

RESOLUTION NO. 4259

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KELLER, TEXAS, DETERMINING THE NECESSITY OF ACQUIRING PERMANENT STREET RIGHT OF WAY, PERMANENT SIDEWALK DEDICATION AND TEMPORARY CONSTRUCTION EASEMENT ON HEREINAFTER DESCRIBED PROPERTY IDENTIFIED AS 501 WHITLEY, W J HOLLAND SURVEY, ABSTRACT 692, WARRANTY DEED TO JACK BROCK BUILDER, INC., KELLER, TARRANT COUNTY, TEXAS, AS NECESSARY FOR THE BEAR CREEK PARKWAY AND ELM STREET/WHITLEY ROAD ROUNDABOUT PROJECT; AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS RELATING THERETO ON BEHALF OF THE CITY OF KELLER, TEXAS.

WHEREAS, the City of Keller (the "City") has the power to exercise eminent domain to acquire property for a public purpose; and

WHEREAS, the City of Keller City Council (the "City Council") hereby declares the necessity for the acquisition of certain real property as shown and described in Exhibit "A" for Permanent Street Right of Way, in Exhibit "B" for Permanent Sidewalk Dedication and in Exhibit "C" for Temporary Construction Easement (the "Real Properties") (attached hereto and incorporated herein for all purposes) for the public purpose of constructing the Bear Creek Parkway and Elm Street/Whitley Road Roundabout (the "Project") to serve the public; and

WHEREAS, the City Council authorizes the City Manager or his designee to obtain a fair market valuation of the Real Properties; and

WHEREAS, the City Council hereby authorizes the City's agents to negotiate in good faith with the owners of the Real Properties; and

WHEREAS, in the event such negotiations are not successful, the City Attorney is hereby authorized to make initial and final offers to the owner of the Real Properties in compliance with the Property Code; and

WHEREAS, all constitutional, statutory and legal prerequisites for the passage of this Resolution have been met, including but not limited to the Open Meetings Act; and

WHEREAS, the City Council has determined that it is in the best interest of the health, safety, and welfare of the public to adopt this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KELLER, TEXAS:

- Section 1: THAT, the above findings are hereby found to be true and correct and are incorporated herein in their entirety.
- Section 2: THAT, it is hereby determined that public necessity requires the acquisition of a Permanent Street Right of Way, Permanent Sidewalk Dedication and Temporary Construction Easement, and that the City of Keller should acquire said Permanent Street Right of Way, Permanent Sidewalk Dedication and Temporary Construction Easement, over, and across the land necessary for said Project.
- Section 3: THAT, THE REAL PROPERTIES DESCRIBED IN Exhibit "A", Exhibit "B" and Exhibit "C" attached hereto and incorporated herein for all purposes is hereby determined to be necessary for the above-mentioned Project. That, for the purpose of the Permanent Street Right of Way, Permanent Sidewalk Dedication and Temporary Construction Easement, the City Manager, or such employee as the City Manager may designate, is hereby authorized and directed to obtain, review and accept a third party's appraisal report for the Real Properties. In the event of failed attempts to negotiate with any owner(s) of a portion of the Real Properties after making a bona fide initial offer and, following receipt of the third party's appraisal, making a bona fide final offer, the City Council hereby authorizes the City Manager or designee to authorize and direct, on behalf of the City, Legal Counsel, the law firm of Boyle & Lowry, L.L.P., to commence condemnation proceedings under the Texas Property Code, and other applicable law, for the acquisition of the Real Properties by eminent domain.
- Section 4: The City Manager, or his designee, is hereby authorized to execute all documents necessary to acquire the Real Properties, on behalf of the City, whether by purchase or eminent domain. The City Council hereby ratifies any documents executed, prior to the effective date of this Resolution, by the City Manager which were necessary for the acquisition of the Real Properties.
- Section 5: The amount to be paid, if any, for acquiring the Real Properties, will be appropriated from any lawful source.
- Section 6. In the event that Special Commissioners appointed by the Court during condemnation proceedings return an award for just compensation to be paid by the City, Legal Counsel is hereby authorized to settle the lawsuit for that amount and the City's Finance Director is hereby authorized to issue a check from the appropriate fund in the amount of the Special Commissioners' award made payable to the owner or to the County Clerk of Tarrant County, to be deposited into the registry of the Court, to enable the City to take possession of the Real Properties without further action of

the City Council. If the City Manager believes such award should be appealed, the award may still be paid to take possession, but the City Manager shall put the question of whether to appeal on the next available city council agenda for consideration. If there is no such city council meeting before the deadline to appeal, the City Manager may direct Legal Counsel to file the appeal and then place on the next available city council agenda to either pursue or withdraw the appeal.

Section 7: THAT, this resolution shall take effect from and after the date of its passage.

AND IT IS SO RESOLVED.

Passed by a vote of 5 to 0 on this the 16th day of June, 2020.

CITY OF KELLER, TEXAS

By: \_\_\_\_\_  
P.H. McGrail, Mayor

ATTEST:

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Kelly Ballard, City Secretary

APPROVED AS TO FORM AND LEGALITY:

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Stan Lowry, City Attorney