

RESOLUTION NO. 21-068

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, APPROVING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO RIGHT OF WAY CONTRACT AGREEMENT BETWEEN THE CITY OF CARSON AND THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR STORAGE AND CONSTRUCTION EASEMENTS OF A PORTION OF REAL PROPERTY LOCATED AT 2403 E. 223RD STREET (APN 7315-012-900)

WHEREAS, the City of Carson ("City") owns that certain unimproved real property located in the City of Carson, County of Los Angeles, State of California as legally described on Exhibit A attached hereto (APN 7315-012-900) and located north of East 223rd Street, south of the 405 freeway and west of South Alameda Street as depicted on Exhibit A attached hereto ("Real Property"); and

WHEREAS, the State of California, Department of Transportation ("State") is in the process of retrofitting the Dolores Yard Overhead Bridge (Bridge No. 53-1168) in the City ("Bridge"); and

WHEREAS, the State needs to acquire a temporary easement in the Property for: (i) storage of its equipment on a portion of the Real Property ("Property") and ingress and egress thereto; and (ii) a temporary construction easement in order to retrofit the Bridge ("Bridge Project"); and

WHEREAS, the State requires the Property for State highway purposes, a public use for which State has the authority to exercise the power of eminent domain to acquire real property interests for the highway purposes; and

WHEREAS, both the City and the State recognize the expense, time, effort, and risk to both Parties in determining compensation for the Property by eminent domain litigation and instead wishes to enter into a Right of Way Contract – State Highway ("Agreement") for the Property in compromise and settlement, in lieu of such litigation; and

WHEREAS, to avoid litigation, the Parties are willing to enter into a grant of temporary easements on the Property upon the terms and conditions specified in the proposed Agreement; and

WHEREAS, time is of the essence and to ensure the process is expedited, staff recommends Council grant the City Manager the authority to make and / or accept minor modifications to finalize the draft Agreement and take any other related actions contemplated by this Resolution.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARSON, DOES HEREBY RESOLVE AS FOLLOWS:

1. Recitals. The Council finds and determines that all the foregoing recitals are true and correct and incorporated herein by this reference.

2. Intention to Enter into Agreement. The Council proposes and intends to enter into the draft Agreement, attached hereto as Exhibit B, in the form subject to approval by the City Manager and City Attorney.

3. Authorization. The City Manager is hereby authorized and directed to take all actions necessary or advisable to give effect to the transactions contemplated by this Resolution including finalizing and executing of the Agreement and to make modifications to the Agreement as the City Manager reasonably determines to be necessary to effect the transaction.

4. Effective Date. This Resolution shall be effective immediately upon its adoption.

5. Certify. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Carson at a regular meeting held on the 1st day of June, 2021.

APPROVED AS TO FORM:

CITY OF CARSON:

Sunny K. Soltani, City Attorney

Lula Davis-Holmes, Mayor

ATTEST:

Joy Simarago, Deputy City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF CARSON)

I, Joy Simarago, Deputy City Clerk of the City of Carson, California, hereby attest to and certify that the foregoing resolution, being Resolution No. 21-068, adopted by the City of Carson City Council at its meeting held on June 1, 2021, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

Joy Simarago, Deputy City Clerk

EXHIBIT A

REAL PROPERTY

VICINITY MAP

2403 E. 223rd Street



81291-1 (Non-Exclusive Area, Construction Easement)

81291-2 (Exclusive Area, Storage Easement)

EXHIBIT B

DRAFT RIGHT OF WAY CONTRACT

RIGHT OF WAY CONTRACT – STATE HIGHWAY

DISTRICT	COUNTY	ROUTE	POST	EA / PROJECT NUMBER
7	LA	405	8.8 PM	EA 304801 / 0714000084
DATE			TYPE OF ACQUISITION	
5-13-21			Temporary Storage & Construction Easements	
GRANTOR				
City of Carson				
PROPERTY ADDRESS			APNs	
2403 East 223 Street, Carson, CA 90745			A portion of APN 7315-012-900	

This Right of Way Contract – State Highway (this “**Agreement**”) is made by and between the **State of California, Department of Transportation** (“**State**”), and **City of Carson**, a chartered city (“**Grantor**”), each a “**Party**” and jointly the “**Parties**”.

RECITALS:

- A.** Grantor owns that certain unimproved real property located in the City of Carson, County of Los Angeles, State of California as legally described on Exhibit A attached hereto (APN 7315-012-900) and located north of East 223rd Street, south of the 405 freeway and west of South Alameda Street as depicted on Exhibit A-1 attached hereto (“**Real Property**”)
- B.** The State is in the process of retrofitting the Dolores Yard Overhead Bridge (Bridge No. 53-1168) in the City (“**Bridge**”).
- C.** The State needs to acquire a temporary easement in the Property for (i) storage of its equipment on a portion of the Real Property (“**Property**”) and ingress and egress thereto; and (ii) a temporary construction easement in order to retrofit the Bridge (“**Bridge Project**”).
- D.** State requires the Property for State highway purposes, a public use for which State has the authority to exercise the power of eminent domain to acquire real property interests for the highway purposes.
- E.** Both Grantor and State recognize the expense, time, effort and risk to both Parties in determining compensation for the Property by eminent domain litigation. The compensation set forth in this Agreement for the Property is in compromise and settlement, in lieu of such litigation.
- F.** To avoid litigation, the Parties are willing to enter into a grant of temporary easements on the Property upon the terms and conditions specified in this Agreement.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT:

- 1. Effective Date.** This Agreement shall become effective on the date executed by Grantor as shown on the execution page below. The Easements shall be effective upon the Closing (as defined in Section 9.3.3) and shall continue for a period of twenty-eight (28) months thereafter (“**Term**”).
- 2. Grant of Temporary Easements.** Grantor agrees to grant the State temporary easements (jointly “**Temporary Easements**”) as follows:

RIGHT OF WAY CONTRACT – STATE HIGHWAY

(a) an easement in the form of Exhibit B for use of a storage area on the Property consisting of approximately 45,755 square feet and ingress and egress thereto (“**Temporary Storage Easement**”); and

(b) a temporary construction easement in the form of Exhibit C to facilitate retrofitting the Bridge (“**Temporary Construction Easement**”).

Grantor reserves all other rights and interests in the Property not specifically granted to the State as set forth in the Temporary Easements. The State may not enter any portion of the Property until the Closing (defined in Section 9.3.3).

3. **Acquisition Price.** The Parties recognize the expense, time, effort, and risk to both Parties in determining the compensation for the Temporary Easements by eminent domain litigation. Therefore, the compensation set forth herein for the Temporary Easements is in compromise and settlement, in lieu of such litigation. Accordingly, at the Closing (as defined below), the State shall pay Grantor the sum of **Seven Hundred Sixty-Eight Thousand Six Hundred Eighty-Four Dollars (\$768,684)** for the Temporary Easements (“**Acquisition Price**”). The Parties agree that the Acquisition Price is the full compensation to Grantor for the grant of the Temporary Easements for the Term but that the terms of the Temporary Easements shall control the continuing obligations of State with respect to the use of the Temporary Easements.
4. **Existing Tenant.** A portion of the Real Property not within the Easements is subject to that certain License Agreement dated November 30, 2019 with WIN Chevrolet, Inc., a California corporation (“**Tenant**”) which is used for parking inventory vehicles (“**Existing Lease**”). The State shall not unreasonably interfere with the Tenant’s access rights under the Existing Lease.
5. **Holding Over.** State has no right to extend the Term of the Easements. In the event that State does not promptly vacate the Property upon termination of the Easements, State shall pay Grantor two hundred percent (200%) of the Acquisition Price prorated on a daily basis from the end of the Term until State fully vacates the Property (“**Hold Over Amount**”). The Parties agree that this amount is fair and reasonable as any such delay by State in vacating the Property will adversely affect Grantor’s ability to sell the Property.
6. **No Discrimination.** The Parties mutually agree as follows:
 - 6.1. The Parties shall, pursuant to Section 21.7(a) of Title 49, Code of Federal Regulations, comply with all elements of Title VI of the Civil Rights Act of 1964. This requirement under Title VI and the Code of Federal Regulations is to complete the USDOT-Non-Discrimination Assurance requiring compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Part 21 and 28 C.F.R. Section 50.3.
 - 6.2. No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity that is the subject of this Agreement.
7. **Indemnity.** Grantee agrees to indemnify, defend and hold harmless Grantor against liens, encumbrances, actions, claims, losses, damages, expenses and/or liabilities of any kind or nature (“**Claims**”) arising from or growing out of loss or damage to Property or injury to or death of persons, including employees of Grantor, resulting in any manner whatsoever, directly or indirectly, by reason of the exercise of the rights under this Agreement, provided, however, that this Agreement shall not apply where such Claims are caused by the sole gross negligence of Grantor.

RIGHT OF WAY CONTRACT – STATE HIGHWAY

- 8. Compliance.** All work by State shall conform to all applicable building, fire and sanitary laws, ordinances and regulations relating to such work and shall be done in a good and workmanlike manner. State shall return the Property to the condition that exists prior to the Effective Date.
- 9. Escrow.** Escrow shall be handled through an internal escrow by the State of California, Department of Transportation, located at 100 South Main Street, Los Angeles, CA 90012 (“**Escrow Holder**”). In this capacity, Escrow Holder shall be subject to California law including, but not limited to, case law regarding its duties except for licensing.
- 9.1. Opening.** Within three (3) business days of the Effective Date, the State shall open escrow by delivering an executed copy of this Agreement to Escrow Holder.
- 9.2. Costs and Expenses.** The State shall be solely responsible for all costs of escrow, recording fees and any other expenses under this Agreement including the costs/premium for any title report or title policy which the State elects, in its discretion, to obtain.
- 9.3. Closing.**
- 9.3.1. Impact of State Budget.** Grantor has been advised that funding for this transaction may be impacted by the approval of the State's budget by the legislature. Consequently, the Closing may be delayed until the State budget is approved, and funds are made available to State.
- 9.3.2. Notice of Receipt of Funds; Right to Cancel.** Escrow Holder shall notify Grantor in writing upon its receipt of the funds to pay the Acquisition Price (“**Closing Notice**”) and Grantor shall deliver the executed Temporary Easements to Escrow Holder within three (3) business days of receipt of the Closing Notice. In the event that Grantor has not received the Closing Notice on or before _____, 2021, Grantor may, in its sole discretion, elect to terminate this Agreement and Escrow by delivery of written notice of termination to the State and Escrow Holder.
- 9.3.3. Recordation.** Escrow shall be deemed closed upon the recordation of the Temporary Easements in the Official Records of Los Angeles County and the release of the Acquisition Price to Grantor (“**Closing**”). Upon Closing, Escrow Holder shall notify Grantor of the Closing and send a conformed copy of the recorded documents to Grantor along with the delivery of the Acquisition Price.
- 10. Limited Representations; As-Is; Title Report/Policy.**
- 10.1. Limited Representations.** Grantor warrants to its knowledge that: (i) it is the owner of fee title of the Property; (ii) except for the Existing Lease, is not aware of any third party rights or claims (including any leases) applicable to the Property; (iii) has the right to grant the Temporary Easements; and, (iv) is not aware of the presence of hazardous waste on the Property although Grantor has not made any investigation as to such.
- 10.2. As-Is.** Grantor is granting the Temporary Easements in as-is condition without any other representation or warranties of any kind including, but not limited to, the status of title, environmental conditions, etc. Grantor will have no liability to the State in the event that the limited representations are not true.
- 10.3. Title Report/Policy.** Within ten (10) days of the Effective Date, the State may, in its discretion, obtain a preliminary title report (“**PTR**”) to confirm the status of title. If the State disapproves any exceptions on the PTR, it shall notify Grantor in writing within twenty (20) days of the Effective Date specifying in detail the specific issues. Grantor may elect to resolve the objection or terminate this Agreement by written notice. Upon Close of Escrow, the State shall look solely to the PTR or any title policy for any claims.

- 11. Reserved Rights.** Grantor intends to sell the Property and, therefore, reserves the right to allow third parties on the Property in order to conduct investigations of the soils and other matters as it deems necessary. Any such third party shall not interfere with the State's use of the Easements.
- 12. Sale of Property.** Grantor may, at any time, transfer fee title of the Property. If any transfer occurs after the Closing, the transfer will be subject to the recorded Temporary Easements.
- 13. Assignment.** The State may not assign this Agreement or any of its rights or obligations hereunder to any third party or entity without the prior written consent of Grantor. This Agreement will be binding upon and inure to the benefit of each of the Parties hereto and, except as otherwise provided herein, their respective legal successors and permitted assigns.
- 14. Notices.** Any notices, demands or communications under this Agreement between the Parties shall be in writing, and may be given either by (i) personal service, (ii) overnight delivery, or (iii) mailing via United States mail, certified mail, postage prepaid, return receipt requested ("US Mail"), addressed to the Party as set forth below or such other address as may be furnished in writing by a Party, and such notice or communication shall, if properly addressed, be deemed to have been given as of the date so delivered under (i) or (ii); or three (3) business days after deposit into the U.S. Mail in accordance with (iii).

Grantor: City of Carson
701 East Carson Street
Carson, CA 90745
Attention: Ms. Eliza Jane Whitman
(310) 830-7600

With Copy to: City of Carson
701 East Carson Street
Carson, CA 90745
Attention: Sunny Soltani, City Attorney

State as Grantee: State of California
Department of Transportation, District 7
Right of Way Acquisition Branch A
100 S Main Street, MS 6
Los Angeles, CA 90012
Attention: Michael Means, Associate Right of Way Agent
Phone (213) 264-9109.

State as Escrow Holder: State of California
Department of Transportation, District 7
100 South Main Street
Los Angeles, CA 90012

15. General Provisions.

- 15.1. Severability.** If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had not been included.

RIGHT OF WAY CONTRACT – STATE HIGHWAY

- 15.2. Governing Law; Jurisdiction.** This Agreement shall be construed and enforced in accordance with the laws of the State of California. If any legal action is necessary to enforce the terms and conditions of this Agreement, the Parties agree that the sole venue and jurisdiction for bringing an action shall be the California Superior Court in Los Angeles county.
- 15.3. Legal Fees and Costs.** In the event of any litigation or other legal proceeding including, but not limited to, arbitration or mediation between the Parties arising from this Agreement, the prevailing party will be entitled to recover, in addition to any other relief awarded or granted, its costs, expenses and reasonable attorney's fees incurred in the proceeding.
- 15.4. Final Agreement.** This Agreement supersedes all prior agreements and understandings between the Parties with respect to the subject matter and any and all prior agreements and understandings are terminated and of no further force or effect.
- 15.5. Construction.** In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Agreement, no uncertainty or ambiguity shall be construed or resolved against a Party under any rule of construction, including the Party primarily responsible for the drafting and preparation of this Agreement. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.
- 15.6. Force Majeure.** In the event an act of the government, war conditions, terrorism, fire, flood, or other act of God prevents a Party from performing in accordance with the provisions of this Agreement, such nonperformance shall be excused and shall not be considered a breach or default for so long as the said conditions prevail.
- 15.7. Modifications in Writing.** Any modification or amendment of any provision of this Agreement must be in writing and bear the signature of the duly authorized representatives of both Parties.
- 15.8. No Waiver.** The failure of either Party to enforce any term, covenant, or condition of this Agreement on the date it is to be performed shall not be construed as a waiver of that Party's right to enforce this, or any other, term, covenant, or condition of this Agreement at any later date or as a waiver of any term, covenant, or condition of this Agreement.
- 15.9. No Third-Party Beneficiaries.** This Agreement is only between the Parties and is not intended to be nor shall it be construed, as being for the benefit of any third party.
- 15.10. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall be deemed but one and the same instrument, and a facsimile copy of such execution shall be deemed an original.
- 15.11. Exhibits.** Exhibits A, B and C are attached hereto and incorporated herein by reference.

[SIGNATURES ON FOLLOWING PAGE]

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY CONTRACT – STATE HIGHWAY

In WITNESS WHEREOF, the Parties have executed this Agreement as of the dates specified below.

STATE:

State of California
Department of Transportation as Grantee

GRANTOR:

City of Carson

Recommended for Approval:

By: _____
Lula Davis-Holmes, Mayor

By: _____
Michael Means Associate Right of Way Agent
Right of Way Acquisition Branch A

Date: _____, 2021

ATTEST:

By: _____
Jennifer Pham, Senior Right of Way Agent
Right of Way Acquisition Branch A

Joy Simarago
Deputy City Clerk

By: _____
Mark Lyles, Office Chief
Right of Way Acquisition, Condemnation and
Local Programs

APPROVED AS TO FORM:
ALESIRE & WYNDER, LLP

APPROVED:

By: _____
Sunny Soltani, City Attorney (ANL)

By: _____
Edward Francis, Deputy District Director
Division of Right of Way
Department of Transportation
Caltrans – District 7

Exhibit “A”
Legal Description of Property

DRAFT

**Exhibit “A-1”
Depiction of Property**

DRAFT

Exhibit B
Temporary Storage Easement

DRAFT

Exhibit C
Temporary Construction Easement

DRAFT