



**CITY OF TYLER, TEXAS
CITY COUNCIL COMMUNICATION**

Agenda Number: R-4

Date: April 25, 2007

Subject: Request that the City Council consider adopting a Resolution authorizing eminent domain proceedings for the acquisition of right of way land against R's & J's Ent Incorporated, a Texas Corporation, for the construction of the Grande Boulevard East Extension Phase 2.

Page: 1 of 1

On April 26, 2006, the City Council determined the necessity for and authorized the design of the Grande Boulevard East extension Phase 2. In order to construct the road improvements, additional land for Right of Way is required across a tract of land owned by **R's & J's Ent Incorporated, a Texas Corporation.**

The Tyler City Engineering department, through a Right-of-Way agent is still negotiating for the required right of way. While it is possible that a settlement will be reached, in order to speed the timetable for land acquisition in case the parties do not agree on a settlement, staff is requesting City Council authorization to proceed with condemnation of the necessary right of way across the aforementioned property. The necessary resolution is attached for City Council review.

RECOMMENDATION:

It is recommended that the City Council adopt a resolution authorizing eminent domain proceedings for the acquisition of land as described herein for the construction of the Grande Boulevard East extension Phase 2.

Drafted/Recommended By:
Department Leader

A handwritten signature in black ink, appearing to read 'G. Morgan', with a long horizontal flourish extending to the right.

Greg Morgan, Director of Utilities and Public Works

Edited/Submitted By:
City Manager

Notice of Confidentiality Rights: If you are a natural person, you may remove or strike any or all of the following information from this instrument before it is filed for record in the public records: your Social Security Number or your Driver's License Number.

**WARRANTY DEED
(Parcel No. 48)**

**THE STATE OF TEXAS §
 §
COUNTY OF SMITH §**

KNOW ALL PERSONS BY THESE PRESENTS:

That we, R's & J's Ent Inc., A Texas Corporation, 6393 Paluxy Drive, Tyler, Texas 75703 (Address), of the County of Smith and State of Texas hereinafter referred to as Grantors, whether one or more, for and in consideration of the sum of Ten Dollars and No/100 (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, paid to Grantors by the **CITY OF TYLER, TEXAS**, a municipal corporation, P. O. Box 2039, Tyler, Texas 75710, of the County of Smith and State of Texas, have GRANTED, SOLD AND CONVEYED and does by these presents GRANT, SELL AND CONVEY unto the said **CITY OF TYLER**, the following described tract or parcel of land:

Being 0.042 of an acre of land, being situated in the Isaac Hill Survey, A-474, City of Tyler, Texas, Smith County, Texas, and being part of a certain called 1.258 acre tract described in a warranty deed from Swati Entreprises, Inc., and recorded under Clerk's File Number No. 2006-R00048698, Official Records of Smith County, Texas.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto, which are hereby conveyed to the **CITY OF TYLER, TEXAS**, its heirs and assigns forever; and Grantors to hereby bind itself, its heirs, executors, successors, assigns and administrators to Warrant and Forever Defend, all and singular the said premises unto the **CITY OF TYLER, TEXAS**, its heirs and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

IN WITNESS WHEREOF, this instrument is executed on this _____ day of _____, 2006.

R's and J's Ent Inc, a Texas Corporation, GRANTOR

Acknowledgment

State of Texas
County of Smith

This instrument was acknowledged before me on _____
by R's & J's Ent. Inc., a Texas Corporation.

Notary Public's Signature

Corporate Acknowledgment

State of Texas
County of _____

This instrument was acknowledged before me on _____ by _____
_____, _____
of _____,
a _____ corporation, on behalf of said corporation.

Notary Public's Signature

After Recording Return To:

**Gary Landers
City Attorney
City of Tyler, Texas
P.O. Box 2039
Tyler, TX 75710-2039**

CONDEMNATION PARCELS

Parcel No. 48

Owner: R's & J's Ent Inc., a Texas Corporation

Street Address: 6393 Paluxy Drive
Tyler, TX 75703

Legal Description of fee portion being acquired:

Being 0.042 of an acre of land, being situated in the Isaac Hill Survey, A-474, City of Tyler, Texas, Smith County, Texas, and being part of a certain called 1.258 acre tract described in a warranty deed from Swati Entreprises, Inc., and recorded under Clerk's File Number No. 2006-R00048698, Official Records of Smith County, Texas.

Note: No offer has been made yet. Appraisal has not been received as of April 16, 2007. Issue with property owner is denial of access from a right turn lane at Grande blvd. and Paluxy Drive. Attorney has already been hired by property owners.

RESOLUTION NO. R-2007-16

A RESOLUTION FINDING A NECESSITY FOR THE ACQUISITION OF CERTAIN LAND FOR GRANDE BOULEVARD EAST EXTENSION AND RELATED PURPOSES; DECLARING SUCH ACQUISITION FOR A PUBLIC PURPOSE; AUTHORIZING CONDEMNATION FOR THE RIGHT-OF-WAY INTEREST IN SAID PROPERTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, engineering studies heretofore conducted have determined that acquisition of the hereinafter described property is necessary for the public purpose of creating a new street, known as the Grande Boulevard East extension project (the "Project"), to provide for improved traffic flow to the City of Tyler, Texas; and

WHEREAS, the City Council has found that a public necessity requires such land acquisition; and

WHEREAS, the City Council has found and determined that the land interest in and to the hereinafter described property is suitable for such purpose and that it is necessary to acquire same for building the street extension along with needed additional Right of Way for utilities; and

WHEREAS, the City of Tyler, through its duly authorized representatives, is beginning negotiations with the owner of such land and it is possible that they will be unable to agree with such owner as to the fair cash market value thereof:

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

PART 1: The City of Tyler will continue to negotiate with the landowner until it appears to the City Manager that the parties will not be able to reach settlement.

PART 2: That acquisition of fee title in and to the following described property, is hereby found to be necessary for the public purpose of constructing and maintaining a new City street along with installation and relocation of any required utilities and appurtenances on the new right of way:

Being 0.042 of an acre of land, being situated in the Isaac Hill Survey, A-474, City of Tyler, Texas, Smith County, Texas, and being part of a certain called 1.258 acre tract described in a warranty deed from Swati Entreprises, Inc., and recorded under Clerk's File Number No. 2006-R00048698, Official Records of Smith County, Texas and more commonly known as 6393 Paluxy Drive, Tyler, Texas 75703.

PART 3: That when the City Manager determines that the City of Tyler has in fact transmitted bona fide offers to the property owner, in accordance with the laws of the State of Texas, for the property described herein, and the owner of the property and the City of Tyler have been unable to agree and cannot agree upon the value of the land or the damages to be paid and further settlement negotiations have become futile and impossible, the City Manager shall transfer further responsibility for this item to the City Attorney in accordance with Part 4 below.

PART 4: That the City Attorney of the City of Tyler, or an attorney authorized by him be and is hereby authorized and directed to file and cause to be filed against the owner, proceedings in eminent domain to acquire fee title in and to the above described property and to conduct all parts of the condemnation in accordance with the laws and procedures of the State of Texas.

PART 5: That this Resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED this 25 day of April, A.D. 2007.

ATTEST:

JOSEPH O. SEEBER, MAYOR
APPROVED:

CASSANDRA BRAGER
CITY CLERK

GARY C. LANDERS, CITY ATTORNEY