

RESOLUTION NO. 2021-255R

A RESOLUTION OF THE CITY OF SAN MARCOS, TEXAS, AUTHORIZING THE USE OF U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FUNDS FOR THE ACQUISITION OF FEE SIMPLE TITLE TO TWO PORTIONS OF A PRIVATELY OWNED PROPERTY AT 1320 AND 1320A RIVER ROAD FOR DRAINAGE RIGHTS OF WAY GENERALLY DEPICTED IN THE EXHIBITS ATTACHED HERETO AND INCORPORATED HEREIN FOR ALL PURPOSES, THIS ACQUISITION BEING NECESSARY TO ADVANCE AND ACHIEVE THE PUBLIC USE OF THE BLANCO RIVERINE FLOOD MITIGATION PROJECT TO REDUCE THE RISK OF AND DAMAGE FROM FUTURE FLOODING IN THE BLANCO GARDENS NEIGHBORHOOD; AUTHORIZING THE INSTITUTION OF CONDEMNATION PROCEEDINGS TO ACQUIRE THE NECESSARY LAND RIGHTS TO THE EXTENT NEGOTIATIONS ARE UNSUCCESSFUL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of San Marcos, (the “City”) pursuant to the authority granted in Chapter 251 of the Texas Local Government Code and Section 2.02 of the City’s Home Rule Charter has reserved the right to exercise the power of eminent domain to acquire property, including, but not limited to the right to acquire fee simple title; and

WHEREAS, in response to the 2015 Memorial Day Floods and All Saints Floods the City has undertaken the Blanco Riverine Flood Mitigation project with funding assistance from the U.S. Department of Housing and Urban Development’s (“HUD”) Community Development Block Grant – Disaster Recovery (“CDBG-DR”) and Community Development Block Grant – Mitigation (“CDBG-MIT”) programs to construct certain improvements within the Blanco River watershed in an effort to reduce the risk of flood damage in and around the Blanco Gardens neighborhood; and

WHEREAS, it is necessary to acquire fee simple title to two portions of a privately-owned property, known as Parcels 11 & 11A, and more specifically described in **Exhibits A** and **B** (the “Property”) by purchase or through the use of eminent domain, in furtherance of the Blanco Riverine Flood Mitigation Project (the “Project”); and

WHEREAS, the Project and acquisition of the Property are necessary to provide drainage rights of way to improve the flow of floodwaters from the Blanco River and to advance and achieve the public use of reducing the risk of harm and damage from future flooding events and the Project is in the best interest of the health, safety, and welfare of the public; and

WHEREAS, the City, has been unable to acquire the necessary land by negotiation and/or further negotiations may become futile, and therefore, the City must exercise its power of eminent domain; and

WHEREAS, to acquire fee simple title to portions of the subject property, it may be

necessary for the City 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 document, 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 SAN MARCOS, 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 San Marcos, to locate, construct, utilize, and maintain the Project and to acquire fee simple title to the portions of the Property described in **Exhibits A** and **B** which are needed for the Project.

SECTION 3.

The City Council declares that acquiring the Property is necessary to complete the Project, which has the public use of reducing the risk of and damage from future flooding in the Blanco Gardens neighborhood.

The City Council authorizes the use of the power of eminent domain to acquire the necessary land, to the extent the City is unable to acquire the land by negotiation and/or further negotiations with the landowner become futile.

SECTION 4.

The City Council authorizes 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 affect 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) participating in 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 acquire fee simple title to the tracts described in the Exhibits appended hereto from whomever holds legal and equitable title as identified according to the procedure adopted through this Resolution and to disburse funds in accordance herewith.

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 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 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 rights.

All acts and proceedings done or initiated by the employees, agents, and attorneys of the City, 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 City Council 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 December 15, 2021.

Jane Hughson
Mayor

ATTEST:

Tammy K. Cook
Interim City Clerk

EXHIBIT A

(0.072-Acre Drainage Right of Way Fee Taking Description)

EXHIBIT B

(4.532-Acre Drainage Right of Way Fee Taking Description)