

RESOLUTION NO. 1242

A RESOLUTION OF THE BROKEN ARROW CITY COUNCIL DECLARING APPROVAL OF RESOLUTION NO. 1242, A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO AGREE TO ENTRY OF JUDGMENT IN THE CASE OF CITY OF BROKEN ARROW, OKLAHOMA V. ABATEMENT SYSTEMS, INC., WAGONER COUNTY DISTRICT COURT CASE NO. CV-18-4 AND DIRECTING THE CITY ATTORNEY TO PREPARE AND FILE THE NECESSARY DOCUMENTS TO EFFECTUATE SETTLEMENT INCLUDING A JOURNAL ENTRY FOR THE COURTS APPROVAL AND DECLARING THE NECESSITY TO CONDEMN PROPERTY LOCATED IN THE NW/4 OF THE SW/4 OF SECTION 7, T-18-N, R-15-E OF INDIAN MERIDIAN, WAGONER COUNTY, STATE OF OKLAHOMA

WHEREAS, on January 2, 2018 the Broken Arrow City Council determined and declared the public necessity of taking, appropriating, condemning and acquiring fee simple and permanent right of way of 197,787 square feet or 4.54 acres, more or less, from Abatement Systems, Inc. for the public purpose of constructing, operating and maintaining completion of 23rd Street, Kenosha to Houston, road widening project as authorized under authority of 11 O.S. § 22-104; and

WHEREAS, on January 9, 2018 the City filed suit against Abatement Systems to acquire 4.54 acres of property, along with two buildings, located at 2400 E. College Street, Broken Arrow, Oklahoma for the 23rd Street, Kenosha to Houston roadway widening project; and

WHEREAS, the Commissioners filed a report on March 9, 2018 valuing the take at \$383,622.00. On April 30, 2018 the City then tendered the Commissioners award to the Court Clerk, taking title to the condemned property including two warehouse type structures; and

WHEREAS, on September 24, 2018, Abatement Systems attorney, Lewis Carter, requested that the City reconsider negotiations related to a limited taking of Abatement Systems property; and

WHEREAS, the City retained Mehlburger Brawley Engineering to review and prepare an engineering drawing to determine if such a limited take would satisfy the needs of this road widening project; and

WHEREAS, both Mehlburger Brawley and the City's engineering staff determined that this road widening project could be completed upon a 0.13 acre tract of land instead of the 4.54 tract of land originally acquired in the Petition for Condemnation; and

WHEREAS, the City Council desires to enter into an Agreed Journal Entry of Judgment that reflects the reduced acquisition from 4.54 acres to 0.13 acres, provides for the City to construct the road widening improvement in accordance with the revised attached engineering drawings and returns the \$383,622.00 previously tendered by the City to the City; and

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BROKEN ARROW THAT, the City Council determines and declares the public necessity of taking, appropriating, condemning and acquiring fee simple and permanent right of way in and

upon the following described real property for the purpose of constructing, operating and maintaining completion of 23rd Street, Kenosha to Houston, to wit:

FEE SIMPLE AND PERMANENT RIGHT OF WAY PARCEL 16.0

A tract of land being a part of Northwest Quarter (nw/4) of the Southwest Quarter (sw/4 of Section 7, Township 18 North, Range 15 East of the Indian Base of Meridian, Wagoner County, State of Oklahoma, more particularly described as follows:

Beginning at point where the North line of said NW/4 of the SW/4 intersects the Westerly right-of-way of Old State Highway 51; thence south 88°51'59" West along the north line of said NW/4 of the SW/4, a distance of 134.50 feet; thence South 01°20'29" East along a line parallel with the west line of said NW/4 of the SW/4, a distance of 38.13 feet; thence North 88°51'59" East, a distance of 169.28 feet to a point on the westerly line of said right-of-way of old highway 51; thence North 43°37'06" West along said westerly right-of-way of old highway 51, a distance of 51.70 feet to the POINT OF BEGINNING, containing 5,792 square feet or 0.13 acres, more or less.

Basis of bearing is an assumed bearing of South 88°51'59" West along the North line of NW/4 of the SW/4 of Section 7, T-18-N, R-15-E, Wagoner County, Oklahoma.

BE IT FURTHER RESOLVED THAT the City Attorney is authorized to enter into a Journal Entry of Judgment to effect settlement of this matter as outlined above.

ADOPTED BY THE BROKEN ARROW CITY COUNCIL this 17th day of June, 2019.

MAYOR

ATTEST:

(SEAL) CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY