

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON DETERMINING THE PUBLIC USE, NEED, AND NECESSITY FOR THE ACQUISITION OF A PUBLIC WATER LINE EASEMENT ENCUMBERING A 0.148 ACRE TRACT OF REAL PROPERTY, AS MORE PARTICULARLY DESCRIBED IN EXHIBIT "A" AND DEPICTED IN EXHIBIT "B", BOTH ATTACHED HERETO AND MADE A PART HEREOF (THE "PROPERTY INTERESTS"), BEING GENERALLY LOCATED ALONG THE 3000 BLOCK OF SOUTH INTERSTATE HIGHWAY 35 EAST AND SITUATED IN THE D. LOMBARD SURVEY, ABSTRACT NO. 784, CITY AND COUNTY OF DENTON, TEXAS; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY, OR THEIR RESPECTIVE DESIGNEES, TO ACQUIRE THE PROPERTY INTERESTS BY AGREEMENT INCLUDING MAKING ALL OFFERS REQUIRED BY LAW; AUTHORIZING THE USE OF THE POWER OF EMINENT DOMAIN TO CONDEMN THE PROPERTY INTERESTS IF AN AGREEMENT CANNOT BE REACHED; AND AUTHORIZING THE CITY ATTORNEY, OR HIS DESIGNEE, TO FILE EMINENT DOMAIN PROCEEDINGS IF NECESSARY; AUTHORIZING THE EXPENDITURE OF FUNDING; MAKINGS FINDINGS; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE. (TxDOT I-35 E Grade Separation Project - water utility relocation component)

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 installation and relocation of municipal water utilities relating to the Texas Department of Transportation's I-35 East Grade Separation Project - water utility relocation component project to serve the public and citizens of the City; and

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 subject landowner before beginning the acquisition of the Property Interests by eminent domain; and

WHEREAS, an independent professional appraisal report of the Property Interests will be submitted to the City as required by Chapter 21 of the Texas Property Code, and the City Manager or his designee will establish a certain amount determined to be just compensation for the subject water line easement based on the appraisal and fair market value of the water line easement and any applicable fees necessary to acquire the subject water line easement which compose the Property Interests; 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 subject landowner for the purchase of the Property Interests. **NOW, THEREFORE,**

THE COUNCIL OF THE CITY OF DENTON ORDAINS:

Section 1. The City Council 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 2. The City Council authorizes acquisition of the Property Interests, as more particularly described Exhibit "A" and depicted in Exhibit "B", both of which are attached hereto and incorporated herein, for the reasons and purposes set forth above together with all necessary water line related appurtenances, additions and improvements on, over, under, and through the Property Interests.

Section 3. The City Council authorizes the City Attorney, or his designee, to negotiate for and to acquire the required property rights in the Property Interests for the City, and to acquire these rights in compliance with State and any other applicable law. The City Attorney, or designee, is specifically authorized and directed to do each and every act necessary to acquire the needed property rights in the Property Interests including, but not limited to, the authority to negotiate, give notices, make written offers to purchase, prepare contracts and conveyance documents, to retain and designate a qualified appraiser of the Property Interests to be acquired and any other experts or consultants that he deems necessary for the acquisition process, to retain qualified outside litigation counsel as needed, and, if necessary, to institute and conduct all parts of the proceedings in eminent domain in accordance with the laws and procedures of the State.

Section 4. The City Manager, or his designee, is appointed as negotiator for the acquisition of the needed Property Interests and, as such, the City Manager, or designee, is authorized and directed to do each and every act and deed specified or authorized by this Ordinance, subject to the availability of funds appropriated by the City Council for such purpose. The City Manager, or designee, is specifically authorized to establish and make offer(s) of just compensation for the acquisition of the Property Interests to the landowner(s) of the Property Interests in accordance with State and any other applicable law. If an agreement as to damages or compensation cannot be reached then the City Attorney, or designee, is authorized and directed to file or cause to be filed, against the subject landowner and interested parties of the Property Interests, proceedings in eminent domain to acquire the Property Interests.

Section 5. It is the intent of the City Council that this Ordinance authorize the condemnation of all property required for the installation and relocation of the municipal water utilities relating to the Texas Department of Transportation's I-35 East Grade Separation Project - water utility relocation component project for public uses to serve the public and citizens of the City. This project is generally located along the 3000 block of South Interstate Highway 35 East and situated in the D. Lombard Survey, Abstract No. 784, City and County of Denton, Texas.

Section 6. If it is determined that there are scrivener errors in the descriptions contained herein or if later surveys contain more accurate revised descriptions, the City Attorney or his designee is authorized to have such errors corrected or revisions made without the necessity of obtaining a new City Council Ordinance authorizing condemnation of the corrected or revised property.

Section 7. In the event that Special Commissioners appointed by the Court during condemnation proceedings return an award that is the same amount or less than the amount offered by the City for just compensation, the City Attorney is hereby authorized to settle the lawsuit for that amount.

Section 8. Following an award by the Special Commissioners, the City Finance Director is hereby authorized to issue a check from the appropriate fund in an amount not to exceed the Special Commissioners' award payable to the County Clerk of Denton County to be deposited in the registry of the Court to enable the City to take possession of the subject easement without further action of the City Council.

Section 9. 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 10. This Ordinance shall become effective immediately upon its passage.

PASSED AND APPROVED this the _____ day of _____, 2017.

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, INTERIM CITY ATTORNEY


BY:  _____

EXHIBIT A
20' WATERLINE EASEMENT
0.148 ACRES
CITY OF DENTON, DENTON COUNTY, TEXAS

BEING all that certain lot, tract or parcel of land situated in the Daniel Lombard Survey, Abstract Number 784, City of Denton, Denton County, Texas, and being a part of Lot 1, Block A of Action Carpet Addition, an addition to the City of Denton, Denton County, Texas, according to the plat thereof recorded in Cabinet N, Page 355 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a Texas Department of Transportation Monument (TXDOT Mon) found for corner in the northwest line of said Lot 1, Block A, and being in the southeast line of that certain tract of land described by deed to Buc-ee's, Ltd., recorded under Instrument Number 2016-16069 of the Real Property Records of Denton County, and being in the southwest line of Interstate Highway 35E (IH35E), a variable width right-of-way;

THENCE South 50 degrees 52 minutes 51 seconds East, with the southwest line of said IH35E, a distance of 194.06 feet to a PK Nail found in asphalt;

THENCE South 56 degrees 35 minutes 29 seconds East, continuing with the southwest line of said IH35E, a distance of 100.50 feet to a TXDOT Mon. found for corner;

THENCE South 50 degrees 52 minutes 51 seconds East, continuing with the southwest line of said IH35E, a distance of 28.34 feet to a TXDOT Mon. found for corner in the southeast line of said Lot 1, Block A and being in the northwest line of Lot 1, Block 1, Achievers Gymnastic Addition, an addition to the City of Denton, Denton County, Texas, according to the plat thereof recorded in Cabinet R, Page 116 of the Plat Records of Denton County, Texas;

THENCE South 38 degrees 56 minutes 00 seconds West, with the common line of said Lot 1, Block A and said Lot 1, Block 1, a distance of 20.00 feet to a point;

THENCE North 50 degrees 52 minutes 51 seconds West, within said Lot 1, Block A, a distance of 27.41 feet to a point;

THENCE North 56 degrees 35 minutes 29 seconds West, continuing within said Lot 1, Block A, a distance of 100.50 feet to a point;

THENCE North 50 degrees 52 minutes 51 seconds West, continuing within said Lot 1, Block A, a distance of 195.00 feet to a point in the common line of said Lot 1, Block A and said Buc-ee's tract;

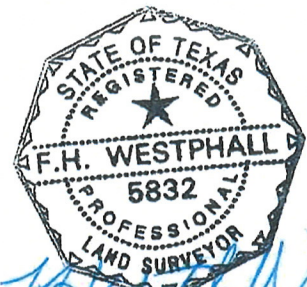
THENCE North 38 degrees 56 minutes 00 seconds East, with the common line of said Lot 1, Block A and said Buc-ee's tract, a distance of 20.00 feet to the **POINT OF BEGINNING**, and containing 0.148 acres of land, more or less, and being subject to any and easements that may affect.



Arthur Surveying Co., Inc.
Professional Land Surveyors

972-221-9439 ~ Fax 972-221-4675
220 Elm Street, Suite 200 ~ P.O. Box 54
Lewisville, Texas 75067 ~ TFRN No. 10063800

Established 1986
www.arthursurveying.com



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S50°52'51"E	28.34'
L2	S38°56'00"W	20.00'
L3	N50°52'51"W	27.41'
L4	N38°56'00"E	20.00'
L5	N38°56'00"E	35.99'
L6	N38°56'00"E	27.03'



SCALE: 1" = 60'

Bearings shown hereon based on Action Carpet Addition, recorded in Cabinet N, Page 355.

NOTES:

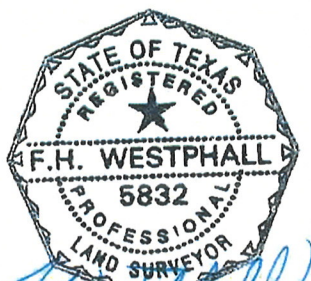
- I.R.F. = 1/2" Iron Rod Found
- I.R.S. = 1/2" Iron Rod Set with yellow cap stamped "Arthur Surveying Company"
- P.O.B. = Point of Beginning

Buc-ee's, Ltd.
Inst. No. 2016-16069
R.P.R.D.C.T.

TXDOT
Mon.-CM
LA L5
P.O.B.

INTESTATE HIGHWAY 35E
(Service Road ~ Variable Width R.O.W.)

Lot 1, Block A
Action Carpet Addition
Cab. N, Pg. 355
P.R.D.C.T.
(remainder)



F.H. Westphall
9-13-16

PK Nail Found
S56°35'29"E 100.50'
N56°35'29"W 100.50'
TXDOT Mon.-CM
I.R.F.
TXDOT Mon.-CM
L3 L2 L1 L6

Lot 1, Block 1
Achievers Gymnastic Addition
Cab. R, Pg. 116
P.R.D.C.T.



(972) 221-9439 Fax: (972) 221-4675
220 Elm Street, Suite 200 ~ P.O. Box 54
Lewisville, Texas 75067 ~ TRFN NO: 10063800
Established ~ 1986
www.arthursurveying.com

EXHIBIT B
20' WATERLINE EASEMENT
0.148 acres out of the
Daniel Lombard Survey, Abstract No. 784
City of Denton, Denton County, Texas