

RESOLUTION NO. _____

A RESOLUTION OF NECESSITY BY THE COUNCIL OF THE CITY OF SANTA BARBARA FOR CERTAIN PERMANENT AND TEMPORARY EASEMENTS LOCATED ON THE REAL PROPERTY COMMONLY KNOWN AS 513 AND 517 DE LA VINA STREET, SANTA BARBARA COUNTY ASSESSOR'S PARCEL NUMBER 037-161-032

THE COUNCIL OF THE CITY OF SANTA BARBARA DOES HEREBY DETERMINE AND RESOLVE AS FOLLOWS:

SECTION 1. That on July 1, 2008, after fifteen days written notice to the owners of the property described hereafter, as they appeared on the last equalized County Assessment Roll, the City Council held a hearing for the purpose of allowing the owners thereof and other persons a reasonable opportunity to appear and be heard on the following matters:

- a. That the public interest and necessity require the proposed project;
- b. That the proposed project (as depicted on City Plan No. C-1-4198, a copy of which is permanently on file at the Public Works Department of the City of Santa Barbara) is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury;
- c. That the property described in the resolution is necessary for the proposed project;
- d. That the offer required by Section 7267.2 of the California Government Code has been made to the owner or owners of record;
- e. That the proposed project has been determined to be categorically exempt from further environmental review pursuant to California Environmental Quality Act regulations 15301 and 15320; and,
- f. Such other and further matters as may be referred to in California Code of Civil Procedure §1245.230.

SECTION 2. That the Council of the City of Santa Barbara does hereby find, determine and declare that:

- a. The public interest and necessity require the proposed project;
- b. The proposed project is planned or located in the manner that will be the most compatible with the greatest public good and the least private injury;
- c. All the property described in this resolution is necessary for the proposed project;
- d. The offer required by Section 7267.2 of the California Government Code has been made to the owner or owners of record (or the offer has not been made because the owner cannot be located with reasonable diligence); and

e. The proposed project was evaluated in the certified Lower Mission Creek Flood Control (LMCFC) Project Environmental Impact Statement/Environmental Impact Report (EIS/EIR) (State Clearinghouse No. 1998101061) and an Addendum to the LMCFC Project EIS/EIR dated March 10, 2008, pursuant to California Environmental Quality Act (CEQA). The certified EIS/EIR determined that there would be unavoidable impacts associated with the project. The Addendum indicates that no new significant impacts or changes in circumstances or regulations would be anticipated since the original EIS/EIR was certified.

The taking of the easements described herein is authorized by Section 19 of Article I of the California Constitution, Section 37350.5 of the California Government Code, and Sections 1240.010 through 1240.125 of the California Code of Civil Procedure.

SECTION 3. That the Council of the City of Santa Barbara does hereby declare that it is the intention of said City to acquire said certain easements on the real property described herein in its name in accordance with the provisions of the laws of the State of California with reference to condemnation procedures.

SECTION 4. That the said certain easements on the real property are located in the City of Santa Barbara, County of Santa Barbara, State of California, and are more particularly described as follows:

I. MISSION CREEK NON-EXCLUSIVE PERMANENT EASEMENT

The Council of the City of Santa Barbara, as a result of said hearing, has determined that the public interest and necessity require the acquisition by the City of a non-exclusive easement for ingress and egress by vehicles, equipment and personnel required for all activities necessary for the construction of bridge and Mission Creek improvements, and for all related surface and subsurface foundation improvements, and ingress and egress required for any periodic maintenance, repair, removal, replacement and reconstruction of such bridge, Mission Creek and appurtenant facilities that enable public access and flood control, which shall include periodic ingress and egress by vehicles, equipment, personnel and any required public utility placements across adjacent portions of Mission Creek upstream of the intersection of Haley Street and De La Vina Street, existing and proposed, including any required removal, at the expense of the City of Santa Barbara or any assignee, at any time of vegetation, surface and subsurface improvements, vehicles, equipment, materials and any other obstructions that may exist, if any, provided that the City of Santa Barbara shall have the unilateral and unrestricted right at any time, without specific consent by others, to assign all or portions of its non-exclusive easement described herein, as may become necessary for joint use and convenience for other public purposes, to SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a special district, referred to herein merely as "DISTRICT" for convenience, which shall be accomplished by the execution by the City of Santa Barbara of an assignment deed approved by resolution adopted by the Council of the City of Santa Barbara for such execution, and

by subsequent Certificate of Acceptance adopted by Order of the Board of Directors of DISTRICT prior to recordation of any assignment deed in the Official Records of the County of Santa Barbara to give constructive notice of such assignment, and provided that, during times when the easement described herein is not used by the City of Santa Barbara or its assigns as set forth hereinabove, the owner and its assignees of the underlying real property shall retain the reasonable right to occupy, use and maintain the surface of the non-exclusive access easement area described herein for parking of vehicles, equipment and mobile materials, and to improve such area with non-public improvements, provided that the owner of the underlying real property or its assignees shall first seek and pay applicable fees, if any, and obtain any permits required prior to commencement of construction of such improvements within the non-exclusive easement described herein, said Mission Creek non-exclusive permanent easement being referred to merely for convenient reference herein as Parcel No. 037-161-032-01, and more particularly described as follows:

A portion of land in the City of Santa Barbara, County of Santa Barbara, State of California, being a portion of Parcel "A" of Parcel Map No. 20,133 as shown on map filed in Book 18, Pages 52 and 53 of Parcel Maps, in the Office of the County Recorder of said County.

Said portion of land is described as follows:

Commencing at the most easterly corner of said Parcel "A", thence along the northeasterly boundary of said Parcel "A" N. 47°36'10" W., 27.83 feet to the True Point of Beginning of the portion of land herein described; thence,

1st continuing along the northeasterly boundary of said Parcel "A" N. 47°36'10" W., 20.00 feet; thence,

2nd at right angles to said northeasterly boundary S. 42°23'50" W., 32.00 feet; thence,

3rd N. 81°29'13" E., 31.72 feet; thence,

4th N. 42°23'50" E., 7.38 feet to the point of beginning.

Containing an area of approximately 394 square feet.

II. MISSION CREEK EXCLUSIVE PERMANENT EASEMENT

The Council of the City of Santa Barbara, as a result of said hearing, has determined that the public interest and necessity require the acquisition by the City of an exclusive easement and right of way in the City of Santa Barbara, County of Santa Barbara, State of California, for all purposes relating to surveys, inspections, excavations, construction, operations, maintenance, repair, removal, replacement and

reconstruction of surface and subsurface improvements required for public street, bridge, creek flow, flood control and all appurtenant facilities associated with Mission Creek and nearby public street improvements located on and near the intersection of Haley Street and De La Vina Street, including the unrestricted right of ingress and egress at all times, and including any required removal at any time of vegetation, improvements, materials and any other topographic features that may exist within said exclusive easement, and providing that the City of Santa Barbara shall have the unilateral and unrestricted right at any time, without specific consent by others, to assign all or portions of its exclusive easement described herein, as may become necessary for joint use and convenience for other public purposes, to SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a special district, referred to herein merely as "DISTRICT" for convenience, which shall be accomplished by the execution by the City of Santa Barbara of an assignment deed approved by resolution adopted by the Council of the City of Santa Barbara for such execution, and by subsequent Certificate of Acceptance adopted by Order of the Board of Directors of DISTRICT prior to recordation of any assignment deed in the Official Records of the County of Santa Barbara to give constructive notice of such assignment, said Mission Creek exclusive permanent easement being referred to merely for convenient reference herein as Parcel No. 037-161-032-02, and more particularly described as follows:

A portion of land in the City of Santa Barbara, County of Santa Barbara, State of California, being a portion of Parcel "A" of Parcel Map No. 20,133 as shown on map filed in Book 18, Pages 52 and 53 of Parcel Maps, in the Office of the County Recorder of said County.

Said portion of land is described as follows:

Beginning at the most easterly corner of said Parcel "A"; thence,

- 1st along the northeasterly boundary of said Parcel "A" N. 47°36'10" W., 27.83 feet; thence,
- 2nd at right angles to said northeasterly boundary, S. 42°23'50" W., 7.38 feet; thence,
- 3rd S. 81°29'13" W., 31.72 feet; thence,
- 4th S. 42°23'50" W., 12.77 feet to a point on the southerly boundary of said Parcel "A"; thence,
- 5th along said southerly boundary S. 88°54'10" E., 33.59 feet; thence,
- 6th continuing along said southerly boundary N. 87°23'50" E., 31.96 feet to the point of beginning.

Containing an area of approximately 712 square feet.

III. NON-EXCLUSIVE TEMPORARY CONSTRUCTION EASEMENT

The Council of the City of Santa Barbara, as a result of said hearing, has determined that the public interest and necessity require the acquisition by the City of a non-exclusive temporary construction easement, right of entry and permission to use the area as required for reasonable and necessary ingress and egress for all purposes necessary relative to surveys, inspections, demolition, excavation, construction, repair, removal, replacement and reconstruction of the Mission Creek bridge and all appurtenant public works improvements and related facilities, and for the necessary surveys, inspections, demolition, excavation, construction, repair, removal, replacement, reconstruction and conformation of certain private improvements as shown on applicable civil design plans and described in the City's specifications prepared in connection with the proposed project, as may be amended by the City of Santa Barbara at any time and from time to time, and providing that the actual use by the City of the non-exclusive temporary construction easement shall be for a period of not more than 24 months, which shall begin on the date work actually commences to demolish, excavate, remove, construct, repair, replace or reconstruct the bridge and related public improvements and private improvements on and adjacent to the non-exclusive temporary construction easement, but providing, however, that in any event, said non-exclusive temporary construction easement shall expire on December 31, 2013, unless extended by specific written consent, and providing that the use of the non-exclusive temporary construction easement by City is for the specific purpose of facilitating all activities of City that may be necessary in the removal and subsequent replacement of the Mission Creek bridge and related public improvements, and for modifying, conforming and rehabilitating certain existing improvements affected by the proposed project, and providing all such modifications will be made at City's sole cost and expense, and providing that the non-exclusive temporary construction easement shall not be used by City for any long-term placement of construction materials or for long-term parking of equipment being used for the proposed project, and providing that the City's use of portions of the non-exclusive temporary construction easement may be exclusive to the City only when ongoing construction activities required for the proposed project may by necessity preclude joint use of such portions of the non-exclusive temporary construction easement by others to minimize potential conflicts during construction activities, so as to avoid possible damage to personal property and vehicles caused by construction activities, and to reduce risk of possible injury to pedestrians in the area not associated with the replacement of the Mission Creek bridge and related public improvements, and providing that any necessary incidental and periodic exclusive use by City of portions of the non-exclusive temporary construction easement shall require City to provide reasonable indirect pedestrian and vehicle access by others, including any occupants of the affected real property, including visitors, across other portions of the non-exclusive temporary construction easement, said non-exclusive temporary construction easement being referred to merely for convenient reference herein as Parcel No. 037-161-032-03, and more particularly described as follows:

A portion of land in the City of Santa Barbara, County of Santa Barbara, State of California, being a portion of Parcel "A" of Parcel Map No. 20,133 as shown on map filed in Book 18, Pages 52 and 53 of Parcel Maps, in the Office of the County Recorder of said County.

Said portion of land is described as follows:

Commencing at the most easterly corner of said Parcel "A"; thence, along the northeasterly boundary of said Parcel "A" northwesterly a distance of 77.81 feet to the True Point of Beginning of the portion of land herein described; thence,

- 1st continuing along said northeasterly boundary, northwesterly a distance of 98.1 feet; thence,
- 2nd at right angles to said northeasterly boundary, southwesterly a distance of 10.0 feet; thence,
- 3rd parallel with said northeasterly boundary, southeasterly a distance of 98.1 feet; thence,
- 4th at right angles northeasterly a distance of 10.0 feet to the point of beginning.

Containing an area of approximately 981 square feet.

IV. EXCLUSIVE TEMPORARY CONSTRUCTION EASEMENT

The Council of the City of Santa Barbara, as a result of said hearing, has determined that the public interest and necessity require the acquisition by the City of an exclusive temporary construction easement, right of entry and permission to use the area as required for reasonable and necessary ingress and egress for all purposes necessary relative to surveys, inspections, demolition, excavation, construction, repair, removal, replacement and reconstruction of the Mission Creek bridge and all appurtenant public works improvements and related facilities, as shown on applicable civil design plans and described in the City's specifications prepared in connection with the proposed project, as may be amended by the City of Santa Barbara at any time and from time to time, and providing that the actual use by the City of the exclusive temporary construction easement shall be for a period of not more than 24 months, which shall begin on the date work actually commences to demolish, excavate, remove, construct, repair, replace or reconstruct the bridge and related public improvements and private improvements on and adjacent to the exclusive temporary construction easement, but providing, however, that in any event, said exclusive temporary construction easement shall expire on December 31, 2013, unless extended by specific written consent, and providing that the use of the exclusive temporary construction easement by City is for the specific purpose of facilitating all activities of City that may be necessary in the removal and subsequent replacement of the Mission Creek bridge

and related public improvements, and for modifying, conforming and rehabilitating certain existing improvements affected by the proposed project, and providing all such modifications will be made at City's sole cost and expense, and providing that the exclusive temporary construction easement may be used by City for placement of construction materials and parking of equipment being used for the proposed project, when removal and replacement of the bridge and related improvements require such uses, and providing that the City's use of the exclusive temporary construction easement is intended to minimize potential conflicts during construction so as to avoid possible damage to personal property and vehicles caused by construction activities, and to reduce risk of possible injury to pedestrians in the area not associated with the replacement of the Mission Creek bridge and related public improvements, said exclusive temporary construction easement being referred to merely for convenient reference herein as Parcel No. 037-161-032-04, and more particularly described as follows:

A portion of land in the City of Santa Barbara, County of Santa Barbara, State of California, being a portion of Parcel "A" of Parcel Map No. 20,133 as shown on map filed in Book 18, Pages 52 and 53 of Parcel Maps, in the Office of the County Recorder of said County.

Said portion of land is described as follows:

Commencing at the most easterly corner of said Parcel "A"; thence along the northeasterly boundary of said Parcel "A" N. 47°36'10" W., 47.83 feet to the True Point of Beginning of the portion of land herein described; thence,

1st continuing along said northeasterly boundary N. 47°36'10" W., 30.0 feet; thence,

2nd at right angles to said northeasterly boundary S. 42°23'50" W., 71.1 feet to a point on the southerly boundary of said Parcel "A"; thence,

3rd along said southerly boundary, S. 85°54'10" E., 40.0 feet; thence,

4th N. 42°23'50" E., 44.8 feet to the point of beginning.

Containing an area of approximately 1,737 square feet.

SECTION 5. That the City Attorney is hereby authorized and directed to prepare, institute and prosecute in the name of the City, and is authorized to retain a law firm as Special Counsel for such proceedings, if necessary, in the proper Court having jurisdiction thereof, as may be necessary for the acquisition of the interests to said certain easements. Said counsel is also authorized and directed to obtain a necessary order of court granting to said City the right of immediate possession and occupancy of said certain easements and, at the discretion of the City Attorney, to approve and execute a settlement agreement or stipulated judgment vesting title to the easements

described herein on terms and conditions approved by the City Attorney for the best interests of the City.

SECTION 6. That the Environmental Quality Control Act of 1970, as amended, and guidelines adopted pursuant thereto, have been complied with insofar as the above project is concerned by the issuance of a Negative Declaration (SCH No. 1998101061, dated March 10, 2008), which is hereby approved and directed to be filed with the City Clerk.