

RESOLUTION NO. 2021-33(R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WYLIE, TEXAS, DETERMINING A PUBLIC NECESSITY TO ACQUIRE CERTAIN PROPERTY FOR PUBLIC USE BY EMINENT DOMAIN FOR RIGHTS-OF-WAY (IN FEE SIMPLE), RELATED IMPROVEMENTS FOR THE CONSTRUCTION, EXPANSION, ACCESS, REPAIR, MAINTENANCE AND REPLACEMENT OF PUBLIC ROAD COMMONLY REFERRED TO AS EUBANKS LANE (FROM HWY 78 TO APPROXIMATELY 1,000 FEET NORTH OF CENTENNIAL DRIVE); GIVING NOTICE OF AN OFFICIAL DETERMINATION OF PUBLIC NECESSITY TO ACQUIRE CERTAIN PROPERTY FOR PUBLIC USE BY EMINENT DOMAIN FOR SUCH RIGHTS-OF-WAY (IN FEE SIMPLE), AND RELATED IMPROVEMENTS FOR THE CONSTRUCTION, EXPANSION, ACCESS, REPAIR, MAINTENANCE AND REPLACEMENT OF EUBANKS LANE (FROM HWY 78 TO APPROXIMATELY 1,000 FEET NORTH OF CENTENNIAL DRIVE); AUTHORIZING THE CITY MANAGER OF THE CITY OF WYLIE, TEXAS, TO ESTABLISH PROCEDURES FOR ACQUIRING THE RIGHTS-OF-WAY (IN FEE SIMPLE), AND RELATED IMPROVEMENTS FOR THE CONSTRUCTION, EXPANSION, ACCESS, REPAIR, MAINTENANCE AND REPLACEMENT OF EUBANKS LANE (FROM HWY 78 TO APPROXIMATELY 1,000 FEET NORTH OF CENTENNIAL DRIVE), OFFERING TO ACQUIRE SAID PROPERTY RIGHT, VOLUNTARILY, FROM THE LANDOWNERS THROUGH THE MAKING OF BONA FIDE OFFERS INCLUDING MAKING INITIAL AND FINAL OFFERS; AUTHORIZING THE CITY ATTORNEY TO FILE PROCEEDINGS IN EMINENT DOMAIN TO CONDEMN THE NEEDED REAL PROPERTY FOR PUBLIC USE, IF NEEDED; APPROPRIATING FUNDS; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Wylie, Texas (“City Council”) has investigated and determined that there is a public necessity for the health, safety, and welfare of the City of Wylie, Texas (“Wylie”) and the public at large to acquire, by eminent domain, if necessary, certain parcels of real property for rights-of-way (in fee simple) and related improvements (collectively, “ROW”) on the real property described and depicted in Exhibit A, attached hereto and incorporated herein for all purposes (collectively, the “Property”); and

WHEREAS, it is the intent of Wylie to acquire the necessary the Property for the purpose of the construction, expansion, access, repair, maintenance and replacement of and/or improvements to public facilities to Eubanks Lane (from Hwy 78 to approximately 1,000 feet north of Centennial Drive) (collectively, the “Project”); and

WHEREAS, the City Council finds that the descriptions of the Property to be acquired by eminent domain for the Project, which are attached hereto in Exhibit A, comply with Chapter 2206 of the Texas Government Code, as amended (“Chapter 2206”), in that the same provides the owner of the Property reasonable notice that the owner’s Property may be subject to condemnation proceedings during the planning or construction of the Project; and

WHEREAS, the City Council has further investigated and determined that the Project is a public use and is a public necessity for the health, safety, and welfare of Wylie; and

WHEREAS, it is necessary to establish procedures for determining the establishment and approval of just compensation for Property to be acquired by eminent domain for the Project; and

WHEREAS, there may be improvements located on some of the Property acquired for the Project and such improvements may be required to be moved prior to the beginning of the Project; and

WHEREAS, the City Manager, or his designee ("City Manager"), is required to make bona fide offers, as defined by and in compliance with the Texas Property Code ("Bona Fide Offer") to acquire the Property for public use, voluntarily, from the subject landowner before moving forward with acquisition by eminent domain; and

WHEREAS, the City Council has investigated and determined that the passage of this Resolution complies with Chapter 2206 and other applicable laws.

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

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Resolution as if fully set forth herein.

SECTION 2: Acquisition of Property. The City Council hereby determines that there is a public necessity for, and the public welfare and convenience will be served by, the acquisition, by eminent domain of the Property, and it is Wylie's intent to acquire the Property for public use as more generally depicted on each Exhibit A, attached hereto, specifically for the purpose of, among other things, the construction, expansion, access, repair, maintenance and replacement of and/or improvements of the Project.

SECTION 3: Authority of City Manager/Bona Fide Offer. The City Manager is hereby authorized to contract, on behalf of the City Council, with professional appraisers for appraisal services and with attorneys for preparation of title opinions needed by Wylie from time to time in connection with the acquisition of the Property for the purpose of, among other things, the construction, access, repair, maintenance and replacement of and/or improvements to the Project. The City Council hereby ratifies any contracts entered into, prior to the effective date of this Resolution, by the City Manager with professional appraisers for appraisal services and with attorneys for preparation of title opinions needed for the acquisition of the Property. To this end, the City Manager shall first make Bona Fide Offers to acquire the Property from the subject landowner voluntarily. Should one or more of the landowners fail to respond and/or voluntarily in respond to said Bona Fide Offers that results in Wylie acquiring the Property, the City Manager is authorized to move forward with acquiring the Property by eminent domain.

SECTION 4: Determination of Just Compensation. The City Manager is hereby authorized and directed to examine and rely on the independent appraisal reports and other information to make a determination as to the establishment and approval of a fair market value offer and the just compensation for the Property for the purpose of making the Bona Fide Offers. After such consideration, the City Manager shall establish and approve the amount determined to be just compensation for acquisition the Property and shall have the authority to execute any and all documents necessary to complete the acquisition of same.

SECTION 5: Authority to Make an Offer. Upon establishment and approval by the City Manager of the amount of just compensation for the acquisition of the Property, the City Manager is authorized to send a written Bona Fide Offer to the each landowner to acquire the Property at the full amount determined and established to be just compensation therefore, and to negotiate with each landowner on behalf of Wylie to acquire the Property voluntarily.

SECTION 6: Authority to Execute Documents. The City Manager is hereby authorized to execute all documents necessary to acquire the Property needed for the Project, on behalf of Wylie, whether by purchase or eminent domain. The City Council hereby ratifies any documents executed, prior to the effective date of this Resolution, by the City Manager or his designee which were necessary for the acquisition of the Property for the Project.

SECTION 7: Disposal of Improvements. The City Manager is hereby authorized to sell such surplus improvements, if any, located on the Property acquired in connection with the Project, should they interfere with the intended use and enjoyment of the Property.

SECTION 8: Eminent Domain Authorized. Should the City Manager be unable to acquire the Property voluntarily from the landowner, through the making of the Bona Fide Offers, the City Manager is authorized to direct the law firm of Abernathy, Roeder, Boyd & Hullett, P.C., to commence eminent domain proceedings for the acquisition of the Property for the Project.

SECTION 9: Source of Funds. The amount to be paid, if any, for acquiring the Property for the Project will be appropriated from any lawful source.

SECTION 10: Savings/Repealing. All provisions of any resolution in conflict with this Resolution are hereby repealed to the extent they are in conflict. Any remaining portion of conflicting resolutions shall remain in full force and effect.

SECTION 11: Severability. Should any section, subsection, sentence, clause or phrase of this Resolution be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Resolution shall remain in full force and effect. The City Council hereby declares that it would have passed this Resolution, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional or invalid.

SECTION 12: Effective Date. This Resolution shall take effect immediately from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF WYLIE, TEXAS, on this 12th day of October, 2021.

Matthew Porter, Mayor

ATTEST:

Stephanie Storm, City Secretary

Dates of Publication: October 20, 2021 *in The Wylie News*

Exhibit A

**EXHIBIT A
PARCEL NO. 2
RIGHT OF WAY DEDICATION
1,482 SQ. FT. (0.0340 ACRES)**

BEING a 1,482 square foot (0.0340 acre) tract of land situated in the Francisco De La Pina Survey, Abstract No. 688, City of Wylie, Collin County, Texas, and being part of that 0.133 acre tract of land described in Special Warranty Deed to Mike Bunting, as recorded in Instrument Number 20121029001374960 of the Official Public Records of Collin County, Texas (O.P.R.C.C.T.), and being more particularly described as follows:

BEGINNING at a set crow's foot in concrete for the northeast corner of said 0.133 acre tract, being the southeast corner of a 1.50 acre tract of land described in Warranty Deed to Charles A. Bunting and Margaret P. Bunting, as recorded in Instrument Number 93-0059736, O.P.R.C.C.T., and being in the center of Eubanks Lane (County Road 389, a variable width right-of-way);

THENCE South 00 degrees 30 minutes 31 seconds West, with the east line of said 0.133 acre tract and the center of Eubanks Lane, a distance of 45.60 feet to a set magnail with a washer stamped "HALFF" for the southeast corner of said 0.133 acre tract, said point being the northeast corner of a variable width right-of-way, as dedicated by the McKee Addition, Block A, Lot 1, an addition to the City of Wylie, as recorded in Volume 2009, Page 449, O.P.R.C.C.T.;

THENCE North 89 degrees 46 minutes 22 seconds West, departing said center of Eubanks Lane and along the common south line of said 0.133 acre tract and north line of said right-of-way dedication, a distance of 32.50 feet to a found 1/2-inch iron rod with plastic cap stamped "RPLS 5686" at the northeast corner of said Lot 1, Block A of the McKee Addition;

THENCE North 00 degrees 30 minutes 31 seconds East, departing said common line and over and across said 0.133 acre tract, a distance of 45.60 feet to a set 1/2-inch iron rod with a yellow plastic cap stamped "HALFF" on the common north line of said 0.133 acre tract and south line of said 1.50 acre tract;

THENCE South 89 degrees 46 minutes 22 seconds East, along said common line, a distance of 32.50 feet to the POINT OF BEGINNING AND CONTAINING 1,482 square feet or 0.0340 acres of land, more or less.

The Basis of Bearing is the Texas Coordinate System of 1983, North Central Zone (4202), based on ties to City of Wylie Monuments CM 1, CM 2, CM 3, CM 4 and CM 5.

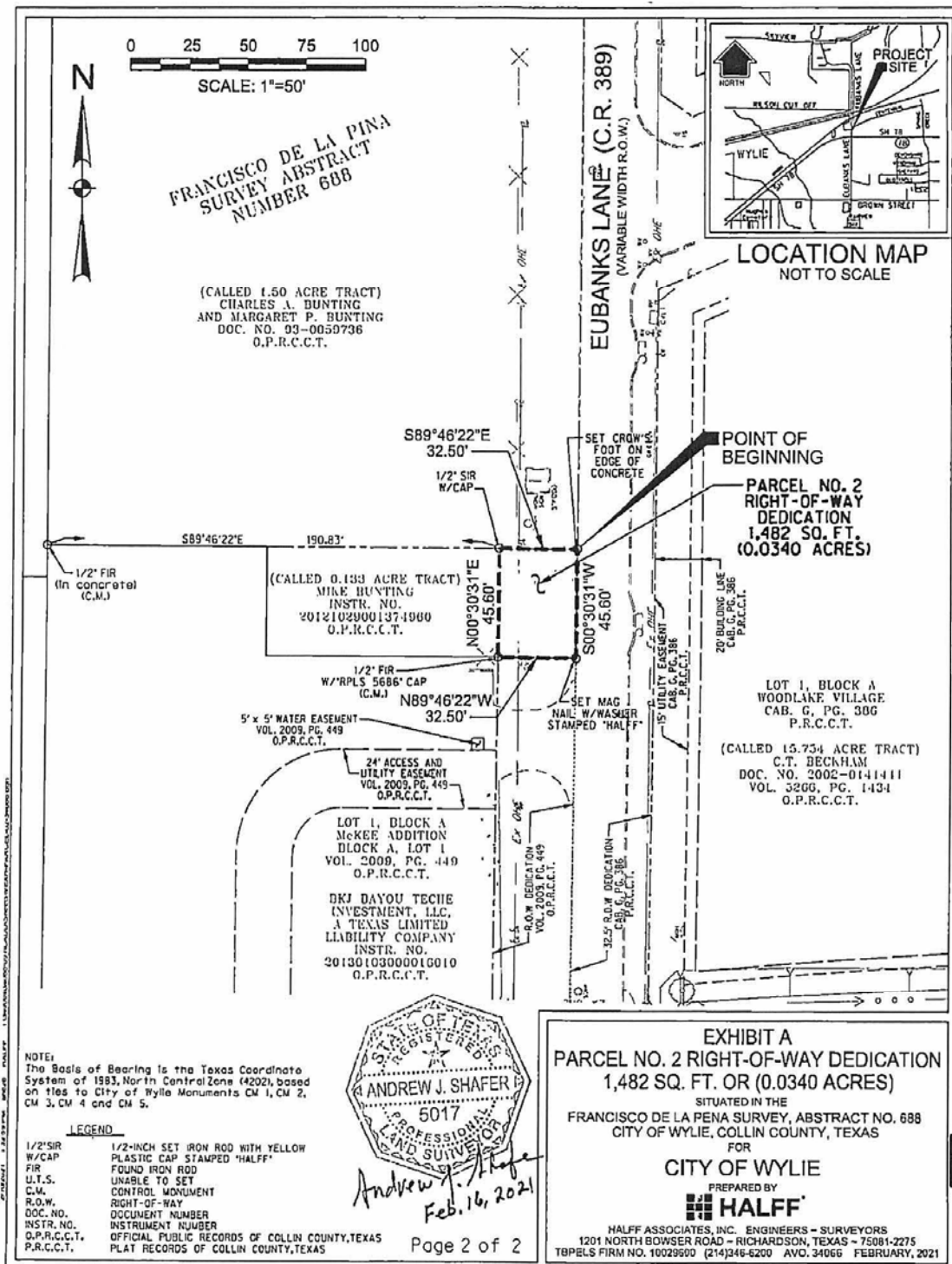
I, Andrew J. Shafer, a Registered Professional Land Surveyor, hereby certify that the legal description hereon and the accompanying plat of even date represent an actual survey made on the ground under my supervision.

Andrew J. Shafer Feb. 16, 2021
Andrew J. Shafer
Registered Professional Land Surveyor
Texas No. 5017
TBPELS Firm No. 10029600



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**EXHIBIT A
PARCEL NO. 3
RIGHT OF WAY DEDICATION
10,721 SQ. FT. (0.2461 ACRES)**

BEING a 10,721 square foot (0.2461 acre) tract of land situated in the Francisco De La Pina Survey, Abstract No. 688, City of Wylie, Collin County, Texas, and being part of that 1.50 acre tract of land described in Warranty Deed to Charles A. Bunting and Margaret P. Bunting, as recorded in Instrument Number 93-0059736, of the Official Public Records of Collin County, Texas (O.P.R.C.C.T.), and being more particularly described as follows:

BEGINNING at a set crow's foot in concrete for the southeast corner of said 1.50 acre tract, a point in the center of Eubanks Lane (County Road 389, a variable width right-of-way), said point also being the northeast corner of a 0.133 acre tract of land described in Special Warranty Deed to Mike Bunting, as recorded in Instrument Number 20121029001374960 (O.P.R.C.C.T.), also being on the west line of a 32.5 foot wide right-of-way dedicated by the Plat of Woodlake Village, an Addition to the City of Wylie, Texas, as recorded in Cabinet G, Page 386, Map Records of Collin County, Texas;

THENCE North 89 degrees 46 minutes 22 seconds West, departing said center of Eubanks Lane and along the common south line of said 1.50 acre tract and north line of said 0.133 acre tract, a distance of 32.50 feet to a set 1/2-inch iron rod with a yellow plastic cap stamped "HALFF" (hereafter referred to as "with HALFF cap") for corner;

THENCE departing said common line, and over and across said 1.50 acre tract the following calls:

North 00 degrees 30 minutes 31 seconds East, a distance of 134.87 feet to a set 1/2-inch iron rod with HALFF cap for the beginning of a tangent circular curve to the right having a radius of 892.50 feet and whose chord bears North 1 degree 26 minutes 35 seconds East, a distance of 29.11 feet;

Northerly, along said curve, through a central angle of 1 degree 52 minutes 07 seconds, for an arc distance of 29.11 feet to a set 1/2-inch iron rod with HALFF cap for the point of tangency;

North 02 degrees 22 minutes 38 seconds East, a distance of 63.95 feet to a set 1/2-inch iron rod with HALFF cap for the beginning of a tangent circular curve to the left having a radius of 827.50 feet and whose chord bears North 1 degree 26 minutes 35 seconds East, a distance of 26.99 feet;

Northerly, along said curve, through a central angle of 1 degree 52 minutes 07 seconds, for an arc distance of 26.99 feet to a set 1/2-inch iron rod with HALFF cap for the point of tangency;

North 00 degrees 30 minutes 31 seconds East, a distance of 20.61 feet to a set 1/2-inch iron rod with HALFF cap for corner;

**EXHIBIT A
PARCEL NO. 3
RIGHT OF WAY DEDICATION
10,721 SQ. FT. (0.2461 ACRES)**

South 89 degrees 29 minutes 29 seconds East, a distance of 2.60 feet to a set 1/2-inch iron rod with HALFF cap for corner;

North 00 degrees 19 minutes 26 seconds East, a distance of 30.27 feet to a set 1/2-inch iron rod with HALFF cap for corner;

North 00 degrees 13 minutes 22 seconds West, a distance of 22.02 feet to a set 1/2-inch iron rod with HALFF cap for corner;

North 02 degrees 50 minutes 52 seconds East, a distance of 15.25 feet to a point (unable to set) on the common north line of said 1.50 acre tract and south line of a 100-foot wide Kansas City Southern Railroad Company right-of-way, described in Deed without Warranty, as recorded in Instrument Number 94-0096329, O.P.R.C.C.T., said point being on a non-tangent circular curve to the right having a radius of 5,679.58 feet and whose chord bears North 62 degrees 49 minutes 57 seconds East, a distance of 30.10 feet;

THENCE Northeasterly, along said common line and said curve, through a central angle of 00 degrees 18 minutes 13 seconds, for an arc distance of 30.10 feet to a set magnail with a washer stamped "HALFF" for the northeast corner of said 1.50 acre tract, being the northwest corner of said 32.5 foot wide right-of-way dedicated by the Woodlake Village addition, and in the center of Eubanks Lane;

THENCE South 00 degrees 30 minutes 31 seconds West, departing said south line and along the common east line of said 1.50 acre tract and west line of said 32.5 foot wide right-of-way dedication, a distance of 356.82 feet to the POINT OF BEGINNING AND CONTAINING 10,721 square feet or 0.2461 acres of land, more or less.

The Basis of Bearing is the Texas Coordinate System of 1983, North Central Zone (4202), based on ties to City of Wylie Monuments CM 1, CM 2, CM 3, CM 4 and CM 5.

I, Andrew J. Shafer, a Registered Professional Land Surveyor, hereby certify that the legal description hereon and the accompanying plat of even date represent an actual survey made on the ground under my supervision.


Andrew J. Shafer
Registered Professional Land Surveyor
Texas No. 5017
TBPELS Firm No. 10029600



