

DRAFT

KEY FOCUS AREA: Economic Vibrancy

AGENDA DATE: January 27, 2016

COUNCIL DISTRICT(S): 2

DEPARTMENT: Trinity Watershed Management
City Attorney's Office

CMO: Mark McDaniel, 670-3256
Warren M.S. Ernst, 670-3491

MAPSCO: 46E

SUBJECT

Authorize the **(1)** deposit of the amount awarded by the Special Commissioners in the condemnation proceeding styled City of Dallas v. Rainier Swiss Avenue Investors, LLC, a Texas limited liability company, et al., Cause No. CC-15-04815-D, pending in Dallas County Court at Law No. 4, to acquire approximately 29,401 square feet of land, located on Swiss Avenue at its intersection with Haskell Avenue for the Mill Creek/Peaks Branch/State Thomas Drainage Relief Tunnel Project; and **(2)** settlement of the condemnation proceeding for an amount not to exceed the award - Not to exceed \$135,804 (\$132,304 being the amount of the award, plus closing costs and title expenses not to exceed \$3,500); an increase of \$32,341 from the amount Council originally authorized for this acquisition - Financing: 2006 Bond Funds

BACKGROUND

This item is being placed on the addendum requesting Council approval prior to the deadline to file objections to the Award of the Special Commissioners.

On March 25, 2015, the City Council authorized the acquisition of this property, by Resolution No. 15-0561. The property owner was offered \$99,963, which was based on a written appraisal from an independent certified appraiser. The appraisal was updated November 10, 2015, and the offer amount was revised to \$105,844. The property owner did not accept the offer and the City filed an eminent domain proceeding to acquire the property. After a hearing before the Special Commissioners on January 7, 2016, the property owner was awarded \$132,304. This item authorizes deposit of the amount awarded by the Special Commissioners for the property, which is \$32,341 more than the City Council originally authorized for this acquisition, plus closing costs and title expenses not to exceed \$3,500.

DRAFT

BACKGROUND (Continued)

The City has no control over the Special Commissioners appointed by the judge or any award that is subsequently rendered by the Special Commissioners. The City, in order to acquire possession of the property and proceed with its improvements, must deposit the amount awarded by the Special Commissioners in the registry of the Court.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

Authorized acquisition on March 25, 2015, by Resolution No. 15-0561.

Council was briefed by memorandum regarding this item.

Information about this item will be provided to the Public Safety Committee on January 25, 2016.

FISCAL INFORMATION

2006 Bond Funds - \$135,804 (\$132,304 being the amount of the award, plus closing costs and title expenses not to exceed \$3,500)

OWNER

Rainier Swiss Avenue Investors, LLC

J. Kenneth Dunn, Manager

MAP

Attached

January 27, 2016

A RESOLUTION AUTHORIZING THE DEPOSIT OF A SPECIAL COMMISSIONERS AWARD AND SETTLEMENT OF THE CONDEMNATION PROCEEDING AND IF OBJECTIONS ARE FILED, SETTLEMENT OF THE CONDEMNATION LAWSUIT FOR AN AMOUNT NOT TO EXCEED THE AWARD.

IN THIS RESOLUTION THE FOLLOWING DEFINITIONS SHALL APPLY:

CONDEMNATION PROCEEDING: Cause No. CC-15-04815-D, in Dallas County Court at Law No. 4, and styled City of Dallas v. Rainier Swiss Avenue Investors, LLC, a Texas limited liability company, et al., filed pursuant to City Council Resolution No. 15-0561.

PROPERTY: Located under approximately 29,401 square feet of land in Dallas County, as described in the CONDEMNATION PROCEEDING.

PROJECT: Mill Creek/Peaks Branch/State Thomas Drainage Relief Tunnel Project

OFFICIAL OFFER: \$99,963.00

AWARD: \$132,304.00

CLOSING COSTS AND TITLE EXPENSES: Not to exceed \$3,500.00

AUTHORIZED AMOUNT: Not to exceed: \$135,804.00

DESIGNATED FUNDS: AWARD payable out of the 2006 Bond Funds, Fund No. 3T23, Department TWM, Unit T525, Activity SDRS, Program No. PB06T525, Object 4210, Encumbrance No. CT-PBW06T525F31-1, CLOSING COSTS AND TITLE EXPENSES payable out of the 2006 Bond Funds, Fund No. 3T23, Department TWM, Unit T525, Activity SDRS, Program No. PB06T525, Object 4230, Encumbrance No. CT-PBW06T525F32.

WHEREAS, the OFFICIAL OFFER having been made and refused, the City Attorney filed the CONDEMNATION PROCEEDING for the acquisition of the PROPERTY for the PROJECT; and,

WHEREAS, the Special Commissioners appointed by the Court in the CONDEMNATION PROCEEDING made the AWARD, which the City Council wishes to deposit with the County Clerk of Dallas County, Texas, so that the City may take possession of the PROPERTY; and,

January 27, 2016

WHEREAS, the City Council desires to authorize the City Attorney to settle the CONDEMNATION PROCEEDING and, if objections are filed, the lawsuit arising from the CONDEMNATION PROCEEDING for an amount not to exceed the AWARD;

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the Chief Financial Officer is hereby authorized and directed to issue a check, paid out of and charged to the DESIGNATED FUNDS, in the amount of the AWARD payable to the County Clerk of Dallas County, Texas, to be deposited by the City Attorney with the County Clerk and in the amount of the CLOSING COSTS AND TITLE EXPENSES payable to the title company closing the transaction described herein. The AWARD, CLOSING COSTS AND TITLE EXPENSES together shall not exceed the AUTHORIZED AMOUNT.

SECTION 2. That the City Attorney is authorized to settle the CONDEMNATION PROCEEDING, and if objections are filed, the lawsuit arising from the CONDEMNATION PROCEEDING, for an amount not to exceed the AWARD.

SECTION 3. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

APPROVED AS TO FORM

Warren M. S. Ernst

City Attorney

By: _____
Assistant City Attorney

January 27, 2016

WHEREAS, the City Council desires to authorize the City Attorney to settle the CONDEMNATION PROCEEDING and, if objections are filed, the lawsuit arising from the CONDEMNATION PROCEEDING for an amount not to exceed the AWARD;

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the Chief Financial Officer is hereby authorized and directed to issue a check, paid out of and charged to the DESIGNATED FUNDS, in the amount of the AWARD payable to the County Clerk of Dallas County, Texas, to be deposited by the City Attorney with the County Clerk and in the amount of the CLOSING COSTS AND TITLE EXPENSES payable to the title company closing the transaction described herein. The AWARD, CLOSING COSTS AND TITLE EXPENSES together shall not exceed the AUTHORIZED AMOUNT.

SECTION 2. That the City Attorney is authorized to settle the CONDEMNATION PROCEEDING, and if objections are filed, the lawsuit arising from the CONDEMNATION PROCEEDING, for an amount not to exceed the AWARD.

SECTION 3. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

APPROVED AS TO FORM

Warren M. S. Ernst
City Attorney

By: 
Assistant City Attorney

DRAFT

