

MILLCREEK, UTAH
RESOLUTION NO. 23-06

**A RESOLUTION AUTHORIZING AND APPROVING PROCEEDINGS IN EMINENT
DOMAIN AS NECESSARY**

WHEREAS, Millcreek (the “City”) is a political subdivision of the State of Utah and is authorized to acquire private property for public use through the exercise of eminent domain; and

WHEREAS, the City has determined that it is necessary and in the public interest to improve and widen 2000 East in the City to further the important transportation and livability goals and objectives of the City (the “Project”); and

WHEREAS, the City has the necessary funding to complete the Project and expects to be able to complete the project within a reasonable time after all property necessary for the Project is obtained; and

WHEREAS, the City has identified a portion of property as more particularly described in the attached Exhibit A (the “Temporary Construction Easement” or “TCE”) owned by Aimee M. Nagles as Trustee of the Nagles Family Trust as necessary to the completion of the Project and has: i) provided required notifications to the property owners, ii) has had the TCE and property interests appraised by an independent appraiser, iii) has offered the City’s appraised amounts to the property owners; and iv) has offered to engage in mediation and further negotiations through the auspices and with the assistance of the office of the Utah Property Rights Ombudsman and otherwise; and

WHEREAS, despite these efforts the City has not been able to acquire the TCE by negotiation and voluntary purchase to date, and is facing deadlines for contracting and construction of the Project.

NOW THEREFORE, the Millcreek City Council resolves, finds, approves, and directs as follows:

Section 1. The City Council finds and determines that: i) the Project and uses to which the TCE will be put are legitimate public purposes; ii) the acquisition of the TCE is necessary for construction of the Project and is authorized by law; and iii) acquisition, construction and use of the TCE will commence within a reasonable time.

Section 2. The proposed location of the Project and associated improvements are planned and located in a manner that will be most compatible with the greatest public good and the least private injury.

Section 3. In light of the equities involved and relative damages that may accrue to the parties, occupancy of the TCE pursuant to negotiation or by court order may be necessary prior to final acquisition of the TCE.

Section 4. Accordingly, the City Council directs City staff and the City’s Legal Counsel, on behalf of the City:

1. To continue to negotiate with the property owners, including with and through the offices of the Utah Property Rights Ombudsman and otherwise, and to continue to use all reasonable efforts in attempts to acquire the TCE by negotiation and voluntary purchase;

2. If, however, after use of all such reasonable efforts, a mutually agreeable purchase price cannot be negotiated, and in the event that the TCE cannot be timely acquired by negotiation, to initiate formal proceedings in eminent domain in accordance with Utah law and to prepare and prosecute the necessary condemnation in the proper court having jurisdiction thereof as is necessary for acquisition of the TCE;

3. If necessary and as dictated by the construction schedules applicable to the Project, to obtain by agreement or by court order permission to take immediate possession and use of the TCE for the purposes herein described; and

4. To use the services of outside consultants and legal counsel as necessary to accomplish these directives.

Section 5. This resolution to take effect immediately upon adoption and signature.

PASSED AND APPROVED this 13th day of February, 2023.

MILLCREEK CITY COUNCIL

Jeff Silvestrini, Mayor

Attest:

Elyse Sullivan, City Recorder

Roll Call Vote:

Silvestrini	Yes	No
Catten	Yes	No
DeSirant	Yes	No
Jackson	Yes	No
Uipi	Yes	No

EXHIBIT A

A temporary easement, upon part of an entire tract of land, in Lot 2, Stream Lane Subdivision, recorded November 8th 2004 as Entry No. 9218975 in Book 2004P at Page 335 in the office of the Salt Lake County Recorder, situate in the NW1/4 NW1/4 of Section 34, T.1 S., R.1 E., S.L.B.& M., in Salt Lake County, Utah, for the purpose of facilitating reconstruction of sidewalks, pedestrian ramps, and appurtenant parts thereof incident to an improvement project of 2000 East Street. This easement shall commence upon the beginning of actual construction on the property and shall continue only until project construction on the property is complete, or for three years, whichever first occurs. The easement shall be non-exclusive such that the Owner may use the property at any time in a manner which does not interfere with construction activities. The boundaries of said part of an entire tract are described as follows:

Beginning in the westerly right of way line of 2000 East Street at a Southeast Corner of said Lot 2, and running thence N.81°57'22"W. 24.23 feet along a southerly boundary line of said Lot 2; thence N.07°41'04"W. 17.65 feet; thence N.81°09'27"E. 17.50 feet; thence N.13°19'57"W. 12.00 feet; thence N.12°23'23"E. 6.62 feet to said westerly right of way line; thence southerly 43.00 feet along the arc of a 691.78 foot radius non-tangent curve to the right (Note: Chord to said curve bears S.14°00'07"E. for a distance of 42.99 feet, central angle = 03°33'41") along said westerly right of way line to the point of beginning. The above-described part of an entire tract of land contains 515 sq. ft. or 0.012 acre.