

**ORDINANCE NO. 2016 - \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF DENTON DETERMINING THE PUBLIC USE AND NECESSITY FOR THE ACQUISITION OF FEE SIMPLE TITLE TO THE SURFACE ESTATE AND RELATED REAL PROPERTY INTERESTS AS FURTHER DEFINED HEREIN, INCLUDING A WAIVER OF SURFACE USE TO THE MINERAL ESTATE, OF A 117.145 ACRES, WHICH CONSISTS OF TWO SEPARATE TRACTS, MORE PARTICULARLY DESCRIBED IN THE ATTACHED EXHIBIT "A" ("PROPERTY INTERESTS"), WITH TRACT ONE (113.417 ACRES) BEING GENERALLY LOCATED SOUTH OF JIM CHRISTAL ROAD, BETWEEN THE 9000 AND 9300 BLOCKS, AND SITUATED IN THE GIBSON MYERS SURVEY, ABSTRACT 843, AND THE MOSE H. DAVIS SURVEY, ABSTRACT NO. 377, AND TRACT TWO (3.728 ACRES) BEING GENERALLY LOCATED SOUTH OF THE 9300 BLOCK OF JIM CHRISTAL ROAD, SITUATED IN THE JOHNSON, GREEN, MYERS AND BRUMMETT SURVEY, ABSTRACT NO. 1699, AND THE MOSES H. DAVIS SURVEY, ABSTRACT NO. 377, BOTH TRACTS BEING IN THE CITY OF DENTON, DENTON COUNTY, TEXAS; AUTHORIZING THE CITY MANAGER, OR HIS RESPECTIVE DESIGNEE, TO ACQUIRE THE PROPERTY INTERESTS BY AGREEMENT INCLUDING MAKING INITIAL AND FINAL OFFERS TO OWNER(S) OF THE PROPERTY INTERESTS; AUTHORIZING THE USE OF THE POWER OF EMINENT DOMAIN TO CONDEMN THE PROPERTY INTERESTS IF AN AGREEMENT CANNOT BE REACHED WITH THE OWNER(S); AUTHORIZING THE CITY ATTORNEY, OR HER DESIGNEE, TO FILE EMINENT DOMAIN PROCEEDINGS IF NECESSARY; AUTHORIZING THE EXPENDITURE OF FUNDING; MAKINGS FINDINGS; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE. (Renewable Denton Plan)**

**WHEREAS**, the City Council of the City of Denton ("City Council") after consideration of this matter, has determined that a public use and necessity exists for, and that the public welfare and convenience requires, the acquisition of the Property Interests by the City of Denton, Texas ("City"). The City Council finds that the acquisition of the Property Interests is a valid public use necessary to provide the location for the Denton Energy Center component of the City's Renewable Denton Plan approved by resolution of the City Council on June 21, 2016;

**WHEREAS**, the City is required to make an initial offer as defined by, and in compliance with, Texas Property Code §21.0111 ("Initial Offer"), and a bona fide offer, as defined by, and in compliance with, Texas Property Code §21.0113 ("Final Offer") to acquire the Property Interests for public use, voluntarily, from the owner(s) before beginning the acquisition of the Property Interests by eminent domain; and

**WHEREAS**, the City Council deems it necessary to authorize the City Attorney to initiate condemnation proceedings in order to acquire the Property Interests if an agreement cannot be reached with the owner(s) for the purchase of the Property Interests; **NOW, THEREFORE**,

## **THE COUNCIL OF THE CITY OF DENTON ORDAINS:**

**Section I.** The City Council ratifies, confirms and adopts the finding and recitals contained in the preamble to this Ordinance and further finds that the recitals made in the Preamble of this Ordinance are true and correct, and incorporates such recitals into the body of this Ordinance as if copied in their entirety.

**Section II.** For the reasons and purposes set forth above, the City Council authorizes acquisition of fee simple title to the real property more particularly described in the attached Exhibit "A", together with all necessary appurtenances, additions and improvements on, over, under, and through the same real property and including a waiver of surface use to the mineral estate (all being referred to in this Ordinance as "Property Interests").

**Section III.** The City Council approves and authorizes the use of eminent domain to acquire the Property Interests for the location of the Denton Energy Center component of the City's Renewable Denton Plan approved by resolution of the City Council on June 21, 2016.

**Section IV.** The City Council authorizes the City Manager, or his designee, to negotiate for and to acquire the Property Interests from the owner(s) for the City, and to acquire the Property Interests in compliance with State and any other applicable law. Specifically, the City Manager, or his designee, in accordance with State and any other applicable law, is directed and authorized to (a) make an Initial Offer to the owner(s) of the Property Interests in the amount of \$2,928,625.00 as just compensation for the Property Interests, with said amount being based on an amount determined by an independent fee appraisal obtained by the City; (b) if the Initial Offer is not accepted, make a Final Offer to the owner(s) of the Property Interests in the amount of \$2,928,625.00 as just compensation for the Property Interests; and, (c) if the Final Offer is not accepted, to direct the City Attorney, or her designee, to file, or cause to be filed, against the owner(s) and interested parties of the Property Interests, proceedings in eminent domain to acquire the Property Interests.

**Section V.** The City Council approves and authorizes, without further authorization from City Council, (a) the City Attorney, or her designee, to take any and all actions required to retain additional counsel to prosecute the proceedings in eminent domain to acquire the Property Interests; and (b) the payment, after approval by the City Attorney, or her designee, of all the attorney fees and costs associated with the prosecution of the proceedings in eminent domain to acquire the Property Interests.

**Section VI.** The City Council approves and authorizes, without further authorization from City Council, the payment, after approval by the City Attorney, of all the costs associated with the acquisition of the Property Interests, including but not limited to the costs of purchases or, if necessary, eminent domain proceedings, relocation assistance expenses, appraisal fees, title policies/services, recording fees, court costs and expert witness fees.

**Section VII.** If any section, article, paragraph, sentence, phrase, clause or word in this ordinance, or application thereof to any persons or circumstances, is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of

the remaining portions of this ordinance; the City Council declares that it would have ordained such remaining portion despite such invalidity, and such remaining portion shall remain in full force and effect.

**Section VIII.** This Ordinance shall become effective immediately upon its passage.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
CHRIS WATTS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

BY:  \_\_\_\_\_

**EXHIBIT A**  
**Legal Descriptions**

## **TRACT 1**

**BEING** a 113.417 acre tract of land situated in the Gibson Myers Survey, Abstract No. 843 and the Moses H. Davis Survey, Abstract No. 377, City of Denton, Denton County, Texas, and being a part of a called 691.64 acre tract of land described in a Deed to Eagle Farms, Inc. and John Porter Auto Sales, Inc., as recorded in Document No. 93-077959 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

**COMMENCING** at a point for corner in the North line of the above cited 691.64 acre tract, said point being the Northeast corner of a called 5.700 acre tract of land described in a Deed to Everett Newland, as recorded in Document No. 2012-19340 of the Official Records of Denton County, Texas, said point also being in the center of Jim Christal Road, a variable width prescriptive right-of-way;

**THENCE** South 00°42'44" West along the East line of said 5.700 acre tract, departing the North line of said 691.64 acre tract and said Jim Christal Road, passing at a distance of 24.00 feet a 1/2 inch iron rod with cap stamped "RPLS 4857" found for reference, and continuing along the East line of said 5.700 acre tract, for a total distance of 1170.56 feet to a 5/8 inch iron rod with cap stamped "TNP" set for the **POINT OF BEGINNING**;

**THENCE** South 89°50'49" East departing the East line of said 5.700 acre tract, for a distance of 2332.15 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner in the East line of a called 10 acre tract of land described in a Deed to Eagle Farms, Inc. and John Porter Auto Sales, Inc., as recorded in Document No. 95-034499 of the Real Property Records of Denton County, Texas, from which the Northeast corner of said 10 acre tract bears North 00°20'51" West a distance of 1107.34 feet;

**THENCE** South 00°00'56" West along the East line of said 10 acre tract, for a distance of 550.10 feet to a 5/8 inch iron rod with cap stamped "TNP" set for the corner, said point being the Southeast corner of said 10 acre tract;

**THENCE** South 00°26'57" East for a distance of 1342.98 feet to a 1/2 inch iron rod with cap stamped "Vannoy 563-7101" found for an interior ell corner of said 691.64 acre tract and the most Northerly Northeast corner of a called 116.088 acre tract of land described in a Deed to Nucon Steel Commercial Corporation, as recorded in Volume 5255, Page 5740 of the Real Property Records of Denton County, Texas;

**THENCE** North 89°50'49" West (*South 89°28'15" West – Deed*) along the South line of said 691.64 acre tract and the North line of said 116.088 acre tract, for a distance of 2358.32 feet (*2359.2' – Deed*) to a 1/2 inch iron rod found for corner at an interior Southwest corner of said 691.64 acre tract and the Northwest corner of said 116.088 acre tract, said point also being in the East line of a called 152 acre tract of land described in a Deed to Walter B. (Bud) Wolf, as recorded in Volume 533, Page 541 of the Deed Records of Denton County, Texas;

**THENCE** North 00°26'46" East (*North 00°05'54" West – Deed*) along an interior West line of said 691.64 acre tract and the East line of said 152 acre tract, for a distance of 599.88 feet (*600.48' – Deed*) to a 1/2 inch iron rod with cap stamped "Vannoy 563-7101" found for corner at an interior ell corner of said 691.64 acre tract and the Northeast corner of said 152 acre tract;

**THENCE** North 89°19'25" West (*West – Deed*) along the South line of said 691.64 acre tract and the North line of said 152 acre tract, passing a 5/8 inch iron rod with cap stamped "TNP" set for reference at a distance of 783.81 feet, and continuing along said line for a total distance of 845.95 feet to a point for corner in the center of Hickory Creek, said point being the Southeast corner of a called 10.036 acre tract of land described in a Deed to Charles L. Gregory and wife, Mary R. Gregory, as recorded in Document No. 94-038707 of the Real Property Records of Denton County, Texas, from which a 1/2 inch iron rod found for the Southwest corner of said 10.036 acre tract bears North 89°19'25" West a distance of 806.13 feet;

**THENCE** North 42°03'00" East departing the South line of said 691.64 acre tract, and along the center of said Hickory Creek, for a distance of 253.13 feet to a point for corner, from which a 5/8 inch iron rod with cap stamped "TNP" set for reference bears South 47°57'34" East a distance of 62.00 feet;

**THENCE** North 27°10'39" East continuing along the center of said Hickory Creek, for a distance of 658.88 feet to a point for corner in the South line of a called 18.000 acre tract of land described in a Deed to Everett Newland and wife, Jennifer Newland, as recorded in Document No. 2008-58941 of the Official Records of Denton County, Texas;

**THENCE** South 79°38'43" East departing said Hickory Creek, and along the South line of said 18.000 acre tract, passing a 5/8 inch iron rod with cap stamped "TNP" set for reference at a distance of 62.00 feet, and continuing along

the South line of said 18.000 acre tract for a total distance of 154.34 feet to a 1/2 inch iron rod found for the Southeast corner of said 18.000 acre tract and the Southwest corner of the above cited 5.700 acre tract;

**THENCE** South 87°40'32" East along the South line of said 5.700 acre tract, for a distance of 128.07 feet to a 1/2 inch iron rod with cap stamped "RPLS 4857" found for the Southeast corner of said 5.700 acre tract;

**THENCE** North 00°42'44" East along the East line of said 5.700 acre tract, for a distance of 542.26 feet to the **POINT OF BEGINNING**, and containing 113.417 acres of land, more or less.

## **TRACT 2**

**BEING** a 3.728 acre tract of land situated in the Johnson, Green, Myers and Brummett Survey, Abstract No. 1699 and the Moses H. Davis Survey, Abstract No. 377, City of Denton, Denton County, Texas, and being a part of a called 691.64 acre tract of land described in a Deed to Eagle Farms, Inc. and John Porter Auto Sales, Inc., as recorded in Document No. 93-077959 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

**COMMENCING** at a point for corner in the North line of the above cited 691.64 acre tract, said point being the Northeast corner of a called 5.700 acre tract of land described in a Deed to Everette Newland, as recorded in Document No. 2012-19340 of the Official Records of Denton County, Texas, said point also being in the center of Jim Christal Road, a variable width prescriptive right-of-way;

**THENCE** North 89°21'52" East along the North line of said 691.64 acre tract, and along said Jim Christal Road, for a distance of 582.91 feet to the **POINT OF BEGINNING** for the herein described tract;

**THENCE** North 89°21'52" East along the North line of said 691.64 acre tract, and along said Jim Christal Road, for a distance of 180.00 feet to a point for corner, from which a PK nail set for an angle point in the North line of said 691.64 acre tract bears North 89°21'52" East a distance of 482.75 feet;

**THENCE** South 00°36'20" East, departing the North line of said 691.64 acre tract and said Jim Christal Road, passing a 1/2 inch iron rod with cap stamped "ARTHUR" found for the Northwest corner of a called 1.069 acre tract of land conveyed to the City of Denton per Deed recorded in Document No. 2007-108566 of the Real Property Records of Denton County, Texas, at a distance of 23.65 feet, and continuing along the West line of said 1.069 acre tract, passing a 1/2 inch iron rod with cap stamped "ARTHUR" found for the Southwest corner of said 1.069 acre tract at a distance of 372.37 feet, and continuing for a total distance of 441.54 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner;

**THENCE** South 19°12'37" West for a distance of 782.39 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner;

**THENCE** North 89°50'49" West for a distance of 100.51 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner;

**THENCE** North 19°12'37" East for a distance of 547.88 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner;

**THENCE** North 00°36'20" West, passing a 5/8 inch iron rod with cap stamped "TNP" set for reference in the South line of said Jim Christal Road at a distance of 637.24 feet, and continuing for a total distance of 660.74 feet to the **POINT OF BEGINNING**, and containing 3.728 acres of land, more or less.