

RESOLUTION NO. 2020-38

A RESOLUTION OF THE FLAGSTAFF CITY COUNCIL, AUTHORIZING THE ACQUISITION OF REAL PROPERTY INTERESTS NECESSARY FOR THE RIO DE FLAG FLOOD CONTROL PROJECT, A PUBLIC USE, PROVIDING FOR DELEGATION OF AUTHORITY, CONDEMNATION AUTHORITY, PRIOR APPROVAL OF PURCHASES; AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, the City Council adopted an Ordinance No. 1983 on October 6, 1998 authorizing the acquisition of real property for flood control and to provide the opportunity for future development along the Rio de Flag and the Clay Avenue Wash, situated within Section 16, the southwest quarter of Section 15, the north half of Section 21, the north half of Section 22, and the northwest quarter of Section 23, Township 21 North, Range 7 East, Gila and Salt River Meridian Coconino County Arizona;

WHEREAS, the City Council adopted an Ordinance No. 2009-22 on August 4, 2009 amending Ordinance No. 1983 to add parcels of real property for flood control and redevelopment within the Rio de Flag Flood Control Project;

WHEREAS, the City Council approved Resolution No. 2020-05 on February 18, 2020, which approves acquisition of property interests needed for the Lower Reach and Upper Reach of the Rio de Flag (this resolution will need to be amended in the future as there will be different legal descriptions for the Upper Reach per revised design documents);

WHEREAS, the City Council approved Resolution No. 2020-24 on May 19, 2020, which approves acquisition of additional property interests needed for Phase 1 of project, which includes the Lower Reach and Clay Avenue Wash Area;

WHEREAS, the City Council is approving this Resolution No. 2020-38, to approve acquisition of five (5) additional property interests needed for Phase 1 of the project;

WHEREAS, the City of Flagstaff ("the City") has authority to acquire real property pursuant to Article 1, Section 3 of the Charter of the City of Flagstaff;

WHEREAS, the City has authority acquire real property necessary for a public use by right of eminent domain (condemnation), pursuant to A.R.S. §§ 9-240, 9-276, 12-1111, 12-1113, and pursuant to A.R.S. § 12-1142 for a public works project funded in part by a federal agency;

WHEREAS, the U.S. Department of the Army and the City entered into a Project Cooperation Agreement for construction of the Rio de Flag Flood Control and Recreation Project dated August 13, 2004, and, per Articles III and IV, the City shall acquire real property necessary for the project;

WHEREAS, the U.S. Army Corps of Engineers has approved \$52 million in funding for its FY2020 Work Plan for the Rio de Flag Flood Control and Recreation Project;

WHEREAS, City has adopted storm water fees to generate revenues for flood control and storm water projects, has included the Rio de Flag Flood Control and Recreation Project in its Capital Improvement Program (CIP), so the City is able to pay its required share of funding for the project;

WHEREAS, the U.S. Army Corps of Engineers, in consultation with the City and the design engineer, has determined that the real properties identified in this resolution are necessary for the project;

WHEREAS, the City is obtaining appraisals and review appraisals by the U.S. Army Corps of Engineers to determine the just compensation to be paid for the real property interests necessary for the project.

ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. In General.

Although broad authority for acquisition of the property interests necessary for the Rio de Flag Project is provided for under Ordinance No. 1983, as amended by Ordinance No. 2009-22, the City Council hereby desires to more specifically approve acquisition of two (2) additional property interests necessary for the construction and completion of Phase 1 of the Rio de Flag Flood Control Project (which includes areas known as the Lower Reach of the Rio de Flag and the Clay Avenue Wash and is conceptually depicted in the map attached hereto as Exhibit 1), and as legally described in the attached Exhibit 2 ("the Real Property Interests").

SECTION 2. Delegation of Authority.

The City Manager and his designees, including the Real Estate Manager and City Attorney's Office are hereby authorized to negotiate with the owners of the Real Property, with the intent to obtain the necessary property by donation, and with the approval of the terms and conditions of sale by the City Manager, including just compensation to be paid, by purchase.

SECTION 3. Condemnation Authority.

When, in the opinion of the City Manager, it appears that it will be necessary to institute and prosecute condemnation actions, the City Attorney is authorized to initiate the actions and proceed on behalf of the City or with the approval of the City Manager to retain the services of private counsel to do so. All legal actions necessary or appropriate to acquire the Real Property, including any negotiated settlement, may proceed without the need for any further approval of the City Council.

SECTION 4. Prior Approval of Purchases.

The City Council hereby gives its prior approval for purchases of the Real Property without the need for any further approval of the Council.

The City Council hereby directs the City Manager and Real Estate Manager to provide updates on the status of acquisitions upon the request of a Council Member, to all Council Members.

SECTION 5. Effective Date.

This Resolution shall be immediately effective.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 7th day of July, 2020

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

Exhibits:

Exhibit 1 Map showing Phase 1

Exhibit 2 Legal descriptions for additional property interests for Phase 1