



Agenda Memorandum

Agenda Item – 10.A.

City Council Meeting
January 23, 2023



Strategic Priority 5: Robust Infrastructure

Provide safe and equitable access to core services and amenities by safeguarding, maintaining and improving the city's water, wastewater, stormwater, mobility and roadway systems.

Subject: First Reading of Councillor's Bill No. 2 Re: Supplemental Appropriation from the Utility Capital Project Reserve to the Utility Water Fund; and Authorization of additional expense for land purchase

Prepared By: Stephanie Bleiker, Capital Projects Administrator
Brian Donahue, Business Operations Administrator
Sarah Borgers, Interim Public Works & Utilities Director

Recommended City Council Action:

1. Pass Councillor's Bill No. 2 on first reading appropriating a transfer of \$22,320,503 from the Utility Capital Project Reserve to the Utility Water Fund for the remaining balance on 37.65 acres of land acquisition related to Jefferson County District Court case 2020CV30231.
2. Contingent upon approval of Councillor's Bill No. 2 on second reading, authorize expense of \$22,320,503 for deposit to preserve the right to appeal the verdict in Jefferson County District Court case 2020CV30231.

Summary Statement:

- In July of 2019, City Council approved Resolution No. 17 to acquire or Condemn Real Property Interests for a new drinking water treatment facility site. Subsequently, a Petition in condemnation was filed in Jefferson County District Court. Immediate possession of the property was granted after the City deposited \$9,019,000 with the Court, which represented the City's appraised value of the 37.65 acre-property.
- Subsequently, R. Dean Hawn Interests, Ltd. (RDHI), the landowner, provided an appraised value of the property in an amount of a little over \$37 million.
- City Council authorized the City Manager to enter into agreement with Hamre, Rodriguez, Ostrander & Prescott, P.C. (HROP) to provide legal services on an as-needed basis to acquire interests in land for capital improvement projects for the City that may require the use of eminent domain. Acquisition of land for the new drinking water treatment facility project is a capital

improvement project of which HROP has represented the City.

- During the week of December 12, 2022, a valuation hearing in the eminent domain case for the aforementioned 37.65 acres was held in Jefferson County District Court. The case was heard by a 3-person commission appointed by the Court. The commission's certificate of ascertainment, which contained its ruling on the value of the property taken and the damage to the remaining property, was recorded with the Court on December 23, 2022, in the total amount of \$27,101,090.
- The deposit required to preserve the right to appeal is estimated to be \$22,320,503 and includes the land valuation (part taken), damages awarded to the remaining property, as well as an estimate of interest, fees and costs due.
- Staff is seeking City Council action to approve an ordinance on first reading to appropriate funds to preserve the option to appeal the verdict in the eminent domain case, should City Council direct.
- The decision to move forward with an appeal must be made within 49 days of the judge's order.

Fiscal Impact:

\$22,320,503 in expenditures

Source of Funds:

Utility Capital Project Reserve and Water Fund: Water Treatment Plant capital project account

Policy Issue(s):

- Should City Council pass Councillor's Bill No. 2 appropriating a transfer of \$22,320,503 from the Utility Capital Project Reserve to the project account?
- Should City Council authorize the expense of \$22,320,503 to preserve the right to appeal the verdict of the eminent domain case?

Alternative(s):

City Council could decline to approve the attached Councillor's Bill to transfer funds from the Utility Capital Project Reserve to the Water Fund with further transfer into the project account. This option would preclude moving forward with the appeal of the verdict in the eminent domain case. It would not preclude abandoning the property or purchasing the property at its currently adjudicated price.

Background Information:

In July of 2019, City Council approved Resolution No. 17 to acquire or condemn real property interests for a new drinking water treatment facility site. The land is located on the east side of Westminster Boulevard in the general vicinity of the 9900 block. The land area is 37.65 acres and is in an undeveloped parcel that is zoned for agricultural use. Another 3.35 acres of City open space property that lies adjacent to Westminster Boulevard is otherwise surrounded by the private property. Combining the 3.35 acres of City land with the 37.65 acres of private land makes up the 40 acres of undeveloped raw land identified for the drinking water treatment facility project.

After the City acquired an appraised value for the 37.65 acres of private property, the City made an

offer to R. Dean Hawn Interests, Ltd. (RDHI), the landowner. The City's initial offer to RDHI was \$9,019,000, which was the City's appraised value for the undeveloped land. The initial offer was rejected by the property owner, and the City made a second offer in the amount of \$10,200,000. Neither the appraised value nor the second offer was accepted. RDHI contracted for an independent property appraisal and provided the City with an appraised value for the 37.65 acres of just over \$37 million.

The City entered into an agreement with Hamre, Rodriguez, Ostrander & Prescott, P.C. (HROP) to provide legal services to the City on an as-needed basis for land acquisition. Since the City was unsuccessful in negotiating a price for the 37.65 acres with RDHI, HROP commenced providing legal services under the above-mentioned agreement to assist the City in moving forward with the condemnation. A petition in condemnation was filed in the Jefferson County District Court and immediate possession of the property was granted after the City deposited \$9,019,000 with the Court, which represents the City's appraised value of the property.

The eminent domain case went to trial in Jefferson County civil court on December 12-16, 2022. The case was heard by a three-person commission appointed by the Court. The commission's certificate of ascertainment was recorded with the Court on December 23, 2022, in the amount of \$27,101,090. There are potential grounds for appeal of that decision, and City Council may make the decision to appeal this verdict. If City Council wishes to move forward with an appeal, then the difference between the initial deposit of \$9,019,000 and the commission's verdict of \$27,101,090 plus estimated interest, fees and costs must be deposited with the Court to preserve the ability to appeal.

Sufficient funds are available from the Utility Fund Capital Project Reserve to deposit the remaining value with the Court in the amount of approximately \$22 million dollars should City Council choose to proceed with an appeal of the verdict of the eminent domain case. The City has 49 days from the date of the court order to file a notice of appeal with the Court. The total amount to be deposited is a combination of the land valuation (part taken), damages awarded to the remaining property and estimated interest, fees and costs.

The proposed action to approve this Councillor's Bill on first reading does not obligate the City to complete acquisition of or pursuit of an appeal. Moving funds from the Utility Capital Reserve Fund to the Utility Water Fund for this capital project requires a budget amendment, which requires two readings. Staff has prepared this Councillor's Bill for consideration on first reading to keep the option available for City Council as they review the plant options in public session on January 23 and February 6. Should City Council approve this Councillor's Bill on first reading, City Council could choose not to approve it on second reading scheduled for February 13 dependent upon the outcome of these public meetings to review the drinking water treatment facility options.

The land acquisition associated with the drinking water treatment facility replacement or rehabilitation project helps achieve the City's Strategic Plan goal to provide safe and equitable access to core services and robust infrastructure by safeguarding, maintaining and improving the City's water, wastewater, stormwater, mobility and roadway systems by replacing aged infrastructure in a timely manner with assets designed to reduce maintenance and save the City money.

Respectfully Submitted,

Mark A Freitag

Mark A. Freitag
City Manager

Attachments:

Councillor's Bill No. 2 re Supplemental Appropriation from the Utility Capital Project Reserve to the
Utility Water Fund

Attachment A – Supplemental Appropriation Account Table