

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh

SUBJECT: SEE BELOW

DATE: August 1, 2011

Approved

Date

8/8/11

COUNCIL DISTRICT: #4

SNI: None

SUBJECT: FINDING AND DETERMINING THE PUBLIC INTEREST AND NECESSITY FOR CONDEMNING REAL PROPERTY OWNED BY NORTH FIRST STREET OFFICE PARTNERS LLC FOR PURPOSES OF CONSTRUCTION OF THE MONTAGUE EXPRESSWAY WIDENING PROJECT AND AUTHORIZING THE ACQUISITION OF THIS INTEREST BY EMINENT DOMAIN

RECOMMENDATION

- (a) Adopt a resolution determining that the public interest and necessity require the acquisition of a portion of land owned by North First Street Office Partners LLC located at 3100 North First Street, San José, California (APN Number 097-09-035; -036) comprising 6,756 square feet or 0.16 acre, together with a 12-month temporary construction easement over an adjacent portion of the subject parcel comprising 12,297.80 square feet or 0.28 acres.
- (b) Authorize the City Attorney to file suit in eminent domain to acquire such property interests, to apply for an order for possession before judgment, and to prosecute the action to final judgment; and
- (c) Authorize the deposit of money in court for possession of the property from the funds lawfully available.

OUTCOME

Staff is requesting that the City utilize its power of eminent domain under Sections 1240.010, 1240.110 and 1240.120 of the California Code of Civil Procedure, all of which authorize the City to acquire the subject property interests from North First Street Office Partners LLC.

If a Resolution of Necessity is adopted, the City Attorney will then file the necessary papers with the court to commence an eminent domain action. Upon the filing of an eminent domain action, a deposit of probable compensation may be made. A request for an Order for Prejudgment

Possession may also be made by the City Attorney which would allow City to take possession of the property before the issue of just compensation is determined.

BACKGROUND

The North San José Area Development Policy was approved by Council on June 21, 2005. The Policy identifies transportation improvements necessary to support development in North San José. One of the improvements identified to serve the growth projected by the Policy was the Montague Expressway Improvement Project. The Montague Expressway Improvement Project later became the subject of settlement agreements between the City, the County of Santa Clara and others arising out of challenges to the Policy, which settlements expanded the scope of that project.

The Montague Expressway Widening Improvement Project is the first segment funded for improvement along Montague Expressway. The project widens the north side of Montague Expressway between Zanker Road and Orchard Drive adding a west bound high occupancy vehicle lane and sidewalk. The scope of the project also includes a dedicated right turn lane onto North First Street and a receiving lane for westbound traffic from North First Street onto Montague Expressway.

Acquisition of a portion of the subject property together with a 12-month temporary construction easement on an adjacent portion is necessary to accommodate the proposed improvements. The area to be acquired will ultimately be conveyed to the County.

The portion of the subject property to be acquired by City together with the area to be encompassed within the temporary construction easement are more fully described in the plat maps attached hereto as Exhibit "A".

ANALYSIS

Acquisition

An appraisal completed on November 12, 2010, by Carneghi-Blum & Partners, Inc., valued the portion of the subject property to be acquired in fee at \$101,400 and the temporary construction easement on an adjacent portion at \$24,600. An initial offer in that amount was sent to North First Street Office Partners LLC on May 10, 2011, together with a copy of the appraisal report. Subsequent discussions were held with the property owner who on June 10, 2011, informed Real Estate staff that he was considering having an "updated" appraisal performed and possibly submitting a "more definitive response" within an estimated 45 to 60 days.

On July 6, 2011, owner was informed by certified letter that City staff intended to schedule a public use and necessity hearing for Council approval on August 23, 2011, in view of the failure to reach a negotiated agreement. The letter also informed owner of its rights to obtain City reimbursement up to a maximum of \$5,000 of the cost of obtaining their own appraisal should they opt to do so. No further response was received from the owner following issuance of the July 6, 2011, letter.

Efforts to resolve these issues with North First Street Office Partners LLC have not been successful to date and staff does not believe that further attempts at negotiation will be fruitful.

Resolution of Necessity

On August 12, 2011, a notice was sent to North First Street Office Partners LLC, the owner of record, notifying it that a hearing is scheduled on August 23, 2011, before the Council to consider the adoption of a Resolution of Necessity determining the following issues:

1. Whether the public interest and necessity require the proposed project.

The City's North San José Area Development Policy identified the need for improvements to the transportation system to support development in the North San José Area.

2. Whether the proposed project is planned and located in a manner that would be most compatible with the greatest public good and the least private injury.

The proposed project is planned as part of the City's North San José Area Development Policy. It is located along the north side of Montague Expressway between Zanker Road and Orchard Drive and is the most logical location for the dedicated right turn lane.

The proposed property acquisition would not impact the current private land use.

3. Whether the property sought to be acquired is necessary for the project.

The property sought currently contains landscape and sidewalk and would provide land necessary for the installation of relocated curb, gutter, sidewalk and street trees adjacent to the proposed right-turn lane for west-bound traffic on Montague Expressway turning right onto North First Street.

The proposed temporary construction easement (TCE) would occupy nineteen (19) parking spaces for one (1) year. The TCE would allow for a staging area for construction equipment and personnel which would minimize the impact to the traveling public along Montague Expressway.

The TCE is required to minimize the impact to the traveling public along Montague Expressway but not necessary for the project.

4. Whether the offer required by Section 7267.2 of the Government Code has been made to the owners of record.

A title report dated April 7, 2011, shows the owner of record on the tax roll as "North First Street Office Partners LLC, a California limited liability company." Staff entered into negotiations with North First Street Office Partners LLC on May 10, 2011. In compliance with Government Code section 7267.2, an offer was sent to North First Street Office Partners LLC on May 10, 2011, together with a copy of Carneghi-Blum Partners, Inc.'s November 12, 2010, appraisal report. This offer was for the full-

appraised value of the fee portion of the property together with the temporary construction easement on an adjacent portion, \$126,000. On June 10, 2011, North First Street Office Partners LLC informed the City that it was considering obtaining an updated appraisal and would be presenting City with a more definitive response within 45 to 60 days. To date owner has not presented any further response and based on the course of discussions between City staff and North First Street Office Partners LLC, staff does not believe that a purchase agreement can be reached. Accordingly, a notice of the August 23, 2011, hearing was sent to North First Street Office Partners LLC on August 12, 2011.

EVALUATION AND FOLLOW-UP

The project is currently within budget and on schedule with a projected completion in June 2012. No additional follow up actions with the Council are expected at this time.

PUBLIC OUTREACH

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This action does not meet any of the above listed criteria; however it will be posted on the City's website for the August 23, 2011, Council agenda.

COORDINATION

This project has been coordinated with the City Manager's Budget Office and the City Attorney's Office.

COST SUMMARY/IMPLICATIONS

The total amount of City's purchase offers for this property together with the other two properties needed for the Montague Expressway Widening project is \$196,000, which total will be deposited by the City Attorney with the filing of court condemnation.

Additional costs consisting of such items as expert appraisal and other witness testimony in depositions and other court proceedings may also be incurred by City above and beyond actual

compensation for the land. These also include possible costs for payment of the property owner’s attorney fees depending on whether these are awarded by the court.

1. AMOUNT RECOMMENDED FOR THIS ACQUISITION:

Amount of City’s offer to be deposited with filing of condemnation in court: \$126,000.

(Note: Final amount of compensation City is required to pay to owners for land may vary depending on outcome of court proceedings.)

2. SOURCE OF FUNDING: Fund 349, a Memo Fund to Fund 465, Construction Excise Tax Fund.

3. OPERATING COSTS: N/A-One time cost

BUDGET REFERENCE

Fund #	Appn. #	Appn Name	RC #	Total Appn.	Amount for Contract	2011-2012 Proposed Capital Budget (Page)	Last Budget (Date, Ord. No.)
465	6319	Montague Expressway Improvements	TBD	\$1,827,000*	N/A	N/A	06/21/2011; Ordinance No. 28928

* These funds were rebudgeted as part of the Recommended Amendments to the 2011-2012 Proposed Operating and Capital Budgets Manager’s Budget Addendum #47. The 2011-2012 Capital Budget and the implementing appropriation ordinance was approved by the City Council on June 21, 2011.

CEQA

CEQA: Resolution 75696 Dated January 11, 2011.

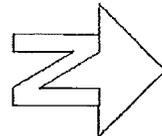
/S/
KIM WALES
Director of Economic Development
Chief Strategist

For questions contact Nanci Klein, Deputy Director of Economic Development at 408-535-8181.

Exhibits:

A – Legal Description and Plat of Subject Portion of Property at 3100 North First Street

EXHIBIT A



NOT TO SCALE

NORTH 1ST STREET

5' WIDE PIPELINE & AUXILIARY EASEMENT PER K820 O.R. 1842

NORTHWESTERLY LINE 4' SIDEWALK EASEMENT PER 653 M 44-45

LANDS OF
NORTH 1ST STREET
OFFICE PARTNERS I
MENLO EQUITIES LLC III
PER DOC. NO. 19923156
LOT 2
PER 653 M 44-45

LINE TABLE

1	N 32°33'03" W	12.11'
3	N 31°55'11" W	22.37'
4	N 58°04'49" E	9.72'
5	S 30°00'10" E	19.30'
7	N 68°07'03" E	63.68'
8	N 23°52'57" W	35.00'
9	S 25°01'41" E	35.00'
10	N 64°58'19" E	40.18'
11	S 32°33'03" E	13.11'

CURVE TABLE

PT	RADIUS	DELTA	LENGTH
2	50.00'	83°11'29"	72.60'
6	40.00'	85°01'23"	59.36'

71.00'
BASIS OF BEARINGS PER 655 M 44-45

MONUMENT LINE
MONTAGUE EXPRESSWAY

LEGEND

||||| ACCESS CONTROL

▨ DESCRIBED PROPERTY CONTAINS APPROXIMATELY 12,297.00 SQ. FT. (0.28 ACRES)

10-181 TCE

POINT OF COMMENCEMENT

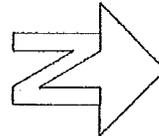
POINT OF BEGINNING

NORTHWESTERLY LINE 20' LANDSCAPE EASEMENT PER E865 O.R. 142

PLAT TO ACCOMPANY
DESCRIPTION OF REAL PROPERTY
TEMPORARY CONSTRUCTION EASEMENT

PREPARED BY
CITY OF SAN JOSE
SURVEY SECTION
AUGUST 10, 2011

NORTH 1ST STREET



NOT TO SCALE

5' WIDE PIPELINE & AUXILIARY EASEMENT PER K020 O.R. 1042

NORTHWESTERLY LINE 4' SIDEWALK EASEMENT PER 653 M 44-45

LANDS OF
NORTH 1ST STREET
OFFICE PARTNERS I
MENLO EQUITIES LLC III
PER DOC. NO. 19923156

LOT 2
PER 653 M 44-45

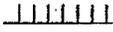
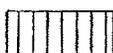
LINE TABLE

2	N 30°00'18" W	4.71'
3	N 58°04'49" E	15.29'
4	S 31°55'11" E	22.37'
6	S 32°33'03" E	12.11'

CURVE TABLE

PT	RADIUS	DELTA	LENGTH
1	80.00'	85°01'23"	118.71'
5	50.00'	83°11'29"	72.60'

LEGEND

-  ACCESS CONTROL (PERPETUATING THE INTENT OF E910 O.R. 415 AND 201 O.R. 652)
-  DESCRIBED PROPERTY CONTAINS APPROXIMATELY 6,755.95 SQ. FT. (0.16 ACRES)

10-151

POINT OF BEGINNING

NORTHEASTERLY LINE 20' LANDSCAPE EASEMENT PER E865 O.R. 142

PARCEL 2
PER 607 M 12-13

PLAT TO ACCOMPANY
DESCRIPTION OF REAL PROPERTY
FEE ACQUISITION

PREPARED BY
CITY OF SAN JOSE
SURVEY SECTION
AUGUST 10, 2011