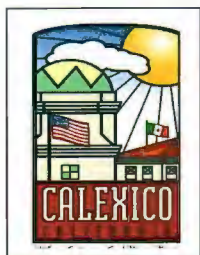


**AGENDA
ITEM**

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CITY COUNCIL AGENDA STAFF REPORT

DATE: December 21, 2022

TO: Mayor and City Council

APPROVED BY: Esperanza Colio Warren, City Manager

PREPARED BY: Esperanza Colio Warren, City Manager
Nossaman LLP, Eminent Domain Counsel for City of
Calexico

SUBJECT: Consider Adoption of a Resolution of Necessity to Acquire by Eminent Domain a Fee Interest in the Real Property Located at 237 Heffernan Avenue, Calexico, California, and Further Identified as Imperial County Assessor's Parcel Number 058-482-002, for the Purpose of Constructing and Operating the Calexico Intermodal Transportation Center Project

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Recommendation:

That the City Council:

1. Consider the attached Resolution of Necessity of the City of Calexico ("City") declaring that the public interest and necessity require the acquisition of real property located at 237 Heffernan Avenue, Calexico, California, Imperial County Assessor's Parcel Number 058-482-002 ("Property"), for the purposes of constructing the Calexico Intermodal Transportation Center Project ("Project"), a mobility hub and bus transfer terminal to serve local and county bus operations.
2. Open and conduct a hearing on the adoption of the proposed Resolution of Necessity, take testimony from any person wishing to be heard on issues A, B, C, and D identified below, and consider all evidence to determine whether to adopt the proposed Resolution of Necessity.
3. If the City Council finds that the evidence supports the necessary findings with respect to the proposed Resolution of Necessity, then City staff recommends that the City Council adopt the Resolution of Necessity and authorize the City's legal counsel to file an eminent domain proceeding to acquire the Property, which is described and depicted more particularly in Exhibits 1 and 2 to the Resolution of Necessity, attached hereto and incorporated in this Report by this reference.

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4. Authorize the City's Mayor or the Mayor's designee, or the City's legal counsel, to execute all necessary documents and for City staff to take all necessary steps to acquire the Property.

Background:

Description of Project and Environmental Review

The Project will serve as a regional mobility hub and bus transfer terminal that will accommodate bus bays for the following local and county bus operations: Imperial Valley Transit; IVT RIDE; Calexico Mobility On-Demand Transit; Calexico Transit; an outlet mall shuttle; farmworker buses; Greyhound or other intercity bus service; and local taxi service.

A categorical exclusion from the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) was secured for the Project in June 2021.

City's Actions Pursuant to Government Code Section 7262 et seq.

Pursuant to California Government Code section 7262 *et seq.*, the City obtained an appraisal of the fair market value of the Property, set just compensation in accordance with the appraised value of the Property, and extended a written offer to the owner of record of the Property to purchase it in fee. A copy of the offer letter is on file in the City's Office, and the offer letter is incorporated in this Report by this reference. The City has attempted to negotiate with the property owner and is continuing to do so. However, to date, the City has been unable to purchase the Property. The Project cannot proceed without the City Council's consideration of the proposed Resolution of Necessity at this time.

Discussion and Analysis

Relevant Eminent Domain Law

The resolution before City Council this evening is a Resolution of Necessity under California Code of Civil Procedure sections 1245.210 *et seq.* Such a resolution must be considered and approved by the legislative body prior to any exercise of eminent domain to acquire property. The resolution must be passed by a two-thirds majority of the members of the City Council.

California eminent domain law requires the following findings to be made in a Resolution of Necessity:

- A. The public interest and necessity require the project for which the property is proposed to be acquired;
- B. The project is planned in a manner that will create the greatest public good and the least private injury;
- C. The property proposed to be acquired is necessary for the project; and

- D. The offer required by Government Code section 7267.2 has been made to the owner of record.

Application of the Law

A. The Public Interest and Necessity Require the Project.

Downtown Calexico's port of entry ("POE") is one of the busiest ports in the nation, with an estimated 20,000 pedestrians crossing the border daily from Mexico into Imperial Valley to work, attend school or shop. The number of people crossing at the Calexico West ("Downtown") POE is projected to increase with the planned expansion of the international border crossing. Many people crossing the border use public transportation to access their final destination. Consequently, it is anticipated that a new, conveniently located transportation center will better accommodate existing and projected rider demand. It is also expected that a new facility will better serve local riders and potentially relieve traffic congestion in the downtown area. There is a substantial need for this public Project, and the Project would significantly support the public interest.

B. The Project Is Located in the Manner Compatible with the Greatest Public Good and Least Private Injury.

Southern California Association of Governments, Imperial County Transportation Commission, and the City of Calexico conducted a collaborative study to determine the feasibility and preferred location for a new intermodal transportation center near the Downtown POE pedestrian crossing. A 134-page Final Report of the Calexico Border Intermodal Transportation Center Feasibility Study ("Feasibility Report") was issued on October 23, 2014 and is available at http://www.imperialctc.org/media/managed/Calexico_ITC_Final_Report.pdf.

After delineating the advantages and disadvantages of six different properties, the Feasibility Report discusses why Alternative 2, made up of two parcels of the property located along E. 3rd Street between Rockwood Avenue and Heffernan Avenue, was determined to be the best area for the Project. The Feasibility Report recognizes that Alternative 2 could accommodate all proposed uses on site, including curbside taxi and farm labor drop-off, restrooms, drinking fountains, a Greyhound ticketing and passenger waiting office, bus loading and unloading, dedicated parking, an information kiosk, four bus bays and three shuttle bays, bicycle storage, and separation of general automobile and professional driver lanes. The Feasibility Report states that the Project would not impact existing businesses; rather, the Project would replace a vacant building, thereby improving area safety. The 1.0 rectangular acre was deemed to be a good size and shape to accommodate all identified uses. There would be relatively no traffic impact, as this area is 0.19 miles walking distance from the POE entrance to the center of the lot.

On October 21, 2014, the City Council of the City of Calexico voted to approve the Feasibility Report and Alternative 2 as the preferred alternative for the Project. The Project is located in a manner that is compatible with the greatest public good and the least private injury.

C. The Property Described in the Resolution of Necessity Is Necessary for the Project.

Six different properties were considered for the Project. After careful study, the Feasibility Report detailed why the property located along E. 3rd Street between Rockwood Avenue and Heffernan Avenue was the best fit for the Project. The City Council approved the Feasibility Report and Alternative 2 as the preferred alternative for the Project. The Property at issue is one of two parcels of property within this area. Both of these parcels are needed for the Project. The Preferred Alternative for the Calexico Intermodal Transportation Center Feasibility Study encompasses use of the Property for the Project, and therefore acquiring the Property in fee is necessary for the Project.

D. The City Has Made the Offer Required by Section 7267.2 of the Government Code to the Owner of Record.

Pursuant to Government Code Section 7262 *et seq.*, the City obtained an appraisal of the fair market value of the Property, set just compensation in accordance with the appraised value, and extended a written offer to purchase to the owner of record of the Property. A copy of the offer letter is on file in the City office and is incorporated into this Report by this reference. The City continues to engage in negotiations with the property owner; however, an agreement has not been reached to date. The inability to negotiate a voluntary acquisition of the Property requires the City Council to consider the proposed Resolution of Necessity at this time.

Fiscal Impact:

The Property was appraised for purposes of the City's Government Code section 7267 offer. The independent appraiser valued the Property at \$1,200,000. The Project is being funded by the Imperial County Transportation Commission.

Coordinated With:

Esperanza Colio Warren, City Manager
Gabriela Garcia, City Clerk

Attachment:

1. Proposed Resolution of Necessity.

RESOLUTION NO. 2022-__

A RESOLUTION OF NECESSITY OF THE CITY OF CALEXICO DECLARING CERTAIN REAL PROPERTY LOCATED AT 237 HEFFERNAN AVENUE, CALEXICO, CALIFORNIA, AND BEARING IMPERIAL COUNTY ASSESSOR'S PARCEL NUMBER 058-482-002, IS NECESSARY FOR PUBLIC PURPOSES AND AUTHORIZING THE ACQUISITION THEREOF, FOR PUBLIC TRANSIT PURPOSES

WHEREAS, THE CITY OF CALEXICO DOES HEREBY RESOLVE, FIND, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The City of Calexico ("City") is a public body in the County of Imperial, State of California.

SECTION 2. The real property described in SECTION 3 of this Resolution is to be acquired for a public use, namely for public transit purposes, and all purposes necessary and convenient thereto. Specifically, the City seeks to acquire the real property in connection with the construction, operation and maintenance of the Calexico Border Intermodal Transportation Center ("Project"), which will construct a mobility hub and bus transfer terminal to serve local and county bus operations. The City must acquire the real property in order to construct and operate the Project. The City can acquire the real property for the Project pursuant to the power conferred upon the City to acquire real property by eminent domain by Article I, Section 19, of the California Constitution, California Government Code sections 37350, 37350.5, 37351, 40401, and 40404, and California Code of Civil Procedure sections 1240.010-1273.050.

SECTION 3. The City seeks to acquire a fee interest in the property identified as 237 Heffernan Avenue, Calexico CA 92231, bearing Imperial County Assessor's Parcel Number 058-482-002, as more fully described and depicted in the Grant Deed attached hereto as **Exhibit 1** and the plat map attached hereto as **Exhibit 2**, which are incorporated herein by reference (the "Property").

SECTION 4. The Project involves the acquisition, in fee, of the Property for public transit purposes. The City intends to use the Property for the construction, operation and maintenance of the Project.

SECTION 5. Some or all of the Property may be subject to easements and rights-of-way appropriated to existing public uses. In the event the use or uses will not unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future, the City is authorized to acquire the real property subject to such existing public use(s) pursuant to section 1240.510 of the California Code of Civil Procedure. To the extent that the herein described use or uses will unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future, the City finds and determines that the herein described use or uses are more necessary than said existing public use. The

City is authorized to acquire the real property appropriated to such existing public use(s) pursuant to section 1240.610 of the California Code of Civil Procedure. City staff are further authorized to make such improvements to the real property being acquired that they determine are reasonably necessary to mitigate any adverse impacts upon the existing public use.

SECTION 6. Pursuant to California Government Code section 7262 *et seq.*, the City obtained an appraisal of the fair market value of the Property and extended a written offer to the owners of record to purchase the Property for the amount of its appraised fair market value. The City's offer letter included an informational pamphlet describing the eminent domain process and the owners' rights. The City further offered to pay the property owners the reasonable costs, up to \$5,000.00, for an independent appraisal of the Property pursuant to Code of Civil Procedure section 1263.025.

SECTION 7. On December 1, 2022, the City sent the record owners of the Property written notice of the City Council's intent to consider adopting the proposed Resolution of Necessity at its December 21, 2022 meeting, as required by Code of Civil Procedure section 1245.235.

SECTION 8. The City Council hereby finds and determines that:

- A. The public interest and necessity require the Project;
- B. The Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury;
- C. The Property is necessary for the Project; and
- D. The City made the offer required by section 7267.2 of the Government Code to the owner or owners of record.

SECTION 9. The findings and declarations contained in this Resolution are based upon the record before the City Council on December 21, 2022, including the Agenda Staff Report and all documents referenced therein, all of which are incorporated herein by this reference. These documents include all documents relating to the Project. The findings and declarations in this Resolution are also based upon any testimony, records and documents produced at the City Council meeting, all of which are incorporated herein by this reference.

SECTION 10. The City Council hereby authorizes and directs legal counsel to take all steps necessary to commence and prosecute legal proceedings in a court of competent jurisdiction to acquire the Property by eminent domain. Legal counsel is further authorized to take such steps as may be authorized and required by law, and to make such deposits as may be required by court order, to permit the City to take possession of and use the Property. Counsel is further authorized to correct any errors or to make or agree to changes in the legal description of the real property that are deemed necessary for the conduct of the condemnation action or other proceedings or transactions required to acquire the subject real property. Counsel is further authorized

to reduce or modify the extent of the interests or property to be acquired so as to reduce the compensation payable in the action where such change would not substantially impair the construction and operation of the Project for which the Property is being acquired.

SECTION 11. The City Council hereby authorizes the City's Mayor or the Mayor's designee or legal counsel to execute all necessary documents in connection with the eminent domain proceeding.

SECTION 12. This Resolution shall take effect upon adoption.

PASSED, APPROVED, AND ADOPTED on this, the 21st day of December, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CITY OF CALEXICO

JAVIER MORENO, MAYOR
CITY OF CALEXICO

ATTEST:

GABRIELA T. GARCIA, CITY CLERK
CITY OF CALEXICO

APPROVED AS TO FORM:



BRADFORD B. KUHN
NOSSAMAN LLP
LEGAL COUNSEL FOR CITY OF CALEXICO

Attachments:

EXHIBIT 1 - Grant Deed

EXHIBIT 2 - Plat Map

EXHIBIT 1

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of Calexico
608 Heber Avenue
Calexico, CA 92231
Attn: City Clerk

APN(s):058-482-002

SPACE ABOVE FOR RECORDER'S USE ONLY

GRANT DEED

This Grant Deed is exempt from Recording Fees pursuant to California Government Code Sections 6103 and 27383 and exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922. This Grant Deed is exempt from fee per California Government Code Section 27388.1(a)(1); expressly exempted from payment of recording fees. [See Senate Bill 2, Chapter 2.5 of the Statutes of 2017, known as the Affordable Housing and Job Acts Fee.]

Public Agency – No Tax Statement

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **SYSTEM II, LLC, a California limited liability company, ("Grantor")** does hereby GRANT to the **City of Calexico, a municipal corporation, ("Grantee")** the real property located in the County of Imperial, State of California, described as follows:

THOSE CERTAIN PARCELS OF REAL ESTATE IN THE RE-SUBDIVISION OF BLOCK 59, TOWNSITE OF CALEXICO, CITY OF CALEXICO, COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO MAP NO. 1056 ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, A COPY OF SAID MAP BEING ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF IMPERIAL COUNTY, AS FOLLOWS:

- (A) THE NORTH 110 FEET OF LOTS 1, 2, 3 AND 4
- (B) THE WEST 1.02 FEET OF LOT 4, EXCEPTING THE NORTH 110 FEET OF SAID LOT
- (C) ALL OF LOTS 5 AND 6
- (D) THE NORTH 90 FEET OF LOTS 7 THROUGH 14, INCLUSIVE

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on the date set forth below.

Dated:

GRANTOR:

SYSTEM II, LLC, a California limited liability company

By: _____

Name: _____

Its: _____

CERTIFICATE OF ACCEPTANCE
(Government Code Section 27281)

This is to certify that the Grant Deed dated _____, 2022, from **SYSTEM II, LLC, a California limited liability company**, to the **CITY OF CALEXICO**, is hereby accepted by the undersigned agent on behalf of the **CITY OF CALEXICO**, pursuant to authority conferred by the Municipal Code, and the grantee consents to recordation thereof by its duly authorized officer.

Dated this ___ day of _____, 2022.

GRANTEE:

CITY OF CALEXICO, a municipal corporation

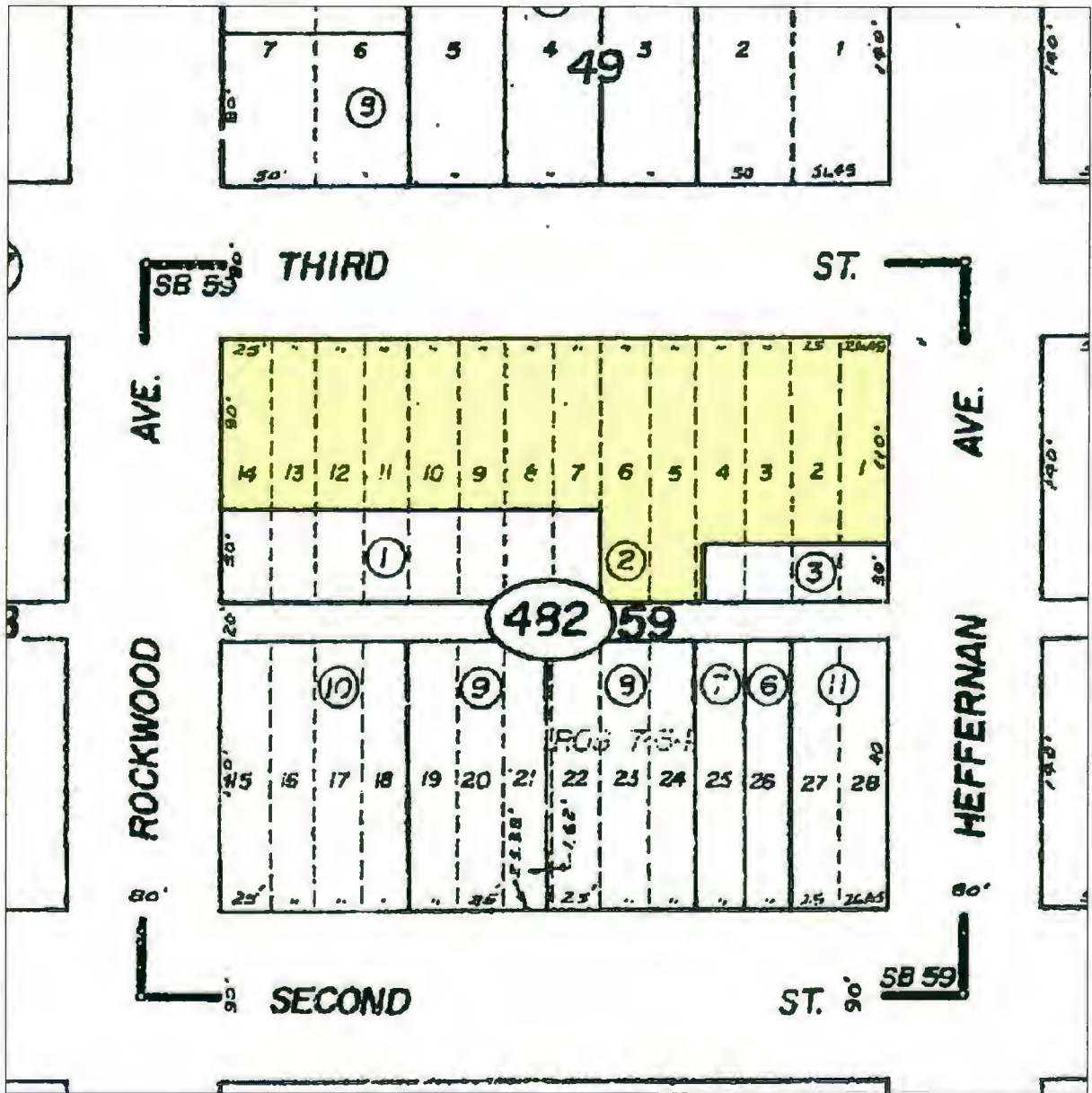
By: _____

Name: _____

Its: _____

EXHIBIT 2

Scale 1 Inch = 55 Feet
 0 55 110



LEGEND

Fee, Property in Question

© 2021
Commonwealth Land Title Company
 888 S. Figueroa St, Suite 2100
 Los Angeles, CA 90017
 Phone: (800) 432-0706

Title Order No. 92015026, Preliminary Report Dated as of March 30, 2021

Drawing Date: May 05, 2021

Reference : 058-482-002

Assessor's Parcel No. : 058-482-002

Property: 237 Heffernan, Calexico, CA

Data :

This map/plat is being furnished as an aid in locating the herein described land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.

Plat Showing Those Certain Parcels of Real Estate in the Re-Subdivision of Block 59, Townsite of Calexico, City of Calexico, County of Imperial, State of California, According to Map No. 1056 on File in the Office of the County Recorder of San Diego County

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