

RESOLUTION 2017-XXX

RESOLUTION OF NECESSITY OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, TO ACQUIRE PROPERTY BY EMINENT DOMAIN FOR TEMPORARY CONSTRUCTION AND PUBLIC ACCESS EASEMENT REQUIRED TO BUILD THE BERRY STREET REPLACEMENT BRIDGE PROJECT AND AUTHORIZING COMMENCEMENT OF LITIGATION TO ACQUIRE PROPERTY BY EMINENT DOMAIN AND TO SEEK AN ORDER OF POSSESSION (CODE OF CIVIL PROCEDURE SECTION 1245.220) (LESTRANGE PROPERTY, 1328 BERRY ST., CALISTOGA, CALIFORNIA, APN 011-222-001)

1 **WHEREAS**, the City Council has determined that the City of Calistoga (“City”) needs to
 2 acquire certain property interests in order to construct the Berry Street Bridge Replacement
 3 Project (“Project”).

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 5 **NOW, THEREFORE BE IT RESOLVED**, that the City Council of the City, by vote of two-
 6 thirds or more of its members, FINDS, DETERMINES, DECLARES, AND RESOLVES the
 7 following:

- 8
 9 1. The City intends to construct the Berry Street Bridge Replacement Project (the "Project"),
 10 which is intended to improve public safety by replacing the old Berry Street bridge
 11 structure and providing temporary pedestrian and bicycle access across Napa River
 12 during construction. The Project is for a public use.
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 14 2. To complete construction on the Project, the City must acquire a temporary construction
 15 and pedestrian access easement (“Easement”) consisting of approximately 1,750 square
 16 feet on privately owned property commonly known as 1328 Berry Street, Calistoga, CA,
 17 APN 011-222-001 (“Property”), and more particularly described and shown on Exhibit A
 18 and Exhibit B attached to this Resolution and incorporated herein. The Easement is
 19 necessary to the completion of the Project. The City is authorized to acquire the
 20 Easement by eminent domain for the public use set forth herein in accordance with the
 21 California Constitution, Article 1, Section 19; the California Eminent Domain Law, Code of
 22 Civil Procedure Section 1230.010 *et seq.*, including, but not limited to, sections 1240.010
 23 through 1240.050 inclusive, and sections 1240.110, 1240.120, 1240.220, 1240.320,
 24 1240.330, 1240.350, 1240.410, 1240.510, 1240.610, 1240.650; Government Code
 25 Section 38730, and other provisions of law.
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 27 3. The Easement shall be non-exclusive and shall commence after no fewer than fifteen (15)
 28 days written notice is provided by the City to the Property owner reflecting the City’s intent
 29 to make use of the Easement. The Easement shall terminate two (2) years after the day it
 30 is created by the City’s notice or immediately upon written notice by the City to the
 31 Property owner that the City no longer requires use of the Easement, whichever is sooner.
 32 In no event shall the Easement exist after May 31, 2020.
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 34 4. On December 2, 2016, the City mailed a Notice of Hearing on the intent of the City
 35 Council of the City of Calistoga to adopt a resolution of necessity for acquisition by
 36 eminent domain of the Easements, which notice is attached hereto as Exhibit C, and
 37 incorporated herein. The Notice of Hearing was mailed to all persons whose name(s)
 38 appear on the last Equalized County Assessment Roll as having an interest in the
 39 Property, and to the addresses appearing on the Roll. The Notice of Hearing advised the
 40 persons of their right to be heard on the matters referred to in the Notice of Hearing on the
 41 date and at the time and place stated.
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 43 5. The hearing referenced in the Notice of Hearing was held on December 20, 2016, at the
 44 time and place stated in the Notice of Hearing. All interested parties were given an
 45 opportunity to be heard. The hearing was then closed.

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6. Based upon the evidence presented at the hearing, the City Council of the City of Calistoga finds, determines, declares, and resolves each of the following:

A. The public interest and necessity require the proposed Project;

B. The proposed Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;

C. The interest in property sought to be acquired by eminent domain is necessary for the proposed Project;

D. The City has complied with all conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the property described herein, as well as any other matter regarding the right to take said property by eminent domain, including but not limited to, making the offer required by Government Code Section 7267.2(a);

E. The City has fully complied with the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, for acquiring the property described herein when the City on August 12, 2016, approved the Final Mitigated Negative Declaration for the Berry Street Bridge Replacement Project; and

F. The Easement herein described is a portion of the Property located at 1328 Berry St., Calistoga, CA (approximately 1,750 square feet), which will be the site for temporary access to the construction site and a temporary pedestrian bridge.

7. The City Attorney is hereby authorized to acquire in the name of the City the Easement described in this Resolution in accordance with the provisions of California Eminent Domain Law, to commence an action in eminent domain, to deposit the probable amount of compensation with the State Treasury, to apply to the Superior Court for an order permitting the City to take immediate possession and make immediate use of the property for the Project, and to take all necessary steps to acquire the property under the law.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Calistoga at a regular meeting held this **17th day of January 2017** by the following vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**

CHRIS CANNING, Mayor

ATTEST:

MELISSA VELASQUEZ, Deputy City Clerk

- List of Exhibits:
- A. Legal Description of the subject property
 - B. Map showing subject property
 - C. Notice of Hearing

RESOLUTION 2017-XXX

RESOLUTION OF NECESSITY OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, TO ACQUIRE PROPERTY BY EMINENT DOMAIN FOR TEMPORARY CONSTRUCTION EASEMENT REQUIRED TO BUILD THE BERRY STREET REPLACEMENT BRIDGE PROJECT AND AUTHORIZING COMMENCEMENT OF LITIGATION TO ACQUIRE PROPERTY BY EMINENT DOMAIN AND TO SEEK AN ORDER OF POSSESSION (CODE OF CIVIL PROCEDURE SECTION 1245.220) (MEYER PROPERTY, 1341 BERRY ST., CALISTOGA, CALIFORNIA, APN 011-171-010)

1 **WHEREAS**, the City Council has determined that the City of Calistoga (“City”) needs to acquire
2 certain property interests in order to construct the Berry Street Bridge Replacement Project (“Project”).
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4 **NOW, THEREFORE BE IT RESOLVED**, that the City Council of the City, by vote of two-thirds or
5 more of its members, FINDS, DETERMINES, DECLARES, AND RESOLVES the following:
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- 7 1. The City intends to construct the Berry Street Bridge Replacement Project (the "Project"), which
8 is intended to improve public safety by replacing the old Berry Street bridge structure and
9 providing temporary pedestrian and bicycle access across Napa River during construction. The
10 Project is for a public use.
11
- 12 2. To complete construction on the Project, the City must acquire a temporary construction
13 easement (“Easement”) consisting of approximately 50 square feet on privately owned property
14 commonly known as 1341 Berry Street, Calistoga, CA, APN 011-171-010 (“Property”), and more
15 particularly described and shown on Exhibit A and Exhibit B attached to this Resolution and
16 incorporated herein. The Easement is necessary to the completion of the Project. The City is
17 authorized to acquire the Easement by eminent domain for the public use set forth herein in
18 accordance with the California Constitution, Article 1, Section 19; the California Eminent Domain
19 Law, Code of Civil Procedure Section 1230.010 *et seq.*, including, but not limited to, sections
20 1240.010 through 1240.050 inclusive, and sections 1240.110, 1240.120, 1240.220, 1240.320,
21 1240.330, 1240.350, 1240.410, 1240.510, 1240.610, 1240.650; Government Code Section
22 38730, and other provisions of law.
23
- 24 3. The Easement shall be non-exclusive and shall commence after no fewer than fifteen (15) days
25 written notice is provided by the City to the Property owner reflecting the City’s intent to make use
26 of the Easement. The Easement shall terminate two (2) years after the day it is created by the
27 City’s notice or immediately upon written notice by the City to the Property owner that the City no
28 longer requires use of the Easement, whichever is sooner. In no event shall the Easement exist
29 after May 31, 2020.
30
- 31 4. On December 2, 2016, the City mailed a Notice of Hearing on the intent of the City Council of the
32 City of Calistoga to adopt a resolution of necessity for acquisition by eminent domain of the
33 Easements, which notice is attached hereto as Exhibit C, and incorporated herein. The Notice of
34 Hearing was mailed to all persons whose name(s) appear on the last Equalized County
35 Assessment Roll as having an interest in the Property, and to the addresses appearing on the
36 Roll. The Notice of Hearing advised the persons of their right to be heard on the matters referred
37 to in the Notice of Hearing on the date and at the time and place stated.
38
- 39 5. The hearing referenced in the Notice of Hearing was held on December 20, 2016, at the time and

40 place stated in the Notice of Hearing. All interested parties were given an opportunity to be
41 heard. The hearing was then closed.

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43 6. Based upon the evidence presented at the hearing, the City Council of the City of Calistoga finds,
44 determines, declares, and resolves each of the following:

45
46 A. The public interest and necessity require the proposed Project;

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48 B. The proposed Project is planned or located in the manner that will be most compatible with
49 the greatest public good and the least private injury;

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51 C. The interest in property sought to be acquired by eminent domain is necessary for the
52 proposed Project;

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54 D. The City has complied with all conditions and statutory requirements necessary to
55 exercise the power of eminent domain to acquire the property described herein, as well as any
56 other matter regarding the right to take said property by eminent domain, including but not limited
57 to, making the offer required by Government Code Section 7267.2(a);

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59 E. The City has fully complied with the California Environmental Quality Act, Public
60 Resources Code Section 21000 *et seq.*, for acquiring the property described herein when the City
61 on August 12, 2016, approved the Final Mitigated Negative Declaration for the Berry Street
62 Bridge Replacement Project; and

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64 F. The Easement herein described is a portion of the Property located at 1341 Berry St.,
65 Calistoga, CA (approximately 50 square feet), which will be the site for temporary access to the
66 construction site.

67
68 7. The City Attorney is hereby authorized to acquire in the name of the City the Easement described
69 in this Resolution in accordance with the provisions of California Eminent Domain Law, to
70 commence an action in eminent domain, to deposit the probable amount of compensation with
71 the State Treasury, to apply to the Superior Court for an order permitting the City to take
72 immediate possession and make immediate use of the property for the Project, and to take all
73 necessary steps to acquire the property under the law.

74
75 **PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Calistoga at a regular
76 meeting held this 17th day of January 2017 by the following vote:

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78 **AYES:**
79 **NOES:**
80 **ABSENT:**
81 **ABSTAIN:**

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CHRIS CANNING, Mayor

ATTEST:

MELISSA VELASQUEZ, Deputy City Clerk

List of Exhibits:

- A. Legal Description of the subject property
- B. Map showing subject property
- C. Notice of Hearing