

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 APN: 444-314-20S, OWNED BY THE BRACKIN-DANIELS TRUST 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; and

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 1611 North Blackstone Avenue, Fresno, California, more particularly described as Assessor's Parcel Number (APN) 444-314-20S, 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 Number 444-314-20S, address of 1611 North Blackstone Avenue, Fresno, California and currently owned by the Brackin-Daniels Trust, c/o Bettina Daniels Cervantes and Tracy Deshler, Trustees.

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

WHEREAS, the fee interest acquisition of the Subject Property is necessary for the construction of the Project; 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

Attachments:  
Exhibit A

**EXHIBIT "A"**  
**Legal Description**

**APN 444-314-20S**  
**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:**

Lot 16 and the North half of Lot 17 of Walnut Heights, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 30 of Record of Surveys, Fresno County Records, together with a right of way for private driveway 12 feet wide across the Westerly end of Lot 17 for the benefit of the North half of said Lot 17 as an entrance way from McKinley Avenue as reserved in the deed from Edith Augusta Etzenhauser to J.W. Ross, dated January 24, 1925

EXCEPTING THEREFROM the East 40 feet as granted to the State of California by deeds recorded May 15, 1950, in Book 2879, Pages 496 and 499 of Official Records.

**Parcel 2:**

Portion of the South half of Lot 17 of Walnut Heights, as said Lot is shown on the Map of Walnut Heights, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 7, Page 30 of Record of Surveys, Fresno County Records and more particularly described as follows: BEGINNING on the North line of the South half of said Lot 17, at a point which is 40.00 feet West of the Northeast corner of the South half of said Lot 17; thence South 89°42'30" West along the North line of the South half of said Lot 17, a distance of 144.73 feet to the Northwest corner of the South half of Lot 17; said corner being also on a non-tangent curve, whose radius bears North 35°32'09" East; thence Southeasterly along said non-tangent curve, concave to the Northeast and having radius of 374.56 feet, through an interior angle of 6°09'45", an arc distance of 40.29 feet; thence South 84°48'14", a distance of 28.25 feet; thence South 89°24'00" East, a distance of 70.00 feet; thence Easterly and Northeasterly along a non-tangent curve, concave to the Northwest and having a radius of 21.50 feet, through an interior angle of 35°32'55", an arc distance of 13.34 feet to the intersection with a line which is parallel with and 40.00 feet West of the East line of the South half of said Lot 17; thence North 0°11'45" East, parallel with and 40.00 feet West of the East line of the South half of said Lot 17, a distance of 21.76 feet to the point of beginning.

**Parcel 3:**

BEGINNING at the Northwest corner of the South half of said Lot 17, thence South 31°45'00" East along the Westerly boundary of said Lot 17, a distance of 23.08 feet; thence South 84°48'14" East, a distance of 21.92 feet to the intersection with a non-tangent curve, whose radius bears North 29°22'24" East; thence Northwesterly along said non-tangent curve, concave to the Northeast and having a radius of 374.56 feet, through an interior angle of 6°09'45", an arc distance of 40.29 feet to the point of beginning.

EXCEPTING THEREFROM all minerals, 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 enter upon or use the surface of said land, or any part thereof, for the purpose of drilling for, mining, or

EXHIBIT "A"  
Legal Description  
(continued)

otherwise removing, any of said minerals, Santa Fe may, however, and hereby reserves the right to, remove any of said minerals from said land 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 no way interfere with or impair the use of the surface of the land hereby conveyed or of any improvements thereon.



7-20-2023