



# City of Broken Arrow

## Request for Action

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**File #: 19-800, Version: 1**

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**Broken Arrow City Council  
Meeting of: 06-17-2019**

**Title:**

Consideration, discussion, and possible 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

**Background:**

On January 2, 2018 the Broken Arrow City Council determined and declared the public necessity of taking, appropriating, condemning and acquiring the 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. On January 9, 2018 the City filed suit against Abatement Systems to acquire this property, along with two buildings, located at 2400 E. College Street, Broken Arrow, Oklahoma for the 23rd Street, Kenosha to Houston roadway widening project. 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. The City's retained appraiser, John Story II, submitted his real estate appraisal report on July 18, 2018 appraising the take at \$400,000.00.

On September 24, 2018, Abatement Systems attorney, Lewis Carter, requested that the City reconsider negotiations related to a limited taking of Abatement Systems property. During pre-condemnation settlement negotiations, the City Right of Way Agent identified a potential limited take of approximately 60 feet of right of way along 23rd Street that would allow Abatement Systems to retain the majority of their property and keep in place the two warehouses. This resolution would also allow Abatement Systems to continue to operate its business. In exchange, Abatement Systems would allow the City to retain the \$383,622.00 Commissioners Award, agreed to a Journal Entry of Judgment conveying title to the property of the limited take.

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

The attached Resolution No. 1242 revises the legal description of the property taken in this condemnation proceeding from the 4.54 acres to 0.13 acres and authorizes the City Attorney 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. In addition, the Journal Entry of Judgment

provides that Abatement Systems, Inc. consents to the revised taking of the 0.13 acres.

**Cost:** Filing Fees

**Funding Source:** Legal Operating Budget

**Requested By:** Trevor A. Dennis, City Attorney

**Approved By:** City Manager's Office

**Attachments:** Resolution No. 1242  
Journal Entry of Judgment  
Exhibit A  
Exhibit B

**Recommendation:**

Approve Resolution No. 1242 and authorize its execution.