

1 Introduced by Council Member Johnson:
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4 **ORDINANCE 2023-590**

5 AN ORDINANCE DECLARING THE PUBLIC NECESSITY FOR
6 ACQUIRING FEE SIMPLE TITLE, TEMPORARY
7 CONSTRUCTION EASEMENTS, AND PERMANENT DRAINAGE
8 EASEMENTS, THROUGH CONDEMNATION BY RIGHT OF
9 EMINENT DOMAIN TO AND OVER CERTAIN REAL PROPERTY
10 IN COUNCIL DISTRICTS 12 and 14, SUCH REAL
11 PROPERTY INTERESTS BEING NEAR OR ADJACENT TO A
12 PORTION OF OLD MIDDLEBURG ROAD SOUTH INCLUDING
13 THE PROPERTIES WITH REAL ESTATE NUMBERS:
14 015238-0000, 015237-0020, 015237-0000, 015237-
15 0010, 015322-0020, 015223-0010, 015225-0020,
16 015221-0100, 015222-0000, 015219-0105, 015219-
17 0050, 015290-0002, 015275-0120, 015235-0100,
18 015239-0000, 015231-0000, 015240-0100, 015225-
19 0000, 015225-0010, 015221-0010, 015219-0010,
20 015226-0100, AND 015226-0000 (THE
21 "PROPERTIES"), AS REQUIRED FOR THE OLD
22 MIDDLEBURG ROAD SOUTH (PHASE I) WIDENING
23 PROJECT; AUTHORIZING ISSUANCE OF A DECLARATION
24 OF TAKING; AUTHORIZING THE CHIEF OF THE REAL
25 ESTATE DIVISION OF THE DEPARTMENT OF PUBLIC
26 WORKS, OR HER DESIGNEE, TO MAKE OFFERS AND
27 NEGOTIATE FOR THE PURCHASE OF THE PROPERTIES UP
28 TO AN AMOUNT NOT-TO-EXCEED \$500,000, INCLUSIVE
29 OF STATUTORY ATTORNEYS' FEES AND COSTS, SUBJECT
30 TO CERTAIN CONDITIONS; WAIVING THE SETTLEMENT
31 LIMITATION IN SECTIONS 112.307 (CLAIMS AND SUITS

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

11
12 **WHEREAS**, the City of Jacksonville is authorized to construct and
13 maintain streets and highways, and improve those streets and highways
14 as needed, for the general public, and is vested by law with the
15 power of eminent domain to acquire interests in real property; and

16 **WHEREAS**, the City of Jacksonville has determined that the Old
17 Middleburg Road South (Phase I) Widening Project (the "Project")
18 referenced in this Ordinance serves a public purpose; and

19 **WHEREAS**, the City of Jacksonville has determined that the
20 acquisition of the Properties described herein is reasonably
21 necessary for completion of the Project; and

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

26 **WHEREAS**, the City of Jacksonville therefore desires to authorize
27 the Chief of Real Estate to enter into those contracts and agreements
28 reached with property owners based on written offers and to authorize
29 the Chief of the Real Estate Division, or designee, to negotiate for
30 the acquisitions as set forth herein; and

31 **WHEREAS**, the City of Jacksonville has determined that the

1 Project is time sensitive and may require the taking of possession
2 and title to real property in advance of the final judgment in an
3 eminent domain action, as authorized by Section 74.021, *Florida*
4 *Statutes*; and

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

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

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

- 27 1. Availability of alternate alignments, or parcels - Due to the
28 nature of the widening project, the City is not able to utilize
29 alternate alignments. All of the acquisitions for this project
30 are directly related to the existing and planned alignment of
31 Old Middleburg Road. The City and its design consultant have

1 reviewed the corridor and chosen the path that would minimize
2 the impacts to private property and overall project costs to the
3 City.

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

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

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

28 5. Safety - This project will improve the safety of Old Middleburg
29 Road and the surrounding areas by reducing congestion and
30 allowing for more efficient travel through this area. This
31 project will also add or expand the existing bicycle and

1 pedestrian features such as sidewalks, which will improve the
2 safety for non-vehicular roadway users within the project
3 limits.

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

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

29 **Section 4. Negotiation of Purchase of Property.** Recognizing
30 that real property values can fluctuate significantly, the Chief, or
31 her designee, is hereby authorized to make or accept binding offers

1 for purchase of the necessary interests in real property either
2 informally or pursuant to Section 73.015, *Florida Statutes*, subject
3 to the following conditions:

- 4 a. Lawfully appropriated funds are available for the Project to
5 pay the purchase price offered; and,
- 6 b. The City will receive the necessary interest in real property
7 from the transaction without any encumbrances negatively
8 affecting the Project; and
- 9 c. The Chief, with the written concurrence of the Director of
10 Public Works and the General Counsel (or their designees),
11 find that the purchase of the Property under the agreed terms
12 is in the best interest of the City.
- 13 d. Pursuant to the waiver in Section 4 below, the Chief has the
14 authority to settle the purchase of a Property for an amount
15 not-to-exceed \$500,000.

16 This authorization includes the negotiation and settlement of any
17 statutory attorneys' fees and costs as provided under Chapters 73 and
18 & 74, *Florida Statutes*. Nothing in this Ordinance is intended to
19 limit the use of the additional settlement authority provided in Ord.
20 Code s. 112.308 in conjunction with, and supplemental to, these
21 provisions.

22 **Section 5. Waiving the Settlement Limitations in Sections**
23 **112.307 and 112.308, Ordinance Code.** The settlement limitation
24 delineated in Subsection 112.307(a)(2)(3) (Claims and suits brought
25 against the City for monetary relief) and Section 112.308 (Eminent
26 domain), Part 3 (Settlement of Claims and Suits By and Against City),
27 Chapter 112 (Claims By and Against City), *Ordinance Code*, that the
28 total amount of a settlement cannot exceed \$50,000 absent approval
29 of City Council is hereby waived recognizing that the value of the
30 properties involved in this project will often require a settlement
31 of more than \$50,000 of the appraised value and that obtaining Council

1 approval for numerous parcels will unnecessarily delay the Project.

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

10 **Section 7. Requesting Emergency Passage Upon Introduction**
11 **pursuant to Council 4.901.** Emergency passage upon introduction of
12 this ordinance is requested due to one of the property owners being
13 terminally ill.

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

17
18 Form Approved:

19
20 /s/ Harry M. Wilson, IV

21 Office of General Counsel

22 Legislation Prepared By: Laura Boeckman

23 GC-#1581332-v2-OMR_Phase_I_Condemnation_Legislation_7_28_23