

City Council Agenda Memo

From: Steve Britzman, City Attorney

Council Meeting: July 13, 2021

Subject: Resolutions of Necessity for Acquisition by Condemnation of Real Property by the City of Brookings

Person Responsible: Steve Britzman, City Attorney

Summary:

Request approval of Four (4) Resolutions of Necessity for Acquisition of Real Property for the I-29 Interchange Project (hereafter “the Project”).

Background:

This Agenda item for the City Council are proposed Resolutions of Necessity, a necessary step for the City of Brookings to initiate and maintain condemnation proceedings. A Resolution of Necessity authorizes a municipality to commence condemnation proceedings to acquire right-of-way and temporary easements where the City of Brookings has been unable to acquire the land for construction of the Project by voluntary purchase or agreement with the owners. A separate Resolution of Necessity has been prepared for the parcels owned by the four (4) separate property owners.

Discussion:

The Project design has been finalized and the consultants have been negotiating with adjacent land owners for right of way and easements. A number of parcels of right-of-way and easements have been acquired for the Project by voluntary purchase or agreement with the owners. There remain several parcels owned by four (4) separate parties where the consultants have been unable to acquire the land for right-of-way and temporary easements necessary for the construction of the Project by voluntary purchase or agreement with the owners. The property descriptions, which are the subject of the Resolutions of Necessity, are set forth in the Resolutions of Necessity. A Resolution of Necessity authorizes the City to initiate condemnation if voluntary agreements as described herein cannot be reached. The following are the dimensions of the parcels necessary for the Project which have not yet been acquired by voluntary purchase or agreement:

- | | |
|---------------------------|------------|
| 1. Right-of-Way | .73 acres |
| Parcel Temporary Easement | 1 acre |
| 2. Right-of-Way | 9.96 acres |
| Parcel Temporary Easement | .3 acres |
| 3. Right-of-Way | 6.12 acres |

Parcel Temporary Easement	.6 acres
4. Right-of-Way	7.893 acres
Parcel Temporary Easement	2.2 acres

Legal Consideration:

A Resolution of Necessity is a prerequisite to commence proceedings in eminent domain (condemnation) pursuant to SDCL Chapters 21-3 and 31-19. Furthermore, SDCL 9-27-1 authorizes a municipality to acquire real property located both within and outside the City for this Project, and requires the determination made pursuant to a Resolution of Necessity that the appropriation of the land is necessary for the Project. The consultants will continue to negotiate with the owners of the land identified in the Resolutions of Necessity for purchase of their property at appraised values. However, if the City is unable to acquire the land by voluntary purchase or agreement, then condemnation would permit the Project to proceed while providing the landowners receive reasonable compensation for the land as determined by state law.

Financial Consideration:

Acquisition of the right-of-way and temporary easements will be funded through the budget for the Project. In addition, the City and County of Brookings adopted a Memorandum of Understanding for reimbursement of Project expenditures.

Options and Recommendation:

The City Council has the following options:

1. Discuss and take no action;
2. Discuss and by motion authorize each of the Four (4) Resolutions of Necessity. A two-thirds majority of all members of the City Council is required to approve each Resolution to be effective.

City Attorney Steve Britzman recommends approval of the Resolutions of Necessity in order for the City to acquire by condemnation, if necessary, the real property and easements required for the Project.

Supporting Documentation:

Resolution
Exhibit