

RESOLUTION NO. 2024- \_\_\_\_\_

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, DETERMINING THAT PUBLIC INTEREST AND NECESSITY REQUIRE ACQUISITION OF FEE INTEREST FOR RIGHTS OF WAY FOR PUBLIC STREET PURPOSES OF APNs: 446-232-37S and 446-232-41, OWNED BY DONALD J. DAL PORTO AND SHIRLEY M. DAL PORTO, TRUSTEES OF THE DONALD AND SHIRLEY DAL PORTO TRUST DATED AUGUST 23, 1983, AS AMENDED AND RESTATED OCTOBER 14, 2005, FOR THE CONSTRUCTION OF THE BLACKSTONE MCKINLEY BNSF GRADE SEPARATION PROJECT AND AUTHORIZING EMINENT DOMAIN PROCEEDINGS FOR PUBLIC USE AND PURPOSE

WHEREAS, the City of Fresno plans to construct the Blackstone McKinley BNSF Grade Separation Project which will eliminate two existing at-grade railroad crossings of the BNSF mainline tracks at North Blackstone Avenue and East McKinley Avenue by separating train traffic from pedestrians, cyclists, and moving vehicle traffic to an underpass below the BNSF mainline track (Project); and

WHEREAS, the Blackstone Avenue and McKinley Avenue corridors serve as primary routes for the community, the City's Bus Rapid Transit System, emergency vehicles, and is also part of the Blackstone Smart Mobility Plan providing Class IV protected bicycle facilities along Blackstone Avenue through the Project area; and

WHEREAS, the Fresno City Council approved the Measure C Cooperative Project Agreement for the Project and subsequent amendments (collectively the Agreement) which provides approximately \$27,000,000 of Project funding to date; and

1 of 5

Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval: KAS

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Resolution No.

WHEREAS, the Project is statutorily exempt pursuant to California Public Resources Code Section 21080.13(a) and 15282(g) of the California Environmental Quality Act (CEQA) Guidelines; and

WHEREAS, the Project requires the fee acquisition of the real property located at 1612 North Blackstone Avenue, Fresno, California, more particularly described as Assessor's Parcel Number (APN) 446-232-41 and 446-232-37S, hereinafter called the "Subject Property," for construction of the Project and related purposes; and

WHEREAS, the design of the Project has been reviewed and it has been determined that the path of the Project, including all projected detours, cannot be constructed without acquiring the Subject Property; and

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

Assessor's Parcel Numbers 446-232-41 and 446-232-37S, address of 1612 North Blackstone Avenue, Fresno, California and currently owned by Donald J. Dal Porto and Shirley M. Dal Porto, Trustees of the Donald and Shirley Dal Porto Trust dated August 23, 1983, as amended and restated October 14, 2005

WHEREAS, the Subject Property, and its general location and extent are described in attached Exhibit "A," and

WHEREAS, the Subject Property is the location of Taco Bell, operating at the northeast corner of Blackstone and McKinley Avenues; and

WHEREAS, the fee interest acquisition of the Subject Property is necessary for the construction of the Project because the Subject Property is in the direct path of the grade separation; and

WHEREAS, the City of Fresno has the power and authority to exercise eminent domain and acquire fee in real property 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 Subject Property; and

WHEREAS, the owner of the Subject Property has not engaged in negotiations or responded to any offers to purchase the Subject Property; 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

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 proposed 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 Subject Property is 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 Subject Property is situated in the City of Fresno, County of Fresno, State of California, and is more particularly described in Exhibit "A."

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 Property in the name of the City for public purposes.

7. Project ID PW00937, Fund 22517, Org 189901, has been established to disburse the necessary funds for the acquisition of the Subject Property 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 and title to the Subject Property.

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 \_\_\_\_\_ 2024.

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2024  
Mayor Approval/No Return: \_\_\_\_\_, 2024  
Mayor Veto: \_\_\_\_\_, 2024  
Council Override Vote: \_\_\_\_\_, 2024

TODD STERMER, CMC  
City Clerk

By: \_\_\_\_\_ Date  
Deputy

APPROVED AS TO FORM:  
ANDREW JANZ  
City Attorney

By: \_\_\_\_\_ Date  
Kelsey Seib  
Deputy City Attorney

Attachment:  
Exhibit A

EXHIBIT "A"  
Legal Description

APN 446-232-37S and 446-232-41  
Grant Deed

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

THAT PORTION OF LOT 13 OF GOULD RANCH, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 2, PAGE 21 OF PLATS, FRESNO COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 10.00 FEET NORTH AND 40.00 FEET EAST OF THE SOUTHWEST CORNER OF SAID LOT 13; THENCE NORTH  $00^{\circ}00'30''$  EAST, AND PARALLEL WITH THE WEST LINE OF SAID LOT 13, A DISTANCE OF 138.91 FEET; THENCE SOUTH  $89^{\circ}56'30''$  EAST AND PARALLEL WITH THE SOUTH LINE OF SAID LOT 13, A DISTANCE OF 197.00 FEET TO A POINT WHICH IS 148.91 FEET NORTH OF THE SOUTH LINE OF SAID LOT 13; THENCE SOUTH  $00^{\circ}00'30''$  WEST, AND PARALLEL WITH SAID WEST LINE, A DISTANCE OF 138.91 FEET, TO A POINT 10.00 FEET NORTH OF THE SOUTH LINE OF SAID LOT 13; THENCE NORTH  $89^{\circ}56'30''$  WEST, AND PARALLEL WITH THE SOUTH LINE OF SAID LOT 13, A DISTANCE OF 197.00 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THAT PORTION OF BLACKSTONE AVENUE (ABANDONED) WHICH WOULD PASS BY A CONVEYANCE OF SAID LAND UNDER SECTION 831 AND 1112 OF THE CIVIL CODE.

EXCEPTING THEREFROM WITHIN THE SOUTHERLY 13 FEET OF THE EASTERLY 60 FEET OF THE WESTERLY 100 FEET OF SAID LAND AND WITHIN THE SOUTHERLY 13 FEET OF THE EAST 97 FEET OF SAID LAND, ALL MINERALS, CONTAINED INCLUDING, WITHOUT LIMITING THE GENERALITY THEREOF, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS WELL AS METALLIC OR OTHER SOLID MINERALS, PROVIDED THAT SANTA FE SHALL NOT HAVE THE RIGHT TO GOUPON OR USE THE SURFACE OF SAID LAND, OR ANY PART THEREOF, FOR THE PURPOSE OF DRILLING FOR, MINING, OR OTHERWISE REMOVING, ANY OF SAID MINERALS, SANTA FE MAY, HOWEVER, AND HEREBY RESERVES THE RIGHT TO, REMOVE ANY OF SAID MINERALS FROM SAID LANDS BY MEANS OF WELLS, SHAFTS, TUNNELS, OR OTHER MEANS OF ACCESS TO SAID MINERALS WHICH MAY BE CONSTRUCTED, DRILLED OR DUG FROM OTHER LAND, PROVIDED THAT THE EXERCISE OF SUCH RIGHTS BY SANTA FE SHALL IN ANY WAY INTERFERE WITH OR IMPAIR THE USE OF THE SURFACE OF THE LAND HEREBY CONVEYED OR OF ANY IMPROVEMENTS THEREON, AS RESERVED AND EXCEPTED BY DEED RECORDED JANUARY 28, 1963, IN BOOK 4813 PAGE 861 OF OFFICIAL RECORDS, DOCUMENT NO. 7801.

EXHIBIT "A"  
Legal Description  
(continued)

PARCEL 2:

AN EASEMENT FOR INGRESS AND EGRESS AS DEFINED IN THAT CERTAIN DECLARATION OF RESTRICTIONS AND RECIPROCAL EASEMENTS RECORDED OCTOBER 21, 1992, AS DOCUMENT NO. 92159920 OF OFFICIAL RECORDS, FRESNO, CALIFORNIA.



7-20-2023