



# STAFF REPORT

DATE: 09/03/2025  
TO: Honorable Mayor and City Council Members  
FROM: Public Works Department

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**2025-356**

## REQUEST FOR CITY COUNCIL ACTION

### SUBJECT:

HEARING TO CONSIDER RESO 2025-094 TO AMEND RESO 2020-043 DECLARING NECESSITY TO ACQUIRE BY EMINENT DOMAIN EXTENDED AND MODIFIED PROPERTY INTERESTS IN 151-195 N. MCKINLEY AND 2275 SAMPSON (APNS 172-420-002, 003, 004 & 005) FOR MCKINLEY GS PROJECT

### EXECUTIVE SUMMARY:

This agenda report asks the City Council to adopt an amended resolution declaring the necessity of acquiring by eminent domain various extended and modified interests in property located at 151-195 N. McKinley Street and 2275 Sampson Avenue (APNs 172-420-002, 172-420-003, 172-420-004 for the construction and maintenance of the McKinley Street Grade Separation Project. The proposed new Resolution of Necessity (Reso 2025-094) amends the previously adopted Resolution of Necessity (Reso 2020-043), adding the following extended and modified interests: (1) modifying from non-exclusive to exclusive a portion of the Temporary Construction Easements on parcels 172-420-002 & 003; (2) extending by 25.25 months the Temporary Construction Easements on parcels 172-420-002 & 003; (3) new Intermittent Parking Interests on parcels 172-420-002, 003, 004 & 005; and (4) new Impaired Irrigation Area Interests on parcels 172-420-002, 003, 004 & 005. Adopting the amended Resolution of Necessity (Reso 2025-094) would allow the City to take the necessary steps to file a First Amended Complaint in Eminent Domain, prior to the currently scheduled October 31, 2025 trial

date, and thereafter take steps to compensate the interested parties for the extended and modified interests.

**RECOMMENDED ACTION:**

That the City Council:

- a. Conduct a public hearing to consider the adoption of the amended Resolution of Necessity (Reso 2025-094), including providing all parties interested in the affected property and their attorneys, or their representatives, an opportunity to be heard on the issues relevant to the Resolution of Necessity.
- b. Make the following findings as hereinafter described in this report:
  1. The public interest and necessity require the proposed project;
  2. The project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury;
  3. The real property to be acquired is necessary for the project, and;
  4. The offer of just compensation has been made to the property owner.
- c. Adopt Resolution 2025-094, amending Resolution 2020-043, to declare the necessity to acquire by eminent domain the modified and extended temporary construction easement interests and the new intermittent parking area and impaired irrigation area interests in certain property located at 151-195 N. McKinley Street and 2275 Sampson Avenue, identified as Assessor Parcel Nos. 172-420-002, 172-420-003, 172-420-004, and 172-420-005 for the construction and maintenance of the McKinley Street Grade Separation Project.
- d. Adopt Resolution 2025-094 to authorize the filing of a motion with the court where the eminent domain proceeding for the acquisition of the property interests identified in Resolution 2020-043 is pending for leave to amend the complaint to include the modified or added interests as provided by Code of Civil Procedure section 1250.340, subdivision (b), which states:

“A public entity may add to the property sought to be taken only if it has adopted a resolution of necessity that satisfies the requirements of Article 2 (commencing with Section 1245.210) of Chapter 4 for the property to be added.” (Cal. Civ. Proc. Code § 1250.340, subd. (b).)

**ANALYSIS:**

**BACKGROUND AND DESCRIPTION OF PROPERTY TO BE ACQUIRED:**

**A. Property Interests Included in City’s June 3, 2020 Resolution of Necessity**

On June 3, 2020, the City adopted Resolution No. 2020-043 (the “2020-043 Resolution”) finding and declaring the necessity to acquire by eminent domain for the McKinley Street

Grade Separation Project (the “Project”) the following interests in the real property identified as Assessor Parcel Nos. 172-420-002, 172-420-003, 172-420-004 and 172-420-005 (the “Subject Property”):

<b>RESO 2020-043 PROPERTY INTERESTS</b>				
<b>City Parcel No.</b>	<b>Assessor Parcel Nos.</b>	<b>Interest</b>	<b>Size</b>	<b>Term (if applicable)</b>
MSGGS-02A	172-420-002	Fee Simple and Access Denial Interests (partial)	0.570 sq acres	N/A
MSGGS-02A	172-420-002	Temporary Construction Easement (“TCE”)	0.437 sq acres	30 months <sup>1</sup>
MSGGS-02A, MSGGS-02B	172-420-002, 003, 004 & - 005	Permanent Ingress/egress easement	as described	N/A
MSGGS-02B	172-420-003	Fee Simple Interest (partial)	0.738 sq acres	N/A
MSGGS-02B	172-420-003	TCE	0.165 sq acres	30 months <sup>2</sup>

These interests are collectively referred to as the “2020-043 Property Interests”.

The Project, which is to be substantially completed by September 2025, includes the construction of a new four-lane overhead grade separation at the McKinley Street/BNSF Railway double tracks, north of the intersection with Sampson Avenue, in the City of Corona, in Riverside County, California (“the Project”). The north/south limits of improvements and required property generally extend along McKinley Street, which is consistent with the City’s zoning of Support Commercial and Limited Commercial industrial land uses.

The 2020-043 Resolution authorized the acquisition of the 2020-043 Property Interests to support the construction, operation, and long term maintenance of roadway, wall, ingress and egress easement (to replace ingress and egress which was lost due to the construction of the Loop Road), temporary loss of access and loss of parking stalls due to construction of the Project, as well as real property improvements, and furniture, fixtures and equipment including a monument sign.

<sup>1</sup> The term of this TCE was expected to commence January 24, 2021, and end July 24, 2023.

<sup>2</sup> As with the TCE for Parcel 002, the TCE for Parcel 003 was expected to commence January 24, 2021, and end July 24, 2023.

A copy of the 2020-043 Resolution is attached hereto and incorporated herein by this reference.

**B. City's July 24, 2020 Complaint in Eminent Domain and Subsequent Order for Prejudgment Possession**

On July 24, 2020, the City filed a Complaint in Eminent Domain with the Riverside Superior Court to acquire the 2020-043 Property Interests. (Case number RIC2002846 the "Action".) The property owner, C.P.I. Properties, a California limited partnership ("CPI" or "Property Owner") filed an Answer to the City's complaint on or about September 18, 2020, and raised challenge to the City's right to acquire the 2020-043 Property Interests, which challenge was subsequently settled. The City subsequently took possession of the 2020-043 Property Interests and construction commenced on the Subject Property.

**C. City's Actual Construction Activities Resulted in Acquiring and Impacting More Property Interests Than What Were Included in the City's Original RON and Complaint in Eminent Domain**

During the course of construction of the Project, the City realized that the following extended and modified interests were also needed for the Project:

- (1) A portion of the TCE area in parcels 172-420-002 & 003 was being used exclusively (and not non-exclusively, as originally expected) by the City;
- (2) Due to various construction delays, the term of the TCE in parcels 172-420-002 & 003 needed to be extended from the expected termination date of July 24, 2023 to August 31, 2025
- (3) The contractor intermittently used, from July 1, 2023 through August 24, 2025, up to eight parking stalls in certain portions of the Subject Property; and
- (4) The Subject Property's irrigation system was inadvertently severed on July 1, 2021 and restored on May 1, 2025.

The documents identified below (which are attached to Reso 2025-094) show which property interests/impacts remain the same, based upon the 2020-043 Resolution, and which property interests/impacts have changed or were added during the course of construction:

**Exhibits Attached to Reso 2025-094**

<b>Exhibit "A":</b> Fee Simple Acquisitions	No Change
<b>Exhibit "B":</b> Permanent Ingress/Egress Easement	No Change
<b>Exhibit "C":</b> TCEs	Changes Reflected in Exhibit

**Exhibit “D”:**

Added

Intermittent Parking Area

**Exhibit “E”:** Impaired Irrigation Area

Added

**D. City’s Request for CPI to Stipulate to Allow the City to Amend its Complaint in Eminent Domain to Include the Additional Property Interests/Impacts**

As recently reiterated by the California Supreme Court, “under Article 1, section 19 of the California Constitution...a public entity must pay the owner just compensation when it takes or damages private property for public use.” (*City of Oroville v. Superior Court of Butte County* (2019) 7 Cal.5th 1091, 1102.) Where a public entity files an eminent domain action, the landowner’s entitlement to just compensation is not in dispute. The public entity concedes liability at the outset of an eminent domain action such that “there is ordinarily no question that [the public entity] has ‘taken or damaged’” the property at issue. (*Weiss v. People ex rel. Dep’t of Transp.* (2020) 9 Cal.5th 840, 853.)

There is no question that CPI is entitled to just compensation for the additional property interests/impacts. Accordingly, the City is prepared to file a First Amended Complaint in Eminent Domain (to include the additional property interests/impacts) for this purpose. The City’s outside eminent domain counsel has requested the Property Owner’s counsel to stipulate to allow the City to amend its Complaint in Eminent Domain. This included several written requests (emails) dated May 21, 2025; June 23, 2025; July 3, 2025; July 17, 2025; and August 19, 2025.

**E. CPI’s Refusal to Allow City to Stipulate to Amend its Complaint in Eminent Domain**

CPI’s counsel has, to date, refused the City’s requests. CPI filed a Cross-Complaint for Inverse Condemnation against the City on October 30, 2024. Rather than allow the City to amend its Complaint in Eminent Domain, CPI appears to want a ruling from the Court that the City is liable in inverse condemnation.

An action for inverse condemnation has been described as “an eminent domain proceeding initiated by the property owner rather than the condemnor.” (*Marshall v. Dep’t of Water and Power of the City of Los Angeles* (1990) 219 Cal.App.3d 1124, 1138.) A landowner has a right to file an inverse condemnation action against the government “[w]here government does not recognize that a particular circumstance amounts functionally to a taking for public use or otherwise fails to pay the requisite compensation for the property in question...” (*City of Oroville v. Superior Court of Butte County*, *supra* 7 Cal.5th at 1102; see also *Joffe v. City of Huntington Park* (2011) 201 Cal.App.4th 492, 503: ‘The doctrine of ‘inverse condemnation’ has evolved to advance these rights where private property is taken or damaged by governmental action, but where the responsible public entity does not initiate proceedings in eminent domain.”)

Given the City’s acknowledgement that CPI is entitled to just compensation for the additional property interests/impacts, and given the City’s stated willingness to file a First

Amended Complaint in Eminent Domain, CPI's Cross-Complaint for Inverse Condemnation is unnecessary.

**F. City's Need to Adopt This RON in Order to File a First Amended Complaint in Eminent Domain**

The City can seek to file a First Amended Complaint without CPI's consent under applicable law. This requires the City Council to first adopt an Amended Resolution of Necessity. Under California Code of Civil Procedure Section 1250.340(b), "A public entity may add to the property sought to be taken only if it has adopted a resolution of necessity that satisfies the requirements of Article 2 (commencing with Section 1245.210) of Chapter 4 for the property to be added."

The City should formally amend its resolution of necessity well in advance of the October 31, 2025 trial date in this case. In *County of San Diego v. Bressi* (1986) 184 Cal.App.3d 112, 122-123., the Court of Appeal stated in pertinent part: "The resolution of necessity conclusively establishes the extent of the taking...The public agency may not later expand the scope of the taking as defined in the resolution of necessity without paying additional compensation..." Moreover, in *Coachella Valley Water District v. Western Allied Properties, Inc.* (1987) 190 Cal.App.3d 969, 978-979, the Court of Appeal cited *Bressi* and stated: "The court ruled that a jury is entitled to consider all evidence relevant to valuation as long as such evidence does not contradict the scope of the taking as defined by the resolution of necessity." The court in *Coachella* went on the note that *Coachella Valley Water District* could "easily" amend its resolution of necessity before trial: "Here, as in *Bressi*, the issue raised by *Western Allied* is easily eliminated by formal amendment to the resolution of necessity before retrial of the valuation phase." (See also *Sacramento Flood Control Agency v. Dhaliwal* (2015) 203 Cal.App.4<sup>th</sup> 1315, 1331-1333.)

Based upon the above cases, the City Council should consider amending its Resolution of Necessity so that (if the Amended RON is adopted) the City can take steps to file a First Amended Complaint in Eminent Domain prior to the October 31, 2025 trial date.

**G. Property Interests to be Included in the Amended Resolution of Necessity 2025-094**

Based upon the above, the property interests, as amended, which the City needs for the Project (including those previously identified and those that have changed or have been added) are:

RESO 2025-094 PROPERTY INTERESTS					
City Parcel No.	Assessor Parcel Nos.	Interest	Size	Term (if applicable)	Difference
AMENDED PROPERTY INTERESTS					
MSGGS-02A	172-420-002	Fee Simple and Access Denial Interests (partial)	0.570 sq acres	N/A	None
MSGGS-02A	172-420-002	Temporary Construction Easement ("TCE")	0.437 sq acres	55.25 months <sup>3</sup>	25.25 months & partial exclusivity
MSGGS-02A, MSGGS-02B	172-420-002, 003, 004 & -005	Permanent Ingress/egress easement	as described	N/A	None
MSGGS-02B	172-420-003	Fee Simple Interest (partial)	0.738 sq acres	N/A	None
MSGGS-02B	172-420-003	TCE	0.165 sq acres	55.25 months <sup>4</sup>	25.25 months & partial exclusivity
NEW PROPERTY INTERESTS					
MSGGS-02A, MSGGS-02B	172-420-002, 003, 004 & -005	Intermittent Parking Interests	8 out of 59 parking stalls	Intermittent use between 7/1/23-8/31/25	New

<sup>3</sup> As stated in footnotes 1 and 2 herein, the term of this TCE started January 24, 2021. The amended date of expiration is August 31, 2025.

<sup>4</sup> As stated in footnotes 1 and 2 herein, the term of this TCE started January 24, 2021. The amended date of expiration is August 31, 2025.

MSGGS-02A, MSGGS-02B	172-420-002, 003, 004 & -005	Impaired Irrigation Area Interests	within irrigation areas	7/1/21-5/1/25	New
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### **NOTICE OF INTENT TO ADOPT AMENDED RESOLUTION OF NECESSITY**

A notice of this public hearing was made to the Property Owner on August 19, 2025, by first class mail in accordance with Section 1245.235 of the California Code of Civil Procedure. The notice was also sent by U.S. Mail and email to counsel of record in the Action for the Property Owner.

### **HEARING AND REQUIRED FINDINGS:**

The recommended actions of the City Council pertain to the Subject Property owned by CPI; namely Assessor Parcel Nos. 172-420-002, 172-420-003, 172-420-004 and 172-420-005.

#### **A. Hearing**

California eminent domain law provides that a public entity may not commence eminent domain proceedings until its governing body has adopted a Resolution of Necessity, which resolution may only be adopted after the governing body has given each party with an interest in the affected property or their representatives a reasonable opportunity to appear and be heard on the following matters:

1. The public interest and necessity require the proposed project.
2. The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury
3. The real property to be acquired is necessary for the project.
4. The offer of just compensation has been made to the property owner.

#### **B. Required Findings**

By adopting the 2020-043 Resolution, the City found and determined that the first two requirements were met. The City is now asked to consider and determine that the additional rights used by the City during construction are necessary for the Project and that the offer of just compensation for those additional interests have been made to the Property Owner.

##### **1. The Public Interest and Necessity Require the Proposed Project**

As determined by the 2020-043 Resolution, the public interest and necessity require the Project. The Project required the construction of a grade separation structure, retiring the existing at- grade crossing, and providing a signalized intersection at the proposed relocated junction of McKinley Street and Sampson Avenue. The Project will:



1. Improve safety by separating vehicles, pedestrians, and cyclists from trains at the railroad crossing;
2. Provide unhindered access for emergency vehicles;
3. Reduce traffic congestion;
4. Reduce air and noise pollution;
5. Minimize impacts to adjacent property owners and the surrounding public to the maximum extent possible, both during and after construction of a grade separated intersection at the BNSF crossing; and
6. Reduce impacts to railroad operations.

**2. The Project is Planned or Located in a Manner That Will be Most Compatible with the Greatest Public Good and the Least Private Injury**

As determined by the 2020-043 Resolution, the Project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury. The permanent rights being acquired from the Subject Property for the Project have not changed. The only changes, as discussed above, are to the terms of the temporary construction easements and include additional intermittent use of parking areas and the inadvertent severance of the irrigation system within the Subject Property. These modified or additional interests were needed for the Project.

**3. The Real Property to be Acquired is Necessary for the Proposed Project**

As determined by the 2020-043 Resolution, in order to accommodate the widening of McKinley, the grade separation structure, and a loop road through the northeast quadrant of the Project area that was necessary due to the separation of the McKinley/Sampson intersection, portions of the Subject Property had to be acquired. However, now that construction is concluding it has been determined that the 30 month-temporary construction easement periods identified in the 2020-043 Resolution were insufficient due to Project delays. The terms of the TCEs were extended from 30 months to 55.25 months. In other words, the term of the temporary construction easements, as amended, is from January 24, 2021 through August 31, 2025, rather than from January 24, 2021 through July 24, 2023. In addition, a portion of the TCE construction area was used exclusively rather than non-exclusively and the City's contractor used intermittently up to eight parking spaces during the period July 1, 2023 through August 31, 2025, and inadvertently severed the Subject Property's irrigation system, which was not operable from July 1, 2021 through May 1, 2025. The use of these additional property interests was necessary for the completion of the Project.

**4. The Offer of Just Compensation Has Been Made**

The City retained the services of Thompson & Thompson Real Estate Valuation and Consulting to conduct an appraisal of the 2020-043 Property Interests, as amended and described herein. On August 18, 2025, and based on the approved Thompson &

Thompson appraisal prepared by Bradford Thompson, MAI, the City, in accordance with California Government Code Section 7267.2, made an amended offer of just compensation to the Property Owner to purchase the 2020-043 Property Interests, as amended, to include the additional property interests used for the Project as described herein. The offer was sent by overnight mail to the Property Owner with a copy by email and overnight mail to the Property Owner's counsel of record as identified in the Action.

The City, through its legal counsel, asked the Property Owner's counsel to stipulate to the amendment of the eminent domain complaint to include the additional interests. However, the Property Owner has declined to do so.

**FINANCIAL IMPACT:**

The Project's current funding includes funds from State Senate Bill 132 distributed by Riverside County Transportation Commission, local Gas Tax measures, Transportation Development Act funds distributed by the State of California, and Measure A funds. All acquisition activities, including eminent domain, have been planned to be included within available project funds.

**ENVIRONMENTAL ANALYSIS:**

As a grade separation project, this Project is statutorily exempt under the California Environmental Quality Act.

**PREPARED BY:** DEAN DERLETH, CITY ATTORNEY/LRM DIRECTOR

**REVIEWED BY:** SAVAT KHAMPHOU, PUBLIC WORKS DIRECTOR

**ATTACHMENTS:**

1. Exhibit 1 – Adopted Resolution No. 2020-043 (Resolution of Necessity)
2. Exhibit 2 – Proposed Resolution No. 2025-094 (Resolution of Necessity)