

**RESOLUTION NO. R-2011-17**

**A RESOLUTION FINDING A NECESSITY FOR THE ACQUISITION OF CERTAIN LAND FOR SANITARY SEWER EASEMENT 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 locating, establishing, constructing, testing, inspecting, installing, operating, renewing, maintaining, repairing, replacing, altering, changing of the size of, reconstructing, restoring and possible future removal of a certain sanitary sewer line or lines and all necessary and convenient valves, connections, fittings, manholes, cleanouts and appurtenances, known as the Highway 69 / Interstate 20 Corridor Sanitary Sewerage System Improvements Project (the "Project"), to provide for sanitary sewer service 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 easement interest in and to the hereinafter described property is suitable for such purpose and that it is necessary to acquire same for locating, establishing, constructing, testing, inspecting, installing, operating, renewing, maintaining, repairing, replacing, altering, changing of the size of, reconstructing, restoring and possible future removal of a certain sanitary sewer line or lines and all necessary and convenient valves, connections, fittings, manholes, cleanouts and appurtenances on said property; and

**WHEREAS**, the City of Tyler, through its duly authorized representatives, has negotiated with the owners of such land and has been unable to agree with such owners 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 has offered Felton Erwin Jr., Keith Minor, Rex Anton Davis, Danny Ray Davis, Jr., Dorothy Horton and Rita Yvette Lee, landowners, a final offer in writing of \$50.00 each (\$300.00 total), a reasonable sum of money to compensate them for the value of the easement and damages, if any, to the remainder of this property, the offer of which is hereby confirmed.

**PART 2:** That acquisition of an easement interest in and to the following described property, is hereby found to be necessary for the public purpose of locating, establishing, constructing, testing, inspecting, installing, operating, renewing, maintaining, repairing, replacing, altering, changing of the size of, reconstructing, restoring and possible future removal of a certain sanitary sewer line or lines and all necessary and convenient valves, connections, fittings, manholes, cleanouts and appurtenances:

**140.00 acres, more or less, in the H. Nelson Survey, Abstract No. 739, Smith County, Texas and being the same land described in a Warranty Deed with Vendor's Lien from Jerry**

**Erwin and wife to Alex Erwin dated June 25, 2899 and recorded in Volume 92, Page 358 of the Deed Records of Smith County, Texas.**

**PART 3:** That it is hereby determined that the City of Tyler has in fact transmitted bona fide offers to the property owners, in accordance with the laws of the State of Texas, for the property described herein, and the owners 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, if any, to be paid and further settlement negotiations have become futile and impossible. A true and complete copy of the Right-of-Way Agreement offered by the City of Tyler as its last and final offer is attached hereto as Exhibit "A". The final monetary offer of the City of Tyler is hereby confirmed and approved.

**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 the easement interest 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 11<sup>th</sup> day of May, A.D. 2011.

  
BARBARA BASS, MAYOR

ATTEST:

APPROVED:

  
CASSANDRA BRAGER  
CITY CLERK



  
GARY C. LANDERS, CITY ATTORNEY

Exhibit "A" to Resolution R-2011-17  
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**Larry R. Dixon, CPL**  
**President**

Mailing address: P.O. Box 6602  
Tyler, Tx 75711  
903-579-9300 (office)

Physical address: 12559 CR 192  
Tyler, Tx 75703  
903-579-9399 (fax)

Certified Mail #7009 2250 0000 8800 2948

May 2, 2011

Felton Erwin, Jr.  
426 Grace Ave., Apt-6  
Inglewood, CA 90301

Re: City of Tyler  
Sanitary Water/Sewer pipeline  
H. Nelson Survey, A-739  
Smith County, Texas

Dear Mr. Erwin:

This letter is to confirm negotiations between, Dixon Services, Inc. as Right-of-Way Agent, and you for the acquisition by The City of Tyler, Texas of the permanent right-of-way easement and temporary workspace for the expansion of the installation of a sanitary water/sewer pipeline across property owned by you and the other heirs of the Alex Erwin in a 140 acre tract of land in the H. Nelson Survey, A-739, Smith County, Texas.

Pursuant to our previous telephone conversations and our inability to reach an acceptable agreement for the purchase of a Right-of-Way Agreement, the City of Tyler hired a real estate appraiser to appraise the subject property that will be affected by the said sanitary water/sewer pipeline. The total distance of the proposed pipeline across the subject tract is 3560.12 feet. The Right of Way Agreement will be for a thirty (30) foot wide permanent easement and an additional twenty (20) foot wide temporary construction easement to be used during construction of the line. Mr. Jim Justice of Real Estate Appraisal Services has appraised the subject property and has determined the appraised value of the 2.45 acre permanent easement to be \$3,675.00 and the appraised value of the 1.63 acre temporary easement to be \$1,223.00 for a total of \$4,898.00 for the entire area that will be used for permanent and temporary easement across the subject property.

Based on research from the Official Public Records of Smith County, Texas, the Probate Records of Smith County, Texas, the District Court Records of Smith County, Texas and heirship information gathered from other heirs of Alex Erwin it appears that you own an undivided 1/132 interest in the subject property. Therefore, your portion of the \$4,898.00 total consideration would be \$37.11. The City of Tyler has agreed to increase this offer to a \$50.00 minimum payment in attempt to compensate you for your time in handling this matter.

Your careful consideration of this final offer will be sincerely appreciated. Additional copies of the original Right of Way Agreement and a copy for your

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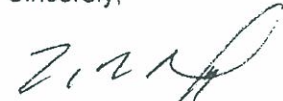
May 2, 2011

records are enclosed for your review. Upon execution of the original Right of Way Agreement in the presence of a Notary Public and upon receipt of the fully executed document we will send you a check in the amount of \$50.00.

If you have not accepted this final offer within seven (7) days from the date you receive this letter, condemnation proceedings will be initiated to acquire the necessary permanent right-of-way and temporary workspace.

You may call this office to communicate your acceptance within the allotted time. Thank you for your concern and cooperation in this matter. I look forward to hearing from you soon and completing this process so the City can focus on beginning construction of the new sanitary water/sewer pipeline.

Sincerely,



Larry R. Dixon

Exhibit "A" to Resolution R-2011-17  
Page 3 of 42



**Larry R. Dixon, CPL**  
**President**

Mailing address: P. O. Box 6602  
Tyler, Tx 75711  
903-579-9300 (office)

Physical address: 12559 CR 192  
Tyler, Tx 75703  
903-579-9399 (fax)

Certified Mail #7009 1410 0000 7440 4841

May 2, 2011

Keith Minor  
3003 Toney Drive  
Decatur, GA 30032

Re: City of Tyler  
Sanitary Water/Sewer pipeline  
H. Nelson Survey, A-739  
Smith County, Texas

Dear Mr. Minor:

This letter is to confirm negotiations between, Dixon Services, Inc. as Right-of-Way Agent, and you for the acquisition by The City of Tyler, Texas of the permanent right-of-way easement and temporary workspace for the expansion of the installation of a sanitary water/sewer pipeline across property owned by you and the other heirs of the Alex Erwin in a 140 acre tract of land in the H. Nelson Survey, A-739, Smith County, Texas.

Pursuant to our previous telephone conversations and our inability to reach an acceptable agreement for the purchase of a Right-of-Way Agreement, the City of Tyler hired a real estate appraiser to appraise the subject property that will be affected by the said sanitary water/sewer pipeline. The total distance of the proposed pipeline across the subject tract is 3560.12 feet. The Right of Way Agreement will be for a thirty (30) foot wide permanent easement and an additional twenty (20) foot wide temporary construction easement to be used during construction of the line. Mr. Jim Justice of Real Estate Appraisal Services has appraised the subject property and has determined the appraised value of the 2.45 acre permanent easement to be \$3,675.00 and the appraised value of the 1.63 acre temporary easement to be \$1,223.00 for a total of \$4,898.00 for the entire area that will be used for permanent and temporary easement across the subject property.

Based on research from the Official Public Records of Smith County, Texas, the Probate Records of Smith County, Texas, the District Court Records of Smith County, Texas and heirship information gathered from other heirs of Alex Erwin it appears that you own an undivided 1/2016 interest in the subject property. Therefore, your portion of the \$4,898.00 total consideration would be \$2.43. The City of Tyler has agreed to increase this offer to a \$50.00 minimum payment in attempt to compensate you for your time in handling this matter.

Your careful consideration of this final offer will be sincerely appreciated. Additional copies of the original Right of Way Agreement and a copy for your

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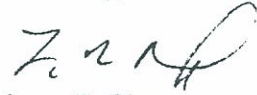
May 2, 2011

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If you have not accepted this final offer within seven (7) days from the date you receive this letter, condemnation proceedings will be initiated to acquire the necessary permanent right-of-way and temporary workspace.

You may call this office to communicate your acceptance within the allotted time. Thank you for your concern and cooperation in this matter. I look forward to hearing from you soon and completing this process so the City can focus on beginning construction of the new sanitary water/sewer pipeline.

Sincerely,



Larry R. Dixon