

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF NEW BRAUNFELS, TEXAS, AUTHORIZING THE ACQUISITION IN FEE SIMPLE OF A TRACT OF LAND GENERALLY DEPICTED IN EXHIBIT “A” WHICH IS ATTACHED HERETO AND IS INCORPORATED HEREIN FOR ALL PURPOSES. SUCH ACQUISITION IS NECESSARY TO ADVANCE AND ACHIEVE THE PUBLIC USE OF EXPANDING THE NEW BRAUNFELS UTILITIES’ ELECTRIC SYSTEM TO SERVE ADDITIONAL LOAD GROWTH. THIS RESOLUTION AUTHORIZES THE INSTITUTION OF CONDEMNATION PROCEEDINGS TO ACQUIRE THE NECESSARY LAND RIGHTS TO THE EXTENT NEGOTIATIONS ARE UNSUCCESSFUL.

WHEREAS, the Board of Trustees of New Braunfels Utilities (“NBU”) is charged with the management and operation of the water, sanitary sewer, and electric systems of the City of New Braunfels (the “City”) pursuant to Chapter 130, Article II, Section 130-26 of the City Code of Ordinances;

WHEREAS, as provided in Section 11.08 of the City’s Home Rule Charter, the City has reserved the right to exercise the power of eminent domain to acquire NBU utility property; and

WHEREAS, the Board of Trustee of NBU adopted a resolution on March 30, 2017, recommending that the City acquire in fee simple interest, by purchase or through the use of eminent domain, that certain privately-owned real property described in **Exhibit A** for the construction of the Weltner Road Substation Project (the “Project”); and

WHEREAS, the Project and acquisition of such property is necessary to locate, construct, utilize, and maintain an electric substation, which shall advance and achieve the public use of expanding NBU’s electric system to serve additional load growth; and

WHEREAS, the Project is in the best interest of the health, safety, and welfare of the public;

WHEREAS, NBU, acting as an agent of the City, has been unable to acquire said land by negotiation and/or further negotiations may become futile, and therefore, the City may be compelled to exercise its power of eminent domain; and

WHEREAS, in connection with the acquisition of such land, it may be necessary for the City and/or NBU or one of its agents or contractors to enter upon the property to investigate and survey the needed land so that it may be defined and described with specificity for inclusion in any deed, easement, or, if necessary, as part of any filings to institute proceedings in eminent domain to acquire the necessary land.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, THAT:

SECTION 1.

The above caption and recitals are incorporated herein for all purposes.

SECTION 2.

The City Council declares a public use and necessity for the City of New Braunfels, acting by and through NBU, to locate, construct, utilize, and maintain the Project and to acquire fee simple interest of the property described in **Exhibit A**, which is needed for the Project.

SECTION 3.

The City Council declares that the acquisition of such property is necessary to complete the Project, which has the public use of expanding NBU's electric system to serve additional load growth.

The City Council authorizes the utilization of the power of eminent domain to acquire the necessary land, to the extent that the City and/or NBU, acting as the City's agent, is unable to acquire said land by negotiation and/or further negotiations with the landowner become futile.

SECTION 4.

The City Council authorizes NBU and its authorized officers or their designees and retained attorneys, to create, execute, and deliver such further documents, instruments, certificates, opinions, consents, pleadings, and other papers, for and on behalf of the City, and to do and cause to be done such further acts and things as may be necessary, appropriate, or advisable to effect the intent of this Resolution, including, but not limited to (a) filing temporary injunctions or other causes of action necessary to obtain access to the property impacted by the acquisitions; (b) performing lineal surveys for metes and bounds purposes and conducting archaeological, species and environmental walk-throughs, inspections and/or testing (including obtaining water and soil samples, if necessary), as required by applicable state and federal laws (collectively the "Preliminary Surveys"), appraising, designing, planning, obtaining title information, and specifying the preparation, location, and routing or re-rerouting of the Project should such become necessary for any reason; (c) entering into good-faith negotiations with the landowner to make a bona fide offer for the property; (d) appraising the property; (e) causing eminent domain proceedings to be filed should the bona-fide offer and good-faith negotiations fail; and (f) obtaining, or causing to be applied for and obtained, surety bonds as may be necessary or desirable regarding any eminent domain proceedings hereinabove authorized or any injunctive proceedings necessary or related to or as a condition precedent to any such eminent domain proceedings. Such documents, instruments, certificates, opinions, consents, pleadings, and other papers, and any amendments, supplements, or modifications thereto shall be in such form and contain such terms and conditions, whether material or non-material, as such officers,

or any of them, shall deem necessary, appropriate, or advisable, and all that such officers, their designees, employees, and retained attorneys have done or may do under or by reason of this and any foregoing resolutions are hereby approved, confirmed, and ratified. The City Council finds that it is in the best interest to obtain the fee simple interest from whomever holds legal and equitable title as identified according to the procedure adopted through this Resolution and if necessary, the Director of Finance or NBU, acting as an agent of the City, is directed to disburse funds to acquire the land identified herein and pay the costs associated therewith.

SECTION 5.

The determination of necessity to exercise the power of eminent domain in this matter is made according to reason and judgment with due regard and consideration of the relevant facts, circumstances, and alternatives, and the knowledge, which existed at this time. Therefore, the City, acting by and through NBU and its contractual eminent domain attorneys, is hereby directed and authorized to institute and prosecute to conclusion all necessary proceedings in eminent domain to condemn the land described herein and to acquire such interest in land if the City and/or NBU, acting as an agent of the City, is unable to acquire such through negotiation, and to take any other legal action necessary or incidental to such acquisition or eminent domain proceeding to investigate, survey, specify, define, and secure the necessary property right.

All acts and proceedings done or initiated by the employees, agents, and attorneys of the City and NBU, acting as an agent for the City, for the acquisition of such land 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 grantors from whom such land is being purchased or acquired.

SECTION 6.

Severability: If any provision, section, subsection, sentence, clause, or phrase of this Resolution, or the application of the 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 Resolution shall not be affected thereby, it being the intent of the Commissioners Court in adopting this Resolution that no portion hereof, or provisions, or regulations contained herein, shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion hereof and all provisions of this Resolution are declared to be severable for that purpose.

SECTION 7.

This Resolution shall become effective from and after its passage.

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

CITY OF NEW BRAUNFELS

Barron Casteel, Mayor

ATTEST:

Patrick Aten, City Secretary

Exhibit A