

RESOLUTION NO. 20-R-07

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS, AUTHORIZING THE POWER OF EMINENT DOMAIN FOR THE ACQUISITION OF PERMANENT PIPELINE EASEMENTS AND CERTAIN PROPERTY RIGHTS NECESSARY FOR SCHERTZ/SEGUIN LOCAL GOVERNMENT CORPORATION SCHERTZ ADDITIONAL POINT OF DELIVERY PROJECT FOR THE CONSTRUCTION, ENLARGEMENT AND MAINTENANCE OF PIPELINES AND APPURTENANCES DESIGNED TO CARRY WATER FOR THE CITY OF SCHERTZ; THE ACQUISITION OF TEMPORARY CONSTRUCTION EASEMENTS; DIRECTING THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE TO EXECUTE ALL DOCUMENTS TO INSTITUTE EMINENT DOMAIN PROCEEDINGS; AND DIRECTING THE CITY ATTORNEY TO INITIATE CONDEMNATION PROCEEDINGS.

WHEREAS, the City of Schertz, Texas (the "City") has previously found and determined that public necessity requires the City to acquire certain water pipeline easements and temporary construction easements in connection therewith in Guadalupe County, Texas and Bexar County, Texas from landowners for the public purpose of construction, operation, and maintenance of a water pipeline system to be constructed for public water supply for the City of Schertz in a Project called the **Schertz Additional Point of Delivery Project ("Project")**, and that the City of Schertz, acquire the rights of ingress and egress over and across such lands and adjacent lands by purchase or eminent domain proceedings pursuant to its power of eminent domain as outlined in Section 251.001 and 552.011 of the Texas Local Government Code, as amended, and other pertinent statutory authority; and

WHEREAS, eminent domain proceedings in the State of Texas are governed by Chapter 21 of the Texas Property Code; and

WHEREAS, under Chapter 21 of the Texas Property Code, a governmental entity exercising the power of eminent domain must first authorize the initiation of the condemnation proceeding at a public meeting by a record vote adopting a resolution, ordinance or order; and

WHEREAS, the City has determined a public need to acquire property rights to certain real property and improvements for the purpose of constructing, enlarging, and maintaining a water pipeline system to address the ongoing water supply needs for the City of Schertz; and

WHEREAS, to facilitate the construction of the water pipeline construction, improvements and appurtenances; temporary construction easements will also be obtained adjacent to the permanent easements to provide the City's contractor with adequate space for construction and maintenance activities; and

WHEREAS, in connection with the acquisition of such easement rights to certain properties, the City finds that it will be necessary for employees, agents, representatives, contractors, or subcontractors of the City to enter upon such properties to conduct both archeological and lineal surveys so that such easement rights may be defined and secured in a lawful manner whether such easement rights be acquired by purchase or through eminent domain proceedings; and

WHEREAS, duly approved offers based on written appraisals by independent real estate appraisers for the fair cash market value of each of the water pipeline easements and temporary construction easements were made to the property owner(s) for the acquisition of such easement rights on behalf of the City and the Schertz/Seguin Local Government Corporation; and

WHEREAS, the City Council finds that the City has, through agents and representatives, entered into bona fide good faith negotiations with the owner(s) of the hereinafter described properties and has failed to agree with the owner(s) the purchase price and damages, if any, due to said owner(s). Now, therefore, the City is authorizing the use of its power of eminent domain to condemn property; and

WHEREAS, the City Council further finds that a public necessity exists and that acquiring the properties referenced herein is necessary to accomplish the above described public purpose and public use, and in order to complete this very important public works project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS; THAT:

SECTION 1. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council of the City of Schertz, Texas and made a part hereof for all purposes as findings of fact.

SECTION 2. Public necessity requires that the City of Schertz acquire certain permanent water pipeline easements ("PE") and temporary construction easements ("TCE") in connection therewith, over, across, upon and under certain privately owned real properties, hereinafter called the Property(ies), in Guadalupe County, Texas and Bexar County, Texas to wit:

| <u>Parcel Number</u> | <u>Landowner</u> | <u>County</u> | <u>Survey</u> | <u>Abstract</u> | <u>Acres Owned</u> | <u>Property Acres</u> | <u>Exhibit</u> |
|----------------------|---|---------------|-----------------|-----------------|--------------------|-------------------------------------|-----------------|
| SCZ-GU-001 | Continental Homes of Texas | Guadalupe | William Bracken | 57 | 110.48 | 0.162 (PE) 0.130 (TCE) Survey | A A-1 A-2 |
| SCZ-BX-003 | Bexar County | Bexar | William Bracken | 48 | 8.62 | 0.151 (PE) 0.149 (TCE) Survey | B B-1 B-2 |
| SCZ-BX-003.1 | Bexar County | Bexar | William Bracken | 48 | 4.360 | 0.307 (PE) 0.331 (TCE) Survey | C C-1 C-2 |
| SCZ-BX-007 | Schertz-Cibolo Universal City ISD Board of Trustees | Bexar | William Bracken | 43 | 4.100 | 1.073 (PE) 1.053 (TCE) Survey | D D-1 D-2 |

more fully described in **Exhibits "A"** through **"D-2"** attached hereto and made a part hereof for all purposes, from said landowners or other persons who are determined to be the owners of the Property(ies), for the public purpose of constructing, operating, maintaining, repairing, relocating, replacing and removing a water pipeline system to be constructed, in the Schertz Additional Point of Delivery Project. Public necessity also requires that the City of Schertz acquire the rights of ingress and egress over and across such Property(ies) either through purchase or by the process of eminent domain and that the City of Schertz take all other lawful action necessary and incidental to such purchases or eminent domain proceedings.

SECTION 3: It is hereby determined that the City of Schertz, through its agents and representatives, has in fact transmitted bona fide offers and copies of the real estate appraisals in support thereof to each of the landowner(s) of the property interests sought herein to be acquired and as required by law, but the City of Schertz and the owners of such property interests have been unable to agree and cannot agree upon the value of such property interests or the damages to be paid, and further settlement negotiations have become futile.

SECTION 4. The City Council hereby authorizes and directs the City Manager or the City Manager's Designee, on behalf of the City, to condemn the property interests in the Property(ies) described above and to sign and execute all necessary documents to institute eminent domain proceedings for the acquisition of the Property(ies) described above and in **Exhibits "A"** through **"D-2"** herein.

SECTION 5. City Council authorizes and directs the City Attorney, on behalf of the City, to initiate condemnation proceedings and such other actions as are necessary to acquire the property interest in the Property(ies) described above and in Exhibits "A" through "D-2" herein, by the exercise of the power of eminent domain.

SECTION 6. All acts and proceedings done or initiated by the employees, agents, and attorneys of the City of Schertz for the acquisition of such property are hereby authorized, ratified, approved, confirmed, and validated and declared to be valid in all respects as of the respective dates thereof with and in regard to the grantors from whom such rights have been or are being acquired.

SECTION 7. If it is later determined that there are any errors in the descriptions contained herein or if later surveys contain more accurate revised descriptions, the City Attorney is authorized to have such errors corrected or revisions made without the necessity of obtaining a new resolution of the City Council authorizing the condemnation of the corrected or revised Property(ies).

SECTION 8: If any provisions, sections, subsections, sentences, clauses or phrases of this Resolution, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Resolution shall not be affected thereby, it being the intent of the City Council of the City of Schertz, Texas in adopting this Resolution that no portion thereof, or provisions or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion hereof and all provisions of this Resolution are declared to be severable for that purpose.

SECTION 9: All ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters ordained herein.

SECTION 10: It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, as amended, Texas Government Code, and that the vote authorizing the adoption of this Resolution and the use of eminent domain power as specified herein was taken in a public meeting by record vote.

SECTION 11. This Resolution shall become effective immediately upon its passage.

| <u>Council Member</u> | <u>In Favor</u> | <u>Opposed</u> |
|-----------------------------------|-----------------|----------------|
| Mayor Ralph Gutierrez | _____ | _____ |
| Council Member Mark E. Davis | _____ | _____ |
| Council Member Rosemary Scott | _____ | _____ |
| Council Member Scott Larson | _____ | _____ |
| Council Member Michael Dahle | _____ | _____ |
| Council Member David L. Scagliola | _____ | _____ |
| Council Member Allison Heyward | _____ | _____ |
| Council Member Tim Brown | _____ | _____ |

PASSED AND APPROVED on this 7th day of January, 2020.

Ralph Gutierrez, Mayor
City of Schertz, Texas

ATTEST:

Brenda Dennis, City Secretary
City of Schertz, Texas