

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

THE CITY COUNCIL OF THE CITY OF TEMECULA DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Findings.

A. The City of Temecula (“City”) is a municipal corporation, located in the County of Riverside, State of California.

B. The Overland Drive Extension Project, PW16-06 (“Overland Drive Extension Project”) is identified in the City’s Capital Improvement Program (CIP) Budget. The Overland Drive Extension Project, which extended Overland Drive from Commerce Center Drive to Enterprise Circle West, was completed in fall of 2018. The Overland Drive Extension Project included the demolition of two buildings located between Commerce Center Drive and Enterprise Circle West. It constructed new roadway improvements, including curbs and gutters, sidewalks, handicap access ramps, storm drains, adjusted certain utility facilities, and installed landscaping. The Overland Drive Extension Project is Phase I of the Murrieta Creek Overcrossing and Overland Drive Extension Project (PW00-26). On December 10, 2019, the City Council accepted the improvements for the Overland Drive Extension Project 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.

C. The Overland Drive Extension Project required the acquisition of certain real property interests from five parcels. The attached Purchase and Sale Agreement, Settlement Agreement, General Release and Escrow Instructions Between the City of Temecula and Mark McMillin, LLC in Connection with the Overland Drive Extension Project, PW16-06 (“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 on February 11, 2014 of an approximate 2,445 square foot temporary construction easement (“TCE”) on the fifth parcel, which is 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”).

D. 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.

E. Pursuant to Government Code Section 7267.2, the City extended a written offer to McMillin on May 11, 2011 for the purchase of the Permanent Easement and use of 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 Overland Drive Extension Project to enable McMillin to analyze all impacts of said Project on the Subject Property, including impacts to parking. McMillin agreed to authorize the City to construct the Overland Drive Extension Project in the area of the Permanent Easement and to use the TCE to facilitate the construction of said Project pursuant to a Possession and Use Agreement entered into on February 11, 2014.

F. 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 grant to the City of possession and use of the Permanent Easement and TCE to construct the Overland Drive Extension Project, McMillin withdrew the \$91,847 deposit from Escrow in 2014.

G. The City constructed certain street and related improvements in the area of the Permanent Easement and used the TCE area to facilitate construction of the Overland Drive Extension 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. 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 the City’s use of the TCE to facilitate the construction of the Overland Drive Extension Project, subject to the terms of the attached Agreement. 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. The Agreement could not be completed until recently, however, because McMillin had to resolve a few issues with state agencies regarding its standing.

H. At its meeting of September 10, 2013, the City Council approved the Mitigated Negative Declaration (MND) and Mitigation Monitoring Plan for the Murrieta Creek Overcrossing and Overland Drive Extension Project (PW00-26). The MND considered the environmental impacts of Phase I, which consists of the improvements for the Overland Drive Extension Project, PW16-06, and demolition of certain structures. The MND also considered the impacts of Phase 2, which will construct Overland Drive between Enterprise Circle West and Diaz Road, including a bridge over Murrieta Creek. The City Council found that based on the record before it (1) the MND was prepared in compliance with California Environmental Quality Act (“CEQA”); (2) there is no substantial evidence that the Murrieta Creek Overcrossing and Overland Drive Extension Project, of which the Overland Drive Extension Project is a part, will have a significant effect on the environment that cannot be adequately and feasibly mitigated with the adopted Mitigation Monitoring Program; and (3) the MND reflects the independent judgment and analysis of the City Council. The City duly filed the Notice of Determination in accordance with CEQA.

Section 2. **Approval of Purchase and Sale Agreement.** The City Council hereby approves the 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.

Section 3. **Environmental Analysis.** The environmental effects of the acquisition of the Permanent Easement and use of the TCE on the Subject Property were studied as an integral part of the MND and Mitigation Monitoring Program for the Murrieta Creek Overcrossing and Overland Drive Extension Project (PW00-26). The findings made by the City Council at its meeting on September 10, 2013 in approving the MND and the Mitigation Monitoring Program are the appropriate findings for the acquisition of the Permanent Easement and use of the TCE. In connection with the attached Agreement, City staff reviewed all of the environmental documentation prepared in connection with the Murrieta Creek Overcrossing and Overland Drive Extension Project (PW00-26), including, but not limited to, the MND, Mitigation Monitoring Program, the initial environmental study, agenda report relating to the approval of the MND, and the Notice of Determination. Pursuant to the criteria of Section 15162 of the CEQA Guidelines and Section 21166 of the Public Resources Code, City staff concluded that no substantial changes have occurred in the Murrieta Creek Overcrossing and Overland Drive Extension Project (PW00-26), of which the Overland Drive Extension Project, PW16-06, is a part; no substantial changes have occurred in the circumstances under which the Murrieta Creek Overcrossing and Overland Drive Extension Project (PW00-26) is undertaken; and that the City has obtained no new information of substantial importance that would require further environmental analysis, including the fact that no mitigation measures previously found not to be feasible would in fact be feasible. These environmental findings are the appropriate findings with respect to the acquisition of the Permanent Easement and use of the TCE on the Subject Property.

Section 4. **City Manager's Authority.** The City Manager is authorized to execute the Agreement in substantially the form attached. A copy of the final Agreement shall be placed on file in the Office of the City Clerk. The City Manager (or the City Manager's designee), is hereby authorized, on behalf of the City, to take all actions necessary and convenient to carry out and implement the Agreement, and to administer the City's obligations, responsibilities and duties to be performed under the Agreement, including but not limited to, execution of the Certificate of Acceptance, escrow instructions, and other similar agreements and documents as contemplated by or described in the Agreement or as necessary and convenient to effectuate the transaction contemplated therein.

Section 5. **Certification.** The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Temecula
this 13th day of April, 2021.

Maryann Edwards, Mayor

ATTEST:

Randi Johl, City Clerk

[SEAL]

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF TEMECULA)

I, Randi Johl, City Clerk of the City of Temecula, do hereby certify that the foregoing Resolution No. 2021- was duly and regularly adopted by the City Council of the City of Temecula at a meeting thereof held on the 13th day of April, 2021, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

Randi Johl, City Clerk