

ORDINANCE NO. 2016-_____

AN ORDINANCE OF THE CITY OF KYLE, TEXAS, DECLARING A PUBLIC NECESSITY FOR THE ACQUISITION OF FEE SIMPLE TITLE AND/OR PERMANENT EASEMENT(S) AND/OR TEMPORARY CONSTRUCTION EASEMENT(S) TO ALL OR PORTIONS OF CERTAIN PRIVATELY OWNED REAL PROPERTY FOR THE N. BURLESON STREET AND DRAINAGE IMPROVEMENT PROJECT IN HAYS COUNTY, TEXAS LISTED AS FOLLOWS: **(1) 1.212 ACRES** OR 52,773 SQUARE FEET OF LAND, MORE OR LESS, OUT OF THE Z. HINTON SURVEY, ABSTRACT NO. 220, AND BEING A PORTION OF THAT TRACT DESCRIBED AS 18.5754 ACRES IN A DEED TO JAMES MATTOX , TRUSTEE, OF RECORD IN VOLUME 1361, PAGE 154, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS; **(2) 0.1569 OF ONE ACRE** OR 6,833 SQUARE FEET OF LAND, MORE OR LESS, OUT OF THE Z. HINTON SURVEY, ABSTRACT NO. 220, AND BEING A PORTION OF THAT TRACT DESCRIBED AS 18.5754 ACRES IN A DEED TO JAMES MATTOX, TRUSTEE, OF RECORD IN VOLUME 1361, PAGE 154, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS, and; **(3) 0.0403 OF ONE ACRE** OR 1,757 SQUARE FEET OF LAND, MORE OR LESS, OUT OF THE Z. HINTON SURVEY, ABSTRACT NO. 220, AND BEING A PORTION OF THAT TRACT DESCRIBED AS 18.5754 ACRES IN A DEED TO JAMES A. MATTOX, TRUSTEE, OF RECORD IN VOLUME 1361, PAGE 154, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS; SAVE AND EXCEPT ANY OIL, GAS, OR OTHER MINERALS IN, ON OR UNDER OR PRODUCED FROM SAID PROPERTY, WHICH MAY BE REMOVED FROM BENEATH SAID PROPERTY WITHOUT ANY RIGHT WHATSOEVER REMAINING TO THE OWNER(S) OF SAID OIL, GAS OR OTHER MINERALS OF INGRESS OR EGRESS TO OR FROM THE SURFACE OF SAID PROPERTY FOR THE PURPOSE OF EXPLORING, DEVELOPING, DRILLING, OR MINING OF SAME, AND SAVE AND EXCEPT ANY SUBSURFACE WATER RIGHTS IN AND TO THE PROPERTY TOGETHER WITH ANY AND ALL APPURTENANT WATER RIGHTS WITHOUT ANY RIGHT WHATSOEVER REMAINING TO THE OWNER(S) OF SAID WATER RIGHTS OF INGRESS OR EGRESS TO OR FROM THE SURFACE OF SAID PROPERTY, FOR THE PURPOSE OF EXPLORING, DEVELOPING, DRILLING OR PRODUCTION OF SAME. FOR THE PUBLIC PURPOSE OF CONSTRUCTION, OPERATION, RECONSTRUCTION, IMPROVEMENTS, REPAIR AND MAINTENANCE, OF THE N. BURLESON STREET AND DRAINAGE IMPROVEMENT PROJECT; AUTHORIZING ALL APPROPRIATE ACTION OF THE CITY IN THE INSTITUTION AND PROSECUTION OF CONDEMNATION PROCEEDINGS TO ACQUIRE SUCH PROPERTY THAT CANNOT BE ACQUIRED THROUGH NEGOTIATION; RATIFYING AND AFFIRMING ALL PRIOR ACTS AND PROCEEDINGS DONE OR INITIATED BY ATTORNEYS, AGENTS AND EMPLOYEES OF THE CITY TO ACQUIRE SUCH PROPERTY; AUTHORIZING ALL OTHER LAWFUL ACTION NECESSARY OR INCIDENTAL TO SUCH ACQUISITIONS OR EMINENT DOMAIN PROCEEDINGS TO INVESTIGATE, SURVEY, SPECIFY, DEFINE, APPRAISE, AND SECURE THE NECESSARY FEE SIMPLE TITLES AND/OR

PERMANENT EASEMENT(S) AND/OR TEMPORARY CONSTRUCTION EASEMENT(S) TO SAID PRIVATELY OWNED REAL PROPERTY; AND DECLARING THE SECTIONS OF THE ORDINANCE TO BE SEVERABLE ONE FROM THE OTHER IN THE EVENT ANY SECTION OF THIS ORDINANCE IS DETERMINED TO BE INVALID.

WHEREAS, the City of Kyle has determined that the acquisition of fee simple title and/or permanent easement(s) and/or temporary construction easement(s) to all or portions of certain privately owned real property located in Hays County, Texas, SAVE AND EXCEPT ANY OIL, GAS OR OTHER MINERALS IN, ON OR UNDER OR PRODUCED FROM SAID PROPERTY, WHICH MAY BE REMOVED FROM BENEATH SAID PROPERTY WITHOUT ANY RIGHT WHATSOEVER REMAINING TO THE OWNER(S) OF SAID OIL, GAS OR MINERALS OF INGRESS OR EGRESS TO OR FROM THE SURFACE OF SAID PROPERTY FOR THE PURPOSE OF EXPLORING, DEVELOPING, DRILLING, OR PRODUCTION OF SAME, AND SAVE AND EXCEPT ANY SUBSURFACE WATER RIGHTS IN AND TO THE PROPERTY TOGETHER WITH ANY AND ALL APPURTENANT WATER RIGHTS, WITHOUT ANY RIGHT WHATSOEVER REMAINING TO THE OWNER(S) OF SAID WATER RIGHTS OF INGRESS OR EGRESS TO OR FROM THE SURFACE OF SAID PROPERTY, FOR THE PURPOSE OF EXPLORING, DEVELOPING, DRILLING OR PRODUCTION OF SAME, is necessary and desirable for the construction, operation, reconstruction, improvement, repair and maintenance, of the Burleson Road Street and Drainage Improvement Project, along the route shown by Project Drawing marked "Exhibit A" and made a part hereof, for the City of Kyle, and has previously budgeted funds to be expended for these purposes, an adequate part of which remains on hand for such purposes; and

WHEREAS, employees, agents and attorneys acting for the City of Kyle, are in the process of investigating, surveying, defining and negotiating for the acquisition of such privately owned real property as may be needed on behalf of the City; and

WHEREAS, in connection with the acquisition of such privately owned real property, it may be necessary for the City to enter upon the property to investigate, survey and appraise the needed property interests so that they may be defined and described with specificity for inclusion in any sales agreement or, if necessary, as part of any filings to institute proceedings in eminent domain to acquire the necessary property rights.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS:

SECTION 1. Public necessity requires that the City of Kyle acquire fee simple title and/or permanent easement(s) and/or temporary construction easement(s) to all or portions of certain privately owned real property either through purchase or by the process of eminent domain, for the public purpose of the construction, operation, reconstruction, improvements, repair and

maintenance, of the N. Burleson Street and Drainage Improvement Project along the route shown by Project Drawing marked “**Exhibit A**” and made a part hereof. The public purpose to be served by the Project is paramount to any conservation easements that may be encountered along the route. Public necessity also requires the City of Kyle to take all other lawful action necessary or incidental to such acquisitions or eminent domain proceedings to investigate, survey, specify, define, appraise and secure the necessary fee simple titles and/or permanent easement(s) and/or temporary construction easement(s) to the privately owned real property described in Section 2.

SECTION 2. The property which are the subject of Section 1 for which fee simple titles and/or permanent easement(s) and/or temporary construction easement(s) are required for the construction, operation, reconstruction, improvements, repair and maintenance, of the N. Burleson Street and Drainage Improvement Project, is described in “**Exhibit B**”, which is attached to and made a part of this Ordinance for all purposes, SAVE AND EXCEPT ANY OIL, GAS OR OTHER MINERALS IN, ON OR UNDER OR PRODUCED FROM SAID PROPERTY, WHICH MAY BE REMOVED FROM BENEATH SAID PROPERTY WITHOUT ANY RIGHT WHATSOEVER REMAINING TO THE OWNER(S) OF SAID OIL, GAS OR MINERALS OF INGRESS OR EGRESS TO OR FROM THE SURFACE OF SAID PROPERTY FOR THE PURPOSE OF EXPLORING, DEVELOPING, DRILLING, OR PRODUCTION OF SAME, AND SAVE AND EXCEPT ANY SUBSURFACE WATER RIGHTS IN AND TO THE PROPERTY TOGETHER WITH ANY AND ALL APPURTENANT WATER RIGHTS, WITHOUT ANY RIGHT WHATSOEVER REMAINING TO THE OWNER(S) OF SAID WATER RIGHTS OF INGRESS OR EGRESS TO OR FROM THE SURFACE OF SAID PROPERTY, FOR THE PURPOSE OF EXPLORING, DEVELOPING, DRILLING OR PRODUCTION OF SAME.

SECTION 3. Public necessity also requires the City of Kyle, acting by and through its attorneys, to institute and prosecute to conclusion all necessary proceedings to condemn the property interests described in Section 2 of this Ordinance and to acquire such interests in land as the City is unable to acquire through negotiation by reason of its inability to agree with the owners of the land as to the value of such interest in land, and to take any other legal action necessary or incidental to such acquisitions or eminent domain proceedings to investigate, survey, specify, define, appraise and secure the necessary property rights.

SECTION 4. All acts and proceedings done or initiated by the employees, agents and attorneys of the City for the acquisition of such property interests rights are hereby authorized, ratified, approved, confirmed and validated and declared to be valid in all respects as of the respective dates of such acts and proceedings, with and in regard to the parties from whom such rights are being purchased or acquired.

SECTION 5. Severability: If any provision, section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this

Ordinance shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof, or provisions or regulation contained herein, shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion hereof and all provisions of this Ordinance are declared to be severable for that purpose.

SECTION 6. This ordinance shall be effective upon passage.

PASSED AND APPROVED on First Reading this _____ day of November, 2016.

FINALLY PASSED AND APPROVED on Second Reading this _____ day of November, 2016

CITY OF KYLE, TEXAS

BY: _____
TODD WEBSTER, MAYOR

ATTEST:

JENNIFER VETRANO, CITY SECRETARY

APPROVED AS TO FORM:

FRANK J. GARZA, *CITY ATTORNEY*