Laverne Avenue; and

WHEREAS, the City of Fresno has the power and authority to exercise eminent domain and acquire easements and rights of way for the public use set forth herein in accordance with the Constitution of the State of California, California Eminent Domain Law, Code of Civil Procedure section 1230.010 et seq., and pursuant to Government Code sections 37350.5 and 40404, Streets and Highway Code section 10102, and section 200 of the Charter of the City of Fresno; and,

WHEREAS, in accordance with Section 7267.2 of the Government Code, an offer to purchase has been made to the owner of record of the real property to be acquired within the Project area; and

WHEREAS, in accordance with Section 1245.235 of the Code of Civil Procedure, notice and reasonable opportunity to respond and be heard on this matter has been given to the persons whose property are to be acquired by eminent domain and whose names and addresses appear on the last equalized county assessment roll; and

WHEREAS, at such time and place, or as soon thereafter as the matter could be heard, the Council received, heard, and considered information pertinent to the matters required by Section 1245.230 of the Code of Civil Procedure to be determined herein; and

WHEREAS, the fee interest portion and permanent easement and right of way will be appropriated to a public use and in accordance with Code of Civil Procedure section 1240.510, the proposed use will not unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future.

NOW, THEREFORE, BE IT RESOLVED the Council of the City of Fresno finds, declares, determines, and orders as follows:

1. The public interest and necessity require the proposed Project.
2. The Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
3. The fee interest portion and permanent easement and right of way that is sought are necessary for the proposed Project.

4. The offer to purchase required by Section 7267.2 of the Government Code has been made to the owner of record.

5. The fee interest portion and permanent easement and right of way which are sought are situated in the City of Fresno, County of Fresno, State of California, and is more particularly described and depicted in Exhibit "A" and Exhibit "B".

6. The City Attorney of the City of Fresno is authorized and directed to institute and conduct to conclusion, in the name of the City of Fresno, a proceeding in eminent domain, including arbitration of compensation, in accordance with the provisions of the Constitution of the State of California and the California Eminent Domain Law, to acquire the subject fee portion and permanent street easement and right of way in the name of the City for public purposes.

7. Project ID PW01021, Fund 24042, Org 189901, has been established to disburse the necessary funds for the acquisitions of the fee interest portion, and permanent easement and right of way and to pay for litigation expenses, including staff time. There will be no General Fund dollars required to construct the project.

8. The Controller of the City of Fresno is authorized to disburse out of the above account, as approved by the City Attorney, such amounts as may be required including costs, witness fees and attorneys' fees, to acquire possession of or title to the fee interest portion and permanent street easement and right of way.

9. This resolution shall be effective upon final approval.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2023.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2023
Mayor Approval/No Return: _____, 2023
Mayor Veto: _____, 2023
Council Override Vote: _____, 2023

TODD STERMER, CMC
City Clerk

By: _____
Deputy _____ Date

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: _____
Kelsey Seib _____ Date
Deputy City Attorney

Attachments:
Exhibit A
Exhibit B