

**CITY OF TEMECULA
AGENDA REPORT**

TO: City Manager/City Council

FROM: Patrick Thomas, Director of Public Works/City Engineer

DATE: April 13, 2021

SUBJECT: Approve Purchase and Sale Agreement for the Purchase of 840 Square Foot Permanent Easement on 27511 Commerce Center Drive, Temecula (APN 921-480-032) in Connection with Overland Drive Extension Project (PW16-06)

PREPARED BY: Amer Attar, Principal Civil Engineer
Paula Gutierrez Baeza, City Attorney's Office

RECOMMENDATION: That the City Council take the following actions:

1. Adopt a resolution entitled:

RESOLUTION NO. 2021-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMECULA APPROVING THAT CERTAIN PURCHASE AND SALE AGREEMENT, SETTLEMENT AGREEMENT, GENERAL RELEASE, AND JOINT ESCROW INSTRUCTIONS BETWEEN THE CITY OF TEMECULA AND MARK MCMILLIN, LLC IN CONNECTION WITH THE OVERLAND DRIVE EXTENSION PROJECT, PW16-06

2. Authorize the City Manager to approve and execute all necessary documents, including those in substantially the form attached to the Agenda Report, and take all necessary actions to effectuate the purchase of the approximate 840 square foot Permanent Easement on the real property located at 27511 Commerce Center Drive, Temecula (Assessor's Parcel Number 921-480-032).

BACKGROUND: The City previously acquired certain property interests from four parcels in connection with the Overland Drive Extension Project, PW16-06 (Project), which extended Overland Drive from Commerce Center Drive to Enterprise Circle West. The Project improved traffic circulation and access to the Overland Drive. At the December 10, 2019 meeting, the City Council accepted the improvements and directed the City Clerk to file the Notice of Completion. On January 15, 2020, the Notice of Completion was recorded as Document Number 2020-0019782 of Official Records of the County of Riverside.

The City acquired three parcels in fee and a permanent easement and temporary construction easement on a fourth parcel. The attached Agreement is for the completion of the outstanding obligations in connection with the City's acquisition of an approximate 840 square foot permanent easement for public street purposes, and all uses necessary or convenient thereto ("Permanent Easement"), and (ii) the City's use pursuant to the terms of Possession and Use Agreement entered into in February 2014 of an approximate 2,445 square foot temporary construction easement ("TCE") on the fifth parcel located at 27511 Commerce Center Drive in the City of Temecula, and identified as Riverside County Tax Assessor's Parcel Number 921-480-032 ("Subject Property").

The Subject Property is approximately 19,602 square feet in size and is improved with an approximate 6,820 square foot multi-tenant light industrial building, driveway, and parking improvements. Mark McMillin, LLC, a California limited liability company ("McMillin") owns the Subject Property. At the Closed Session meeting of October 22, 2019, the City Council approved the price and terms for the purchase of the Permanent Easement and use of the TCE in connection with the Project. The transaction could not be completed until recently, however, because McMillin had to resolve a few issues with state agencies regarding its standing.

History of Negotiations for Permanent Easement and TCE and Construction of Project Pursuant to Possession and Use Agreement

The City extended an offer to McMillin on May 11, 2011 for the purchase of the Permanent Easement and the TCE. During the Parties' good faith negotiations, McMillin informed the City that it wished to defer further negotiations until the City completed construction of the Project to enable McMillin to analyze all impacts of the Project on the Subject Property, including impacts to parking. McMillin agreed to authorize the City to construct the Project in the area of the Permanent Easement and to use the TCE to facilitate the construction of the Project pursuant to a Possession and Use Agreement entered into on February 11, 2014.

The City opened an Escrow (File No. RRI 4583645) with First American Title Insurance and deposited the sum of \$91,847 as the probable amount of just compensation for the Permanent Easement and use of the TCE based on an independent appraisal that used a date of value of February 7, 2011. In consideration for McMillin's irrevocable grant to the City of possession and use of the Permanent Easement and TCE to construct the Project, McMillin withdrew the \$91,847 deposit from Escrow in 2014.

The City completed the construction of the Project in fall of 2018. The City Council accepted the improvements for the Project and directed the City Clerk to file the Notice of Completion on December 10, 2019. On January 15, 2020, the Notice of Completion was recorded as Document Number 2020-0019782 of Official Records of the County of Riverside.

The City constructed certain street and related improvements in the area of the Permanent Easement and used the TCE to facilitate construction of the Project. On May 24, 2019, the City recorded as Document Number 2019-0185146 of Official Records of the County of Riverside a Notice of Termination of City's Use of the Temporary Construction Easement to document the termination of the City's use of the TCE in connection with the Project. The Parties resumed their good faith negotiations and have reached an agreement for the total just compensation that the City will pay for the purchase of the Permanent Easement and for its use of the TCE, subject to the terms of the attached Agreement.

Total Consideration Pursuant to Agreement

Pursuant to the Agreement, the City will pay to McMillin the total compensation of \$141,347 for the Permanent Easement and use of the TCE in connection with the Project. The \$141,347 includes the \$91,847 deposit that McMillin withdrew from Escrow in 2014. Accordingly, the City will need to deposit into Escrow the additional \$49,500 representing the difference between \$141,347 total just compensation and the \$91,847 previously withdrawn from Escrow by McMillin. The \$141,347 total compensation is an all-inclusive settlement and constitutes the total payment for the fair market value of the Permanent Easement and use of the TCE, and full and complete consideration for all claims arising in connection with or out of the City's acquisition of the Permanent Easement and use of the TCE for the Project, claims for severance and other damages, inverse condemnation, precondemnation damages, attorneys' fees, interest, loss of rents, improvements located in the area of the Permanent Easement or TCE, loss of parking, loss of business goodwill pursuant to Code of Civil Procedure Section 1263.510, and any other damages of every kind and nature suffered by McMillin by reason of the City's acquisition of the Permanent Easement and use of the TCE in connection with the Project.

FISCAL IMPACT: The Overland Drive Extension Project is identified in the Capital Improvement Program (CIP) Budget. It is funded with Development Impact Fees (DIF) Street Improvements, and the General Fund. The total remaining City obligation for the City's purchase of the Permanent Easement and its use of the TCE in connection with the Project is \$49,500 plus any escrow-related costs, which are not expected to exceed \$10,000. Sufficient funds are available in the Project accounts.

ATTACHMENTS:

1. Resolution
2. Purchase and Sale Agreement with Exhibits
3. Project Description
4. Property Location Map