

**ORDINANCE NO. 2017 - \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF DENTON DETERMINING THE PUBLIC USE, NEED, AND NECESSITY FOR THE ACQUISITION OF FEE SIMPLE TITLE TO THE SURFACE ESTATE, INCLUDING A WAIVER OF SURFACE USE TO THE MINERAL ESTATE, OF AN 18.969 ACRE PROPERTY TRACT (“PROPERTY INTERESTS”), SITUATED IN THE DAVID HOUGH SURVEY, ABSTRACT 646, IN THE CITY AND COUNTY OF DENTON, TEXAS, AND MORE PARTICULARLY DESCRIBED IN THE ATTACHED EXHIBIT “A;” AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY, OR THEIR RESPECTIVE DESIGNEES, TO ACQUIRE THE PROPERTY INTERESTS BY AGREEMENT INCLUDING MAKING INITIAL AND FINAL OFFERS; 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. (Mayhill Road Project)**

**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 expansion and improvement of Mayhill Road, a municipal street and roadway located in the City of Denton, Texas, and for flood control and storm water improvements necessitated thereby for the public safety and welfare (collectively, the “Project”), to serve the public and the citizens of the City.

**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(s) 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 Property Interests based on the appraisal and fair market value of the Property Interests and any applicable fees necessary to acquire 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(s) for the purchase of the Property Interests; **NOW, THEREFORE,**

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

**Section I.** 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 II.** The City Council authorizes acquisition of the Property Interests, covering the land more particularly described in the attached Exhibit "A," for the reasons and purposes set forth above together with all necessary appurtenances, additions, and improvements on, over, under, and through the Property Interests.

**Section III.** 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 IV.** 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. 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(s) and interested parties of the Property Interests, proceedings in eminent domain to acquire the Property Interests.

**Section V.** It is the intent of the City Council that this Ordinance authorize the City Manager and City Attorney, or their designees, to perform all steps necessary to obtain the Property Interests necessary for the Project, whether through negotiation or condemnation, including the expenditure of funds.

**Section VI.** 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 VII.** 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 VIII.** 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 property without further action of the City Council.

**Section IX.** 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 VII.** 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, CITY ATTORNEY

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

## EXHIBIT "A"

BEING 19.969 acres of land located in the DAVID HOUGH SURVEY, Abstract No. 646, Denton County, Texas, being the same tract of land as conveyed to Rozella A. Putnam by the deed recorded in Volume 1586, Page 45 of the Deed Records of Denton County, Texas. Said 19.969 acres being more particularly described by metes and bounds as follows.

BEGINNING at a ½ inch iron rod in the centerline of Mayhill Road at the Southeast corner of said Putnam Tract, also being the Northeast corner of a tract of land conveyed to Andrew Corporation, by the deed recorded in Volume 912, Page 797, Deed Records of Denton County, Texas, also being the Southeast corner of said Hough Survey,

THENCE, South 87 degrees 13 minutes 28 seconds West, 774.08 feet along the North line of said Andrew Corporation Tract and the South line of said Hough Survey to a ½ inch iron rod in the Northeast right-of-way line of the M K T Railroad,

THENCE, along said Northeast right-of-way line as follows:

1. North 47 degrees 59 minutes 44 seconds West, 87.69 feet to a ½ inch iron rod,
2. North 50 degrees 49 minutes 23 seconds West, 101.67 feet to a ½ inch iron rod,
3. North 53 degrees 56 minutes 53 seconds West, 101.75 feet to a ½ inch iron rod,
4. North 57 degrees 13 minutes 33 seconds West, 67.68 feet to a ½ inch iron rod at the Southwest corner of aforesaid Putnam Tract, also being the Southeast corner of a tract of land conveyed to Don V. Cunningham and wife, by Deed recorded in Volume 653, Page 146, Deed Records of Denton County, Texas,

THENCE, North 00 degrees 00 minutes 04 seconds East, 641.34 feet to a ½ inch iron rod in the South line of a tract of land conveyed to E. P. Jeske by the deed recorded in Volume 1386, Page 377, Deed Records of Denton County, Texas, also being the Northeast corner of said Cunningham Tract,

THENCE, North 87 degrees 34 minutes 46 seconds East, 1,051.76 feet to a ½ inch iron rod in the center line of aforesaid Mayhill Road, also lying in the West survey line of the G. Walker Survey, Abstract No. 1330,

THENCE, South 01 degrees 36 minutes 49 seconds West, 869.50 feet along said survey line and the East boundary line of said Putnam Tract to the PLACE OF BEGINNING and containing 19.969 of land, more or less, LESS AND EXCEPT that certain 1.0 acre tract of land previously conveyed by Robert P. Donnelly to the City of Denton, Texas by General Warranty Deed on the 22nd day of January, 1998, which deed is recorded at Volume 4015, Page 1156 of the Real Estate Records of Denton County, Texas, leaving 18.969 acres, more or less, remaining in this tract.