PALMIERI HENNESSEY & LEIFER, LLP

Michael I. Kehoe
Direct Dial: (949) 851-7279
E-mail: mkehoe@palmierilawgroup.com

File No.: -

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VIA E-MAIL

City of Corona City Council
c/o City Clerk
Corona City Hall
City Council Chambers
400 South Vicentia Avenue
Corona, CA 92882
Sylvia.Edwards@CoronaCA.gov
CityClerk@CoronaCA.gov

Re: Resolution of Necessity Hearing Re: 151-195 N McKinley Street and 2275 Sampson Avenue, Corona, CA 92879
McKinley Street Grade Separation Project
APNs 172-420-002, 003, 004, & 005(Partial)

Dear Honorable Mayor and City Councilmembers:

This firm represents CPI Properties ("CPI"), the fee owners of the above-referenced properties. CPI objects to the City's proposed adoption of the "amended" Resolution of Necessity 2025-094.

The City has already taken property rights that were not authorized in the 2020 Resolution of Necessity which is the subject of CPI's Inverse Condemnation Cross-Complaint.

More than five years after adopting the 2020 Resolution of Necessity, the City is attempting a re-do. The Staff Report prepared for this September 3, 2025 hearing claims that 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."

CPI has already filed an inverse condemnation cross-complaint that is at issue for the October 31, 2025 trial. The cross-complaint was filed because the City violated the time, scope and spatial restrictions the City set for itself in the 2020 Resolution of Necessity.

The City's direct eminent domain case was filed after the City's adoption of the 2020 Resolution of Necessity. In the 2020 Resolution of Necessity, the City **limited** its rights to use the CPI Property. The City took certain rights that were limited in **time, scope and space**.

For example, the City's temporary construction easements that were **authorized** by the 2020 Resolution of Necessity were limited in time and scope—"non-exclusive temporary construction easement…for a period of thirty (30) consecutive months…" Within that period, the 2020 Resolution of Necessity claimed "the actual physical construction activities within the TCE area shall be limited to a period of six (6) consecutive months" and that "the City's use and occupancy" during that period "will remain non-exclusive." It was also limited to a physical space on the CPI Property.

In fact, the City far exceeded the thirty (30) month and six (6) month time estimates. The City also used the temporary construction easement areas **exclusively**. The City also used and occupied areas of the subject property outside of the spatial limits of the temporary construction easement area. The City's use and occupancy of the CPI Property outside of the authorized time, scope and space of the temporary construction easements is part of CPI's inverse condemnation cross-complaint.

The City had **years** to fix its resolution of necessity. The City did not do so. Instead, the City simply authorized its contractor to fence the "non-exclusive" temporary construction easement area making it "exclusive." The City allowed the use and occupancy of the temporary construction easement after the authorized temporal limits. The City allowed use and occupancy of the CPI Property outside of the designated TCE area. The City did all of that without attempting to adopt a new resolution of necessity.

Now, the City's new eminent domain counsel seeks to retroactively authorize a taking of the property rights that were not authorized in 2020 but were used anyway. The rights that the City is now claiming to "approve" or authorize by this new resolution of necessity have already been taken. The taking has occurred and/or is continuing to occur. This is simply improper litigation maneuvering.

Moreover, as CPI has informed the City's eminent domain counsel, while the City is admitting that it has used the CPI Property outside of the time, scope and space authorized in the 2020 Resolution of Necessity, CPI contends that the City's unauthorized use and occupancy of the CPI Property is more than what is stated in the proposed new Resolution 2025-094. The scope of the takings in Resolution 2025-094 are incorrect—they are wrong on the areas used and occupied, the time of the use and occupancy and the scope.

The City is simply attempting to retroactively authorize what it should have authorized in 2020. At a minimum, the City improperly waited five years after the 2020 Resolution of Necessity to attempt to "amend" or adopt a new resolution of necessity. No explanation is provided for the City's delay. Nor is there any explanation why, after CPI filed its cross-complaint in October 2024, the City has waited nearly a year to seek to adopt this "amended" "new" resolution of necessity less than two-months before trial. The City's Staff Report admits that "The City should formally amend its resolution of necessity well in advance of the October 31, 2025 trial date in this case"—yet the City has unjustifiably waited years, forced CPI to file and litigate its inverse cross-complaint, and now, shortly before trial seeks to "amend" and adopt a "new" resolution of necessity.

As a condition precedent to the exercise of the power of eminent domain, a public entity must hold a public hearing to determine whether a particular taking meets the three public interest and necessity criteria articulated in Code of Civil Procedure Section 1240.030. (Code Civ. Proc., § 1245.235.) Those three necessity findings are: (a) that the public interest and necessity require the project; (b) the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and (c) that the property sought to be acquired is necessary for the project. If, after such public hearing, the public entity determines that the proposed taking meets that criteria, then it must adopt a resolution of necessity before proceeding to condemn. (Code Civ. Proc., §§1240.040, 1245.220.)

The resolution of necessity is a fundamental predicate to providing due process to the property owner. (*City of Stockton v. Marina Towers LLC* (2009) 171 Cal.App.4th 93, 108-109.) Implicit in this requirement of a hearing and the adoption of a resolution of necessity is the concept that, in arriving at its decision to take, the public entity engages in a good faith and judicious consideration of the pros and cons of the issue and that the decision to take be buttressed by substantial evidence of the existence of the three basic requirements set forth in Code of Civil Procedure Section 1240.030. (*Redevelopment Agency v. Norm's Slauson* (1985) 173 Cal.App.3d 1121, 1125-1126.)

Here, the City's attempt to adopt a resolution of necessity cannot undo the fact that the takings have already occurred and CPI has already suffered inverse condemnation. The City is proceeding under the pretense that if the City Council rejected the adoption of the resolution of necessity that there would be no taking. However, as explained above, the unauthorized taking has already occurred.

The City's alleged "offer" pursuant to Government Code 7267.2 is invalid as it is based on a date of value more than five years ago.

The offer is based on an old, stale date of value and a vague statement of valuation data. The Government Code Section 7267.2 offer requirement is not subject to Code of Civil Procedure Section 1240.030—thus CPI is not legally required to raise such an objection prior to the City's adoption of the "amended" "new" resolution of necessity. Even so, the City's offer is improper and does not comply with Government Code Section 7267.2. The proffered offer is invalid.

CPI asserts that the offer made was not based on a valid and approved appraisal by the City Council. Making a valid precondemnation offer is a mandatory prerequisite to condemnation. (Gov. Code §7267.2; *City of San Jose v. Great Oaks Water Co.* (1987) 192 Cal.App.3d 1005,1011.) Government Code Section 7267.2 provides that "Prior to adopting a resolution of necessity . . . the public entity shall establish an amount it believes to be just compensation therefor, and shall make an offer to the owner or owners of record to acquire the property for the full amount so established . . ." (Gov. Code §7267.2, subd. (a)(1).) The Government Code, of course, directs that the appraisal and offer shall be based on the principles of just compensation. (Gov. Code §7267.2, subds. (a) and (b).)

Here, the offer is invalid because it is outdated and based on a 2020 date of value. Public agencies seeking to utilize eminent domain are required to use every effort to acquire property expeditiously by negotiation. (Gov. Code, §§ 7267.1, 7267.2, 7267.5; 25 CCR 6182.) The California Code of Regulations instructs that "if a significant delay has occurred since the determination of just compensation, the public entity shall have its appraisal updated. If a modification in the public entity's determination of just compensation is warranted, an appropriate price adjustment shall be made and the new amount determined to be just compensation shall be promptly offered in writing to the owner." (25 CCR 6182, subd. (i)(2).)

The City's "offer" which adds the "amended" "new" takings is based on a 2020 date of value—the offer letter is dated August 18, 2025. The market data relied upon by the appraiser dates back to 2018. So, the City is improperly attempting to rely on an offer made in 2025 utilizing an appraisal with a 2020 date of value which used 2018 market data that is seven years old. The City's offer is invalid and violates the Government Code and principles of just compensation.

The offer is also invalid and improper as the rights being appraised, as stated in the Statement of Valuation Data, appear to be different from the property rights retroactively sought to be taken in the "amended" "new" resolution of necessity.

There is also no evidence of the City Council reviewed and approved the appraisal that was the basis of the precondemnation offer as required by Government Code 7267.2. The City, thus, has not made valid precondemnation offer.

Conclusion.

As the California Supreme Court has held, the City and its counsel are charged under the law "to seek justice and to develop a full and fair record." (*City of Los Angeles v. Decker* (1977) 18 Cal.3d 860, 871.) The Supreme Court has made clear that the City and its counsel are prohibited from using the power of eminent domain and "the economic power of the government to harass parties or to bring about unjust settlements or results." (*Ibid.;* see also, Gov. Code § 7260, *et seq.* [City obligated to act in good faith and not take coercive action].) To the contrary, "[t]he condemnor acts in a quasi-judicial capacity and should be encouraged to exercise his tremendous power fairly, equitably and with a deep understanding of the theory and practice of just compensation." (*Ibid.*)

The City has not treated CPI fairly in the handling of the pending condemnation proceeding. The eminent domain case has been pending for over five years. The City knew that it was exceeding the authorized rights taken in the 2020 resolution of necessity and did nothing to address that situation until nearly one year after CPI filed its Cross-Complaint. The City's actions appear to be an attempt to litigate in order to coerce settlement and to avoid compensating fairly. The City is abusing its tremendous condemnation and economic power which the Supreme Court forcefully held to be improper. CPI objects to the City's improper conduct.

Very truly yours,

Michael I. Kehoe

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cc: VIA EMAIL
David W. Skinner - david@meyersnave.com
Elizabeth Valadez - lvaladez@meyersnave.com
Kristof D. Szoke - kszoke@meyersnave.com