RESOLUTION NO. 2008-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANAHEIM DETERMINING THE PUBLIC INTEREST AND NECESSITY FOR ACQUISITION OF PROPERTY LOCATED AT 2203 WEST MIDWOOD LANE FOR THE PURPOSES OF THE KATELLA AVENUE SMART STREET - HUMOR DRIVE TO JEAN STREET PROJECT.
(R/W ACQ 2005-00237).

WHEREAS, the City of Anaheim has been investigating the acquisition of property located at 2203 West Midwood Lane for the purposes of making public roadway improvements pursuant to the circulation element of the General Plan of the City of Anaheim; and

WHEREAS, on June 10, 2008, after no less than fifteen (15) days written notice to the owners of the Property referenced above, and more specifically described in the legal descriptions attached hereto as Exhibit "A", which legal descriptions are incorporated herein by reference ("Property"), the City Council of the City of Anaheim held a hearing for the purposes of allowing the record owners of such property reasonable opportunity to appear and be heard regarding the City’s identification of the “Project” as the Katella Avenue Smart Street - Humor Drive to Jean Street Project ("Project"), and on the following matters:

A. Whether the public interest and necessity require the Project;

B. Whether the Project is planned or located in a manner which is most compatible with the greatest public good and the least private injury;

C. Whether the Property proposed to be acquired is necessary for the Project; and

D. Whether the offer required by Government Code § 7267.2 had been given to the owners of record;

and whether the City had properly exercised all of its statutory responsibilities and duties antecedent to the exercise of eminent domain against the Property including review under CEQA; and

WHEREAS, the City Council, as a result of such hearing, has determined that the public health, safety and welfare require that the City acquire the Property more particularly described herein for the purposes of the Project; and

WHEREAS, the Project for which the Property to be acquired is sought has previously been reviewed under applicable environmental review procedures, including Environmental Impact Report No. 538 certified in February 1993 under the Final Environmental Impact Report (Hereinafter "E.I.R.") through the Orange County Transportation Authority ("OCTA") for the Katella Avenue Smart Street - Humor Drive to Jean Street Project; and
WHEREAS, the City of Anaheim is authorized to acquire the Property under authority of its own charter, and Government Code §§ 37350.5 and 40404;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Anaheim, California, that the City Council does hereby find, determine and declare upon evidence presented to the City Council as follows:

SECTION I. The Project for which the property is being acquired is the Katella Avenue Smart Street - Humor Drive to Jean Street Project which consists of the widening and improving of Katella Avenue, including installation of street landscaping and public utilities. The Location of the Project is depicted generally in the project precise alignment dated May 11, 1998 and presented to the City Council as part of the record of hearing in this matter.

SECTION II. The Property to be acquired is located within the City at 2203 West Midwood Lane (Assessor Parcel No. 127-611-24). The Property the City seeks to acquire, and the Property interests sought, consist of the following:

A. Fee simple title to Property consisting of approximately 9,086 square feet, as more specifically described in Exhibit "A" attached hereto.

SECTION III. The public interest and necessity require the Project, in that the City's General Plan, and specifically the Circulation Element, calls for the improvement of Katella Avenue in the manner contemplated by the Project. The Project is designed to relieve regional traffic congestion and improve the capacity of the street, which will require continuity in the roadway alignment and traffic handling capacity of the streets.

SECTION IV. The Project is located in a manner most compatible with the greatest public good and least private injury, in that the design of the roadway widening must of necessity occupy land which is immediately adjacent to the existing roadway, in order to maintain the continuity of the alignment of the road for all users. The property to be taken for the Project is necessitated and established by the street alignment in an effort to minimize any disproportionate burden or impact of the required property being taken from individual property owners. The Project is designed in a manner compatible with the greatest public good, in that the Project will involve road widening, undergrounding of utilities, and upgrading parkway landscaping, along with drainage improvements. This will enhance the utility of the area and help improve traffic circulation.

SECTION V. The Property is necessary for the proposed Project, in that the roadway widening must occur on property immediately adjacent to the existing roadway.

SECTION VI. The offer required by Government Code § 7267.2 has been made to the record owners, by way of letter dated March 12, 2007. Staff has attempted to negotiate with the record owners subsequent to this offer, but such negotiations have not proved successful in securing the necessary property interests outside of more formal proceedings.
SECTION VII. To the extent any of the property to be taken herein is devoted to a public use, the City finds that the proposed use for the Project is compatible with, or more necessary to, such public use, and that the City is authorized to acquire the Property pursuant to Code of Civil Procedure §§ 1240.510 and 1240.610.

SECTION VIII. The Project has been reviewed and approved under E.I.R. No. 538, adequately reviewed and certified in February 1993 through the OCTA, referenced in the Notice of Hearing which was sent in connection with this Resolution. The City Council finds and determines that since the time of that certification there have been no subsequent changes with respect to the circumstances under which the Project is to be undertaken, no new information of substantial importance regarding significant effects or mitigation measures or alternative which has become available, and no subsequent changes have been proposed in the Project which would require important revisions to the E.I.R. such that no further environmental review attending this proposed acquisition is necessary.

SECTION IX. The law firm of Rutan & Tucker, LLP, special counsel for the City of Anaheim, and the City Attorney are hereby authorized to prepare and prosecute in the name of the City, such special proceedings in the proper court having jurisdiction thereof, as are necessary for acquisition of the Property described herein, and to prepare and file such pleadings, documents, and otherwise prosecute such actions as may be necessary in the opinion of such attorneys to acquire for the City the Property. Such attorneys are specifically authorized to take whatever steps and/or procedures are available to them under the Eminent Domain Law of the State of California, including, but not limited to, seeking orders for prejudgment possession of the property. The City Attorney is authorized to assign any work in such action to other attorneys as the City Attorney may deem appropriate.

THE FOREGOING RESOLUTION is approved and adopted by the City Council of the City of Anaheim this ________ day of ______________, 2008 by the following roll-call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

CITY OF ANAHEIM

MAYOR OF THE CITY OF ANAHEIM

ATTEST:

CITY CLERK OF THE CITY OF ANAHEIM

68932.1

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LOT 34 OF TRACT 2319, IN THE CITY OF ANAHEIM, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 69, PAGES 43 AND 44 OF MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER, OR THAT MAY BE PRODUCED FROM A DEPTH BELOW 500 FEET FROM THE SURFACE OF SAID LAND, BUT WITHOUT THE RIGHT OF SURFACE ENTRY THEREON, AS GRANTED BY DEED RECORDED APRIL 1, 1955 IN BOOK 3018 PAGE 163, OFFICIAL RECORDS.

END OF LEGAL DESCRIPTION