



19-0588

**TITLE:** Consider/Discuss/Act on a Resolution Authorizing the Execution of Documents for the Acquisition of Easements and the Consideration of the Use of Eminent Domain to Condemn Property for the Relocation and Construction of Water Lines Along Custer Road from Approximately US 380 to FM 1461 in Northwest McKinney Associated with the Custer Road Utility Relocations Project and Authorizing the City Manager to Establish Procedures for Acquiring the Easements on Said Properties, and Take All Steps Necessary to Acquire the Needed Property Rights in Compliance with all Applicable Laws and Resolutions

**COUNCIL GOAL:** Direction for Strategic and Economic Growth

**MEETING DATE:** July 16, 2019

**DEPARTMENT:** Development Services/Engineering

**CONTACT:** Gary Graham, PE, PTOE, Director of Engineering

**RECOMMENDED CITY COUNCIL ACTION:**

- Approval of Resolution using a motion in a form substantially similar to the following:

*"I move that we approve this item as written and authorize the use of the power of eminent domain to acquire all necessary easements from property owners, generally indicated on the attached property location map, for the relocation and construction of water lines generally known as the Custer Road Utility Relocations Project."*

**ITEM SUMMARY:**

- This item provides authority to the City Manager to execute documents for the acquisition of easements; and the use of eminent domain to condemn property to complete the relocation and construction of water lines from US 380 north to FM 1461.

**BACKGROUND INFORMATION:**

- The Texas Department of Transportation (TxDOT) is in the process of design and right-of-way acquisition for the upcoming widening construction of Custer Road from US 380 to FM 1461 in northwest McKinney.
- The Custer Road Utility Relocations Project will relocate the existing water lines in order to clear TxDOT's new and proposed right-of-way for Custer Road.
- Approximately 17,000 linear feet of an existing 8 inch City water distribution line is in conflict with the proposed TxDOT Custer Road widening project. The relocated line will be upsized to a 24 inch water line.
- The City needs to acquire water line easements and/or temporary construction easements from approximately 29 property owners in order to relocate existing water lines outside of the new TxDOT Right-of-Way.
- All easements need to be acquired and water lines relocated prior to TxDOT commencing construction of their Custer Road project tentatively scheduled to begin in the Fall of 2020.
- Staff anticipates the City's utility relocation project may take 14-16 months to complete.
- This agenda item provides authority to the City Manager to execute documents for the acquisition of easements and to take all necessary steps to acquire property rights for the relocation and construction of water lines from US 380 north to FM 1461.
- Initial and final offer letters to purchase the needed land rights have been sent to the property owners affected by the project.
- The City has acquired approximately one-third of the necessary easements. The remaining property owners have either rejected the City's offers, been non-responsive and/or hired legal representation.
- Unfortunately, staff anticipates several parcels will require an action in condemnation to acquire the necessary easements to complete the project.
- Should a petition in condemnation be filed, staff will continue to use their best efforts to acquire any remaining easements by negotiation throughout the condemnation process.
- As previously presented to Council, Senate Bill 18 (SB 18) was passed into law during the Texas 82<sup>nd</sup> Regular Legislative Session and became effective September 1, 2011. The Bill created the following impacts on negotiations and the eminent domain practices of the City:
  - The Truth in Condemnation Procedures Act states that a governmental entity must authorize the initiation of a condemnation proceeding at a public meeting and must be approved by a record vote.
  - The Act also requires the governmental entity to include in the notice for the public meeting, "the consideration of the use of eminent domain to

condemn property” as an agenda item.

- Under the Act, a single ordinance or resolution authorizing the initiation of the condemnation proceeding may be adopted for all units (parcels) of property to be condemned for a water line from point to point, along a general area/route without identifying a list of specific parcels.
- The required motion (as provided above) indicates that the first record vote applies to all units of property to be condemned. If action is taken as a single vote the minutes of the meeting must reflect that the first vote applies to all units.

**FINANCIAL SUMMARY:**

- Funds for the acquisition of easements are available in WA1630.

**BOARD OR COMMISSION RECOMMENDATION:**

- N/A

**SUPPORTING MATERIALS:**

[Resolution](#)

[Location Map](#)