

1 Introduced by Council Member Johnson and Co-Sponsored by Council
2 Members Pittman, Carlucci and Clark-Murray and amended by the Rules
3 Committee:

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6 **ORDINANCE 2023-590-E**

7 AN ORDINANCE DECLARING THE PUBLIC NECESSITY FOR
8 ACQUIRING FEE SIMPLE TITLE, TEMPORARY
9 CONSTRUCTION EASEMENTS, AND PERMANENT DRAINAGE
10 EASEMENTS, THROUGH CONDEMNATION BY RIGHT OF
11 EMINENT DOMAIN TO AND OVER CERTAIN REAL PROPERTY
12 IN COUNCIL DISTRICTS 12 and 14, SUCH REAL
13 PROPERTY INTERESTS BEING NEAR OR ADJACENT TO A
14 PORTION OF OLD MIDDLEBURG ROAD SOUTH INCLUDING
15 THE PROPERTIES WITH REAL ESTATE NUMBERS:
16 015238-0000, 015237-0020, 015237-0000, 015237-
17 0010, 015322-0020, 015223-0010, 015225-0020,
18 015221-0100, 015222-0000, 015219-0105, 015219-
19 0050, 015290-0002, 015275-0120, 015235-0100,
20 015239-0000, 015231-0000, 015240-0100, 015225-
21 0000, 015225-0010, 015221-0010, 015219-0010,
22 015226-0100, AND 015226-0000 (THE
23 "PROPERTIES"), AS REQUIRED FOR THE OLD
24 MIDDLEBURG 103RD-BRANAN FIELD - 01 PROJECT;
25 AUTHORIZING ISSUANCE OF A DECLARATION OF TAKING;
26 AUTHORIZING THE CHIEF OF THE REAL ESTATE
27 DIVISION OF THE DEPARTMENT OF PUBLIC WORKS, OR
28 HER DESIGNEE, TO MAKE OFFERS AND NEGOTIATE FOR
29 THE PURCHASE OF THE PROPERTIES UP TO AN AMOUNT
30 NOT-TO-EXCEED \$500,000, INCLUSIVE OF STATUTORY
31 ATTORNEYS' FEES AND COSTS, SUBJECT TO CERTAIN

1 CONDITIONS; WAIVING THE SETTLEMENT LIMITATION IN
2 SECTIONS 112.307 (CLAIMS AND SUITS BROUGHT
3 AGAINST THE CITY FOR MONETARY RELIEF) AND
4 112.308 (EMINENT DOMAIN), PART 3 (SETTLEMENT OF
5 CLAIMS AND SUITS BY AND AGAINST CITY), CHAPTER
6 112 (CLAIMS BY AND AGAINST CITY), *ORDINANCE*
7 *CODE*, REGARDING LIMITATIONS ON TOTAL AMOUNT OF
8 A SETTLEMENT; AUTHORIZING AND DIRECTING THE
9 OFFICE OF GENERAL COUNSEL TO INSTITUTE
10 APPROPRIATE CONDEMNATION PROCEEDINGS;
11 REQUESTING ONE-CYCLE EMERGENCY PASSAGE;
12 PROVIDING AN EFFECTIVE DATE.

13
14 **WHEREAS**, the City of Jacksonville is authorized to construct
15 and maintain streets and highways, and improve those streets and
16 highways as needed, for the general public, and is vested by law with
17 the power of eminent domain to acquire interests in real property;
18 and

19 **WHEREAS**, the City of Jacksonville has determined that the Old
20 Middleburg 103rd-Branan Field - 01 Project (the "Project") referenced
21 in this Ordinance serves a public purpose; and

22 **WHEREAS**, the City of Jacksonville has determined that the
23 acquisition of the Properties described herein is reasonably
24 necessary for completion of the Project; and

25 **WHEREAS**, to meet the requirements of Section 73.015, *Florida*
26 *Statutes*, it will be necessary to make a written offer to the impacted
27 property owners prior to the commencement of any eminent domain
28 action; and

29 **WHEREAS**, the City of Jacksonville therefore desires to
30 authorize the Chief of Real Estate to enter into those contracts and
31 agreements reached with property owners based on written offers and

1 to authorize the Chief of the Real Estate Division, or designee, to
2 negotiate for the acquisitions as set forth herein; and

3 **WHEREAS**, the City of Jacksonville has determined that the
4 Project is time sensitive and may require the taking of possession
5 and title to real property in advance of the final judgment in an
6 eminent domain action, as authorized by Section 74.021, *Florida*
7 *Statutes*; and

8 **WHEREAS**, in order to timely and cost-effectively complete the
9 Project, the City of Jacksonville desires to authorize the Chief of
10 the Real Estate Division to invoke the procedures under Chapter 74,
11 *Florida Statutes*, and further to issue and execute a declaration of
12 taking pursuant to Section 74.031, *Florida Statutes*; now therefore

13 **BE IT ORDAINED** by the Council of the City of Jacksonville:

14 **Section 1. Declaration of Necessity.** The City hereby
15 declares the public necessity for acquiring through condemnation by
16 right of eminent domain, fee simple title, temporary construction
17 easements, and permanent drainage easements to and over certain real
18 property located in Council Districts 12 and 14 as more fully
19 described by sketch and legal description in **Exhibit 1**, and by maps
20 and aerials in **Exhibit 2** attached hereto (collectively, the
21 "Property") to complete the Project. In making this determination
22 of necessity, the City has ordered and reviewed the Traffic Study,
23 the Contamination Screening Evaluation, Phase I Cultural Resources
24 Assessment Survey, Wetland Impact Study, and reviewed a Right-of-Way
25 Map, each in the form placed **On File** with the Legislative Services
26 Division. In addition, the City has had the opportunity to ask
27 questions of the respective engineers and other professionals
28 conducting assessments and studies of the Property, including
29 appropriate City staff, and has considered the following:

- 30 1. Availability of alternate alignments, or parcels - Due to the
31 nature of the widening project, the City is not able to utilize

1 alternate alignments. All of the acquisitions for this project
2 are directly related to the existing and planned alignment of
3 Old Middleburg Road. The City and its design consultant have
4 reviewed the corridor and chosen the path that would minimize
5 the impacts to private property and overall project costs to the
6 City.

7 2. Costs - The City has considered many different designs and has
8 chosen the most cost-effective plan that accomplishes all of the
9 project's goals. The City has also adjusted the plans to require
10 as little private property acquisition as possible. Costs
11 considered include design, construction, and right-of-way
12 acquisition.

13 3. Environmental Factors - The City requested and reviewed studies
14 to determine the impact of the project on the environment. These
15 studies determined that there is no evidence of recognized
16 environmental conditions associated with the project and the
17 impact to wetlands was less than half an acre and therefore no
18 mitigation is needed. In addition, the cultural resources
19 assessment survey determined that the project will have no
20 effect on cultural resources.

21 4. Long-range area planning - This project will help provide
22 necessary infrastructure and roadway capacity for an area that
23 is rapidly growing. The project will help alleviate existing
24 traffic issues on Old Middleburg Road, as well as provide
25 additional capacity for future growth. There are also a number
26 of other roadway improvement projects in the area to help with
27 this growth. The northern end of this project will directly tie-
28 in to an FDOT project on 103rd Street. There are also ongoing or
29 upcoming roadway projects in this general area on Chaffee Road,
30 Shindler Drive, and Collins Road.

31 5. Safety - This project will improve the safety of Old Middleburg

1 Road and the surrounding areas by reducing congestion and
2 allowing for more efficient travel through this area. This
3 project will also add or expand the existing bicycle and
4 pedestrian features such as sidewalks, which will improve the
5 safety for non-vehicular roadway users within the project
6 limits.

7 **Section 2. Acquisition of Fee Simple Title and Easement**
8 **Rights.** The City of Jacksonville shall acquire property rights in
9 those lands described in **Exhibits 1 and 2** by negotiation or eminent
10 domain for the purpose aforesaid from the present owners thereof and
11 all persons claiming any interest therein. Acquisition of fee simple
12 title and easements rights, if made by negotiation, shall be pursuant
13 to the City of Jacksonville Real Estate Purchase Agreement
14 substantially in the form placed **On File** with the Legislative Services
15 Division. However, the terms may be negotiated and modified by the
16 Chief of Real Estate, or designee, as necessary, so long as the cost
17 to the City does not exceed those costs authorized by this Ordinance
18 or other provisions of the Ordinance Code and the Office of General
19 Counsel concurs that such modification is in the best interests of
20 the City. The Chief is further authorized to execute the Real Estate
21 Purchase Agreements and to take all actions necessary to close such
22 agreed purchases pursuant to their terms.

23 **Section 3. Authorizing Issuance of a Declaration of Taking**
24 **and Deposit of Good-Faith Estimate.** The Chief of the Real Estate
25 Division of the City of Jacksonville Department of Public Works (the
26 "Chief") is hereby authorized to execute on behalf of the City a
27 Declaration of Taking pursuant to Section 74.031, *Florida Statutes*,
28 for the Property. The Chief is additionally authorized to approve the
29 deposit of funds into the registry of the court in the amount directed
30 by an order of taking pursuant to Section 74.051, *Florida Statutes*,
31 from funds lawfully appropriated for the Project.

Section 4. Negotiation of Purchase of Property.

Recognizing that real property values can fluctuate significantly, the Chief, or her designee, is hereby authorized to make or accept binding offers for purchase of the necessary interests in real property either informally or pursuant to Section 73.015, *Florida Statutes*, subject to the following conditions:

- a. Lawfully appropriated funds are available for the Project to pay the purchase price offered; and,
- b. The City will receive the necessary interest in real property from the transaction without any encumbrances negatively affecting the Project; and,
- c. The Chief, with the written concurrence of the Director of Public Works and the General Counsel (or their designees), find that the purchase of the Property under the agreed terms is in the best interest of the City.

Pursuant to the waiver in Section 5 below, the Chief has the authority to settle the purchase of a Property for an amount not-to-exceed \$500,000. This authorization includes the negotiation and settlement of any statutory attorneys' fees and costs as provided under Chapters 73 and 74, *Florida Statutes*. Nothing in this Ordinance is intended to limit the use of the additional settlement authority provided in Section 112.308, *Ordinance Code*, in conjunction with, and supplemental to, these provisions.

Section 5. Waiving the Settlement Limitations in Sections 112.307 and 112.308, Ordinance Code. The settlement limitation delineated in Subsection 112.307(a)(2)(3) (Claims and suits brought against the City for monetary relief) and Section 112.308 (Eminent domain), Part 3 (Settlement of Claims and Suits By and Against City), Chapter 112 (Claims By and Against City), *Ordinance Code*, that the total amount of a settlement cannot exceed \$50,000 absent approval of City Council is hereby waived recognizing that the value of the

1 properties involved in this project will often require a settlement
2 of more than \$50,000 of the appraised value and that obtaining Council
3 approval for numerous parcels will unnecessarily delay the Project.

4 **Section 6. Institution of Legal Proceedings.** The Office of
5 General Counsel of the City of Jacksonville is hereby authorized and
6 directed to institute the appropriate legal proceedings to acquire
7 by condemnation property interests in those lands described in
8 **Exhibits 1 and 2** for the purpose described in this Ordinance. The
9 Office of General Counsel is further authorized to invoke the
10 procedures of Chapter 74, *Florida Statutes* (commonly known as a
11 "quick-take").

12 **Section 7. Requesting One-Cycle Emergency Passage Pursuant**
13 **to Council Rule 4.901 (Emergency).** One-cycle emergency passage of
14 this Ordinance is requested due to one of the property owners being
15 terminally ill.

16 **Section 8. Effective Date.** This Ordinance shall become
17 effective upon signature by the Mayor or upon becoming effective
18 without the Mayor's signature.

19
20 Form Approved:

21
22 /s/ Mary E. Staffopoulos

23 Office of General Counsel

24 Legislation Prepared By: Laura Boeckman

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