

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE OF PUBLIC USE AND NECESSITY (1) MAKING CERTAIN FINDINGS AND DETERMINATIONS RELATING TO THE EXERCISE OF THE POWER OF EMINENT DOMAIN PURSUANT TO ARTICLE 2, CHAPTER 4, TITLE 7 OF PART 3 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE FOR THE ACQUISITION OF REAL PROPERTY FOR PUBLIC USE PURPOSES OF THE PARK AVENUE RECONFIGURATION PROJECT BETWEEN ALMADEN BOULEVARD AND MARKET STREET WITH LAND OWNED BY THE HEIRS AND DEVISES OF JAMES SMITH, DECEASED, COMPRISING A PARCEL, 1,281 SQUARE FEET, LOCATED ON THE NORTH SIDE OF PARK AVENUE AT THE INTERSECTION OF ALMADEN BOULEVARD; (2) AUTHORIZING THE CITY ATTORNEY, OR THEIR DESIGNEE, TO FILE SUIT IN EMINENT DOMAIN TO ACQUIRE SUCH PROPERTY INTEREST, TO APPLY FOR AN ORDER FOR POSSESSION BEFORE JUDGMENT, AND TO PROSECUTE SAID ACTION TO FINAL JUDGMENT; AND (3) AUTHORIZING THE CITY ATTORNEY, OR THEIR DESIGNEE, TO DEPOSIT MONEY IN THE STATE TREASURY CONDEMNATION FUND FOR POSSESSION OF THE PROPERTY FROM THE FUNDS LAWFULLY AVAILABLE THEREFORE**

**WHEREAS**, the Park Avenue Reconfiguration Project is being undertaken by the City of San Jose ("City") for the purpose of reconfiguring, improving and beautifying the Park Avenue right-of-way to reduce the area of vehicle travel lanes, maximize the area for pedestrian and bicycle circulation, create plazas and seating areas to improve the public realm, add new trees and landscaped areas, and integrate the reconfigured street with adjacent open space on private property, construct power and water hook-ups for use at private and public events, relocation of utilities, replace curb, gutter, sidewalk and pavement sections, and complete signal modifications at Park Avenue and Almaden Boulevard and at Market Street including a raised intersection ("Project"); and

**WHEREAS**, on September 3, 2019, the City of San José ("City") approved a Determination of Consistency with the Downtown Strategy 2040 Final Environmental Impact Report and Statement of Exemption for the realignment of Park Avenue, and approved the proposed Project to reconfigure the Park Avenue right-of-way between the Guadalupe River and South Market Street to reduce the area for vehicular circulation, maximize the area for pedestrians, and integrate the street with adjacent open space on private property ; and

**WHEREAS**, on June 16, 2020, the City Council approved the CityView Plaza Project under Site Development Permit No. H 19-016 , which allows for the demolition of the CityView Plaza, removal of 31 ordinance size trees, and construction of an office development totaling approximately 3.8 million square feet of office and commercial space above a subterranean parking garage on an approximately 8.1 gross-acre site by SJ City View LLC ("Developer"); and

**WHEREAS**, a portion of the Developer's approved project includes real property located at Park Avenue between Market Street and Almaden Boulevard and within the Park Avenue right-of-way and the Park Avenue Reconfiguration Project; and

**WHEREAS**, in the public interest and necessity, City desires to acquire the underlying fee interest in that certain property consisting of 1,281 square feet, which is in the Park Avenue public right-of-way, located within the City for a proposed public use, the Park Avenue Reconfiguration Project, as described in Exhibit "A" attached hereto and made a part hereof by this reference (the "Property"); and

**WHEREAS**, the Property to be acquired is proposed to be ultimately vacated and conveyed by City to the Developer to implement the Park Avenue Reconfiguration Project's planned public use improvements on the north side of Park Avenue between

Almaden Boulevard and Market Street and to integrate them with the Developer's overall project; and

**WHEREAS**, the City is authorized to acquire the Property and exercise the power of eminent domain for the public use and the Park Avenue Reconfiguration Project, pursuant to and in accordance with Article 1, Section 19 of the California Constitution, the California Eminent Domain Law (Code of Civil Procedure Sections 1230.010 *et seq.*), Section 200 of the City of San José Charter, and Sections 37350, 37350.5, 37351, 37353 and 40404 of the California Government Code; and

**WHEREAS**, pursuant to the provisions of Section 1245.235 of the California Code of Civil Procedure, the notice required to be given to the owner of the Property on the opportunity to appear and be heard on the matters referred to in Code of Civil Procedure Section 1240.030 before the City Council has not been given because there is no person whose name and address appears on the last equalized County of Santa Clara assessment roll notice pursuant to Code of Civil Procedure section 1245.235(d) and a reasonable diligent search has not identified any living heirs or devisees of the owner, James Smith, deceased; and

**WHEREAS**, on April 13, 2021, City Council conducted a Public Hearing to allow each person whose Property is to be acquired a reasonable opportunity to appear and be heard on the matters referred to in Section 1240.030 of the California Code of Civil Procedure; and

**WHEREAS**, City also desires to authorize the City Attorney, or their designee, to file suit in eminent domain for condemnation of the Property, and to take all steps necessary, including applying for an Order for Possession before Judgment, and to correct any errors or make or agree to non-material changes in the description of the Property and interests deemed necessary for the conduct of the condemnation action; and

**WHEREAS**, City further desires to authorize the Director of Economic Development, or their designee, to make deposit in the State Treasury Condemnation Fund from lawfully available funds of the City in the amount determined by the summary appraisal of the Property or by the court in eminent domain proceedings concerning the Property or which may otherwise be required by law for the maintenance of the proceeding in eminent domain;

**NOW THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

**SECTION 1.** The City Council hereby finds, determines and declares that:

**A.** The City is authorized to acquire the Property and exercise the power of eminent domain to and in accordance with Article 1, Section 19 of the California Constitution, the California Eminent Domain Law (Code of Civil Procedure Sections 1230.010 *et seq.*), Section 200 of the City of San Jose Charter, and Government Code Sections 37350, 37350.5, 37351, 37353 and 40404.

**B.** The public interest and necessity require the following proposed Project: the acquisition by the City of the Property consisting of 1,281 square feet, which is in the Park Avenue public right-of-way, as described in Exhibit "A" attached hereto and by reference made a part hereof, for the Park Avenue Reconfiguration Project.

**C.** The Property to be acquired for the proposed Park Avenue Reconfiguration Project is planned or located in the manner which will be most compatible with the greatest public good and the least private injury.

**D.** The acquisition of Property as described in Exhibit “A” is necessary for the public uses proposed in the Park Avenue Reconfiguration Project.

**E.** The offer required by Section 7267.2 of the Government Code, together with the accompanying statement of the amount established as just compensation, for the acquisition of the Property, has not been made by the City to the owner of record, the heirs and devisees of James Smith, deceased, because the heirs or devisees of the deceased owner cannot be identified with reasonable diligence.

**F.** The City has complied with all conditions and statutory requirements that are necessary for approval and adoption of the Park Avenue Reconfiguration Project, including those prescribed by the California Environmental Quality Act (“CEQA”, Pub. Res. Code § 21000, *et seq.*). On September 3, 2019, the City prepared a Determination of Consistency of the Park Avenue Reconfiguration Project to the Downtown Strategy 2040 Final Environmental Impact Report certified by the City on December 18, 2018 (State Clearinghouse No. 2003042127). The City has also determined that the Park Avenue Reconfiguration Project is exempt from environmental review under the provisions of Section 15301(c) of the State Guidelines for Implementation of CEQA as an existing public facility.

**G.** All conditions and statutory requirements necessary to exercise the power of eminent domain to acquire the Property have been complied with by the City.

**SECTION 2.** The City Attorney, or their designee, is hereby authorized to institute, maintain and prosecute to final judgment, in the name of the City of San José, proceedings in eminent domain in the Superior Court of the State of California, County of Santa Clara, for the condemnation of the Property herein above described, and to take all steps necessary, including applying for an Order for Possession before Judgment, for said condemnation in the name of the City, and correcting any errors or to making or

agreeing to non-material changes in the description of the Property and interests to be acquired that are deemed necessary for the conduct of the condemnation action.

**SECTION 3.** The City Attorney, or their designee, is hereby authorized to make deposit in the State Treasury Condemnation Fund from lawfully available funds of the City in the amount determined by the summary appraisal of the Property or by the court in which eminent domain proceedings concerning the Property herein authorized are commenced or which may otherwise be required by law for the maintenance of the proceeding in eminent domain. The deposit is conditioned on the availability of funds under the Real Property Purchase and Sale and Cost Payment Agreement between Developer and City dated December 4, 2020.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

NVF:CHD:CAG  
4/1/21

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T-39999 / 1806140  
Council Agenda: 4/13/21  
Item No.: 8.1(b)

**DRAFT – Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanJoseca.gov](mailto:CityClerk@sanJoseca.gov) for final document.**

## EXHIBIT A – PROPERTY

December 2, 2020  
Job No. A19006  
Page 1 of 2

### LEGAL DESCRIPTION FOR: ACQUISITION PARCEL A

ALL THAT LAND SITUATE IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, BEING A PORTION OF PARK AVENUE SITUATE IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED FOR RECORD ON MAY 13, 1968 IN BOOK 237 OF MAPS AT PAGE 24, SANTA CLARA COUNTY RECORDS, SAID LAND ALSO BEING A PORTION OF THE LAND AS DESCRIBED IN THAT CERTAIN DEED RECORDED ON NOVEMBER 22, 1872 IN BOOK 28 OF DEEDS, PAGE 23, OF OFFICIAL RECORDS, SANTA CLARA COUNTY, MORE PARTICULARLY DESCRIBED, AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF PARCEL 4 (LANDS OF THE CITY OF SAN JOSE) AS DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED NOVEMBER 21, 1967 IN BOOK 7936 PAGE 685, OFFICIAL RECORDS OF SANTA CLARA COUNTY;

THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL 4 NORTH 55° 37' 37" EAST, 34.76 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID SOUTHEASTERLY LINE NORTH 55° 37' 37" EAST, 105.53 FEET TO A POINT ON THE COMMON LINE BETWEEN SAID DEED RECORDED IN BOOK 28 OF DEEDS, PAGE 23, AND THAT CERTAIN DEED RECORDED ON OCTOBER 24, 1870 IN BOOK 19 OF DEEDS, PAGE 37, OFFICIAL RECORDS OF SANTA CLARA COUNTY;

THENCE ALONG SAID COMMON LINE SOUTH 30° 38' 30" EAST, 16.04 FEET;

THENCE LEAVING SAID COMMON LINE THE FOLLOWING TWO (2) COURSES AND DISTANCES:

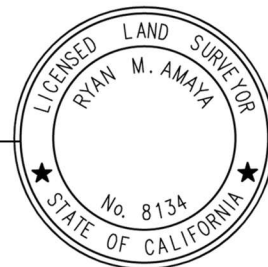
1. SOUTH 59° 16' 52" WEST, 86.32 FEET;
2. ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 24.00 FEET, THROUGH A CENTRAL ANGLE OF 52° 15' 24", FOR AN ARC DISTANCE OF 21.89 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,281± SQUARE FEET.

**THIS LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION IN ACCORDANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.**

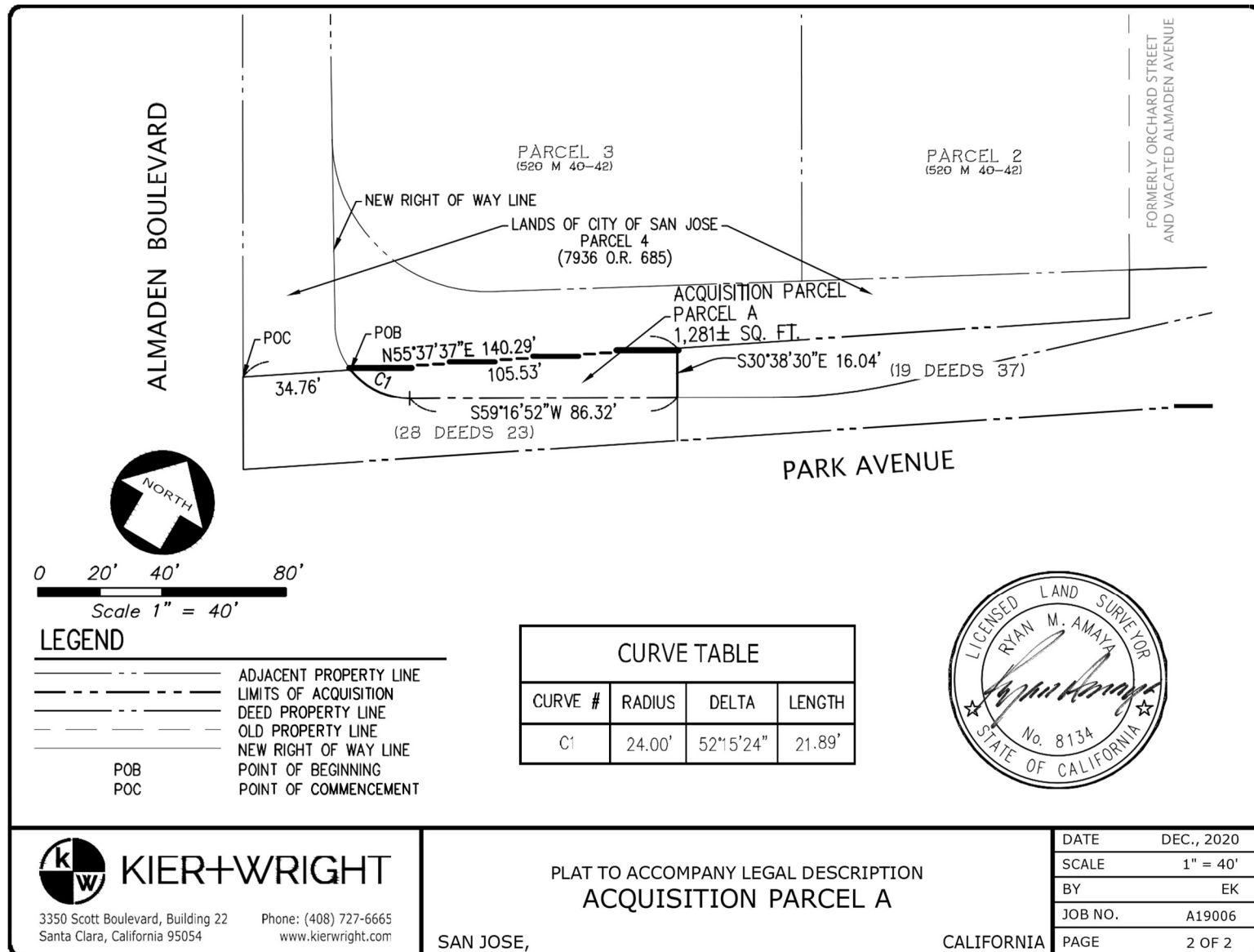
12-07-2020  
DATE

  
RYAN M. AMAYA, L.S. 8134



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