

RESOLUTION NUMBER 5106

**AN AMENDED RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF PERRIS, CALIFORNIA, DECLARING THAT
PUBLIC INTEREST AND NECESSITY REQUIRE
ACQUISITION OF THE FEE SIMPLE INTEREST IN A
PORTION OF THE PROPERTY KNOWN AS ASSESSOR'S
PARCEL NO. 313-092-014**

WHEREAS, for the public purposes set forth herein, the City of Perris, California is authorized to acquire property through the exercise of eminent domain pursuant to Section 19 of Article 1 of the California Constitution, Section 1240.010 through 1240.050 of the California Code of Civil Procedure, and Sections 37350, 37350.5, 37353, and 40404 of the California Government Code; and

WHEREAS, the “Project” for the purposes of this acquisition consists of the Perris Boulevard Road Project, which generally consists of the widening of the Perris Boulevard Arterial between Interstate 215 and 4th Street (referred to herein as the “Project”); and

WHEREAS, in order to carry out and make effective the principal purpose of the Project, it is necessary for the City of Perris to acquire the fee simple interest (“Fee Simple Interest”) in a portion of certain privately-owned real property located at 164 and 180 East 2nd Street, in the City of Perris, County of Riverside, California, Assessor’s Parcel No. 313-092-014; and

WHEREAS, the portion of the property in which the City seeks to acquire the Fee Simple Interest is described in Exhibit “A” which is attached hereto and incorporated by this reference, and depicted on the diagram attached hereto as Exhibit “B” which is incorporated by this reference (hereinafter the “Property”); and

WHEREAS, on or about July 6, 2015, the City made a written offer to acquire interests in the Property; and

WHEREAS, since the July 6, 2015 offer, the City has determined it is necessary to acquire a larger portion of the Property than was stated in the original offer; and

WHEREAS, on or about January 23, 2017 the City made a revised written offer to acquire the Fee Simple Interest and a temporary construction easement at an amount that was not less than the appraised fair market value in compliance with Government Code Section 7267.2(a), and the owner of the Property has not accepted said offer or otherwise conveyed the Fee Simple Interest or temporary construction easement to the City as of the date of this amended Resolution; and

WHEREAS, on March 13, 2017 a Notice of Intent to Adopt a Resolution of Necessity for Acquisition of the Fee Simple Interest and temporary construction easement in certain real property identified as Assessor's Parcel No. 313-092-014 was mailed to all persons whose names appear on the last equalized County Assessment Roll as having an ownership interest in the Property, and to the address appearing on said Roll, which Notice of Hearing advised said persons of their right to be heard on the matters referred to therein on the date and at the time and place stated therein; and

WHEREAS, the hearing set out in said Notice of Hearing was held on March 28, 2017, at the time and place stated therein, and all interested parties were given an opportunity to 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 Fee Simple Interest and temporary construction easement proposed to be acquired are necessary for the Project;
- (d) Whether an offer meeting the requirements of Government Code Section 7267.2 has been made to the owner or owners of record;
- (e) Whether all other prerequisites for the exercise of eminent domain to acquire the Fee Simple Interest and temporary construction easement have been met; and

WHEREAS, at the March 28, 2017 hearing, the owner of the Property, Mr. Kelly Kaus, raised concerns he had regarding the acquisition of the temporary construction easement; and

WHEREAS, at the request of Mr. Kaus, the City Engineer reviewed the matter and has determined construction of the Project can be accomplished without the temporary construction easement; and

WHEREAS, the City now desires to adopt this amended Resolution to indicate the City is no longer seeking to acquire the temporary construction easement in the Property, but only seeking to acquire the Fee Simple Interest in the Property; and

WHEREAS, after further communications between the City and Mr. Kaus, Mr. Kaus agreed to waive the requirement of Code of Civil Procedure Section 1245.235 that 15 days prior written notice of the hearing on this amended Resolution be given and any defense to the City's right to take based on the absence of a written notice of hearing on this amended Resolution; and

WHEREAS, the hearing on this amended Resolution was held on April 11, 2017, and all interested parties were given an opportunity to 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 Fee Simple Interest proposed to be acquired is necessary for the Project;
- (d) Whether an offer meeting the requirements of Government Code Section 7267.2 has been made to the owner or owners of record;
- (e) Whether all other prerequisites for the exercise of eminent domain to acquire the Fee Simple Interest have been met; and

WHEREAS, the City Council, as a result of such hearing, has determined that the public health, safety, and welfare require the City to acquire the Fee Simple Interest in the Property for the stated purposes; and

WHEREAS, the Planning Division has determined the Project for which the Fee Simple Interest is being acquired is exempt from the California Environmental Quality Act pursuant to the Notice of Exemption filed with the Riverside County Clerk on November 3, 2016; and

NOW THEREFORE, BE IT RESOLVED, that the City Council hereby does find, determine, and declare based upon evidence presented to it as follows:

Section 1. The staff reports presented regarding this matter at the March 28 and April 11, 2017 hearings are incorporated herein by this reference. The facts referenced in this amended Resolution and the staff reports, and specifically the recitals above, are found to be true and are incorporated herein by this reference. The findings made by the City Council herein are supported by substantial evidence contained in the record of this proceeding.

Section 2. The Fee Simple Interest to be acquired is located within the City of Perris, County of Riverside, State of California, Assessor's Parcel No. 313-092-014, as more specifically described above and in Exhibit "A" and depicted in Exhibit "B".

Section 3. The public interest, convenience, and necessity require the Project to accommodate growth and development as anticipated in the Land Use Element. Perris Boulevard starts from 11th Street in the City of Perris and extends to the northern portion of the City of Moreno Valley. Currently, Perris Boulevard consists of four lanes from Placentia Avenue to 300 feet north of Ramona Expressway and two lanes from 300 feet north of Ramona Expressway to the City Limits. The Project will expand Perris Boulevard to three lanes in each direction per the General Plan. The Project will improve traffic safety and emergency vehicle response times.

Section 4. The Project is planned in the manner which will be the most compatible with the greatest public good and the least private injury. Perris Boulevard is part of the City's General Plan and Circulation Element. Acquiring the portion of the Property that would be required for completion of the ultimate right-of-way as shown in the Circulation Element of the City's General Plan will allow the owner of the Property to use or further develop the remainder of the Property without risk that another permanent taking would be required in the future if Perris Boulevard is expanded to its ultimate width. Thus, acquiring the portion of APN 313-092-014 necessary for construction of the ultimate right-of-way will result in less private injury than a more limited taking. Widening the existing roadway is the only practical means of achieving the necessary traffic capacity. Re-routing Perris Boulevard would be cost

prohibitive and have a greater impact on private property owners because more private property would need to be acquired than is necessary for widening the existing roadway.

Section 5. The acquisition of the Fee Simple Interest in the Property is necessary for the Project because without the Fee Simple Interest, the Project cannot be constructed. The Fee Simple Interest is part of the ultimate width of Perris Boulevard. Acquisition of the Fee Simple Interest for public right-of-way is expressly authorized by Section 19 of Article 1 of the California Constitution, California Code of Civil Procedure Sections 1240.010 through 1240.050 and Government Code Sections 37350, 37350.5, 37353, and 40404.

Section 6. The offer required by Government Code Section 7267.2 has been made to the owner of record of the Property, by way of letter dated January 23, 2017, and the City has pursued negotiations thereafter, and negotiations with the owner of the Fee Simple Interest in the Property have not been successful.

Section 7. The City hereby declares its intent to acquire the Fee Simple Interest in a portion of the Property described in Exhibit "A" in the City's name, in accordance with the provisions of the law of the State of California and finds that all conditions, statutory requirements and prerequisites to the exercise of eminent domain to acquire the Fee Simple Interest described herein and the Project have been complied with by the City.

Section 8. The law firm of Aleshire & Wynder, LLP, is hereby authorized and directed to prepare, institute, and prosecute in the name of the City such proceedings, in the Court having proper jurisdiction thereof, as may be necessary for the acquisition of the Fee Simple Interest in a portion of the Property in accordance with the provisions of the California Eminent Domain Law and the Constitution of California. Said counsel are also authorized and directed to obtain any necessary order of the Court granting the City the right of immediate possession and occupancy of the Property.

PASSED, APPROVED and ADOPTED at a regular meeting of the City Council of the City of Perris this 11th day of April 2017.

MICHAEL M. VARGAS
MAYOR OF THE CITY OF PERRIS

ATTEST:

NANCY SALAZAR
CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) §
CITY OF PERRIS)

I, NANCY SALAZAR, City Clerk of the City of Perris, California, do hereby certify that Resolution Number 5106 was adopted by the City Council of the City of Perris at a regular meeting held on the 11th day of April, 2017, and that the same was adopted by the following vote:

AYES: RABB, ROGERS, BURKE, CORONA, VARGAS
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

NANCY SALAZAR, CITY CLERK

EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT "B"
LEGAL DESCRIPTION PLAT