

R-2024-184

A RESOLUTION BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES APPROVING (I) THE TRANSFER OF APPROXIMATELY 1.126 ACRES OF REAL PROPERTY LOCATED AT 263 MAIN PLAZA, NEW BRAUNFELS, TEXAS (THE “MAIN PLAZA PROPERTY”), TO THE CITY OF NEW BRAUNFELS; (II) THE LEASE OF THE MAIN PLAZA PROPERTY FROM THE CITY OF NEW BRAUNFELS TO NEW BRAUNFELS UTILITIES; (III) EXECUTION OF ANY AND ALL DOCUMENTS NECESSARY TO CONVEY AND LEASE THE MAIN PLAZA PROPERTY; AND (IV) OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, New Braunfels Utilities (“NBU”) is a Texas municipally owned utility that provides water, wastewater, and electricity to customers in its service area;

WHEREAS, NBU performs a portion of its utility functions at the Main Plaza Property, said real property being more particularly described on **Exhibit A**;

WHEREAS, NBU recently purchased an approximately 76.618 acre tract of property to construct its new headquarters;

WHEREAS, due to the anticipated construction of its new headquarters, NBU has agreed to transfer the Main Plaza Property to the City to develop for the benefit of the community;

WHEREAS, the City has agreed to lease the Main Plaza Property to NBU while NBU’s new headquarters is being constructed and briefly thereafter while personnel, furniture, fixtures, and equipment are moved into the new headquarters; and

WHEREAS, the Board of Trustees has reviewed the Real Estate Transfer Agreement, together with the proposed forms of the Special Warranty Deed and the Lease Agreement attached thereto, in relation to the transfer and lease of the Main Plaza Property, and is of the opinion that the same should be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES THAT:

SECTION 1. The Board of Trustees hereby approves (i) the transfer of the Main Plaza Property to the City for \$4,550,000, and (ii) the lease of the Main Plaza Property from the City, as landlord, to NBU, as tenant, both upon the terms and conditions set out in the Real Estate Transfer Agreement in substantially the form attached hereto as **Exhibit B**.

SECTION 2. The Chief Executive Officer of NBU or his designee is hereby authorized to negotiate and execute any and all documents necessary to transfer the Main Plaza Property to the City and lease the Main Plaza Property from the City, including without limitation, the Real

Estate Transfer Agreement, the Special Warranty Deed, and the Lease Agreement, each in a form substantially similar to those reviewed by the Board of Trustees. The Board of Trustees also authorizes the Chief Executive Officer or his designee to pay or arrange for payment of any costs reasonably necessary to close the transfer of the Main Plaza Property to the City and lease the Main Plaza Property from the City.

SECTION 3. The recitals contained in the preamble hereof are found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the Board of Trustees.

SECTION 4. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

SECTION 5. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 6. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the Board of Trustees hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 7. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

SECTION 8. This Resolution shall be in full force and effect from and after its final passage, and it is so resolved.

PASSED, APPROVED, AND ADOPTED, this the _____ day of _____, 2024.

Wayne Peters
President, Board of Trustees
New Braunfels Utilities

ATTEST:

Ryan Kelso
Secretary, Board of Trustees
New Braunfels Utilities

EXHIBIT A

All that certain tract, piece or parcel of land situated in Comal County, Texas, and being Lots 40, 42, and part of Lot 36, Block 1005, being a 1.126 acre tract in the City of New Braunfels, Comal County, Texas, and being those lots described by deed recorded in Volume 58, Pages 150-153, LESS that portion of Lot 36 conveyed by deed recorded in Volume 57, Pages 307-309, Deed Records of Comal County, Texas, said 1.126 acre tract being described by metes and bounds as follows:

BEGINNING at a point, the intersection of the Northeast line of Seguin Avenue and the Southeast line of East San Antonio Street, the same point being the West corner of Lot 40, Block 1005 of the City of New Braunfels, an "X" cut in a concrete walk;

THENCE with the Southeast line of East San Antonio Street and the Northwest line of Lot 40, North $38^{\circ} 42' 08''$ East 191.59 feet to an iron pin set for the North corner of Lot 40, and in the Southwest line of Lot 36;

THENCE with the Southwest line of Lot 36, North $52^{\circ} 00'$ West 31.05 feet to a fence corner, said corner being the West corner of a part of Lot 36 included in this tract and the South corner of a part of Lot 36 conveyed by instrument recorded in Volume 57, Pages 307-309 of the Deed Records of Comal County, Texas;

THENCE with the Northwest line of this tract, the Southeast line of the tract described in said conveyance, North $38^{\circ} 38' 24''$ East 95.70 feet to a fence corner, said point lying in the Southwest line of Lot 37, the Northeast line of Lot 36;

THENCE with the Southwest line of Lot 37, and the Northeast line of Lot 36, South $52^{\circ} 04' 19''$ East 127.07 feet to an iron pin set for the East corner of Lot 36, the South corner of Lot 37, and lying in the West line of Lot 42;

THENCE with the Northwest line of Lot 42 and the Southeast line of Lot 37, North $38^{\circ} 41' 47''$ East 96.05 feet to an iron pin set in the Southwest line of Comal Avenue and being the North corner of Lot 42 and the East corner of Lot 37;

THENCE with the Southwest line of Comal Avenue, the Northeast line of Lot 42, South 52° 00' 02" East 96.04 feet to an iron pin set for the East corner of Lot 42, and the North corner of Lot 43;

THENCE with the Southeast line of Lot 42, the Northwest line of Lot 43, South 38° 32' 10" West 191.38 feet to an iron pin, said pin being the South corner of Lot 42, West corner of Lot 43, North corner of Lot 44 and the East corner of Lot 41;

THENCE with the Southwest line of Lot 42, the Northeast line of Lot 41, North 52° 18' 01" West 96.27 feet to an iron pin set for the West corner of Lot 42, the North corner of Lot 41, the East corner of Lot 40, and the South corner of Lot 36;

THENCE with the Southeast line of Lot 40 and the Northwest line of Lot 41, South 38° 41' 58" West 191.60 feet to a screw set in a concrete walk, said screw lying in the North line of Seguin Avenue and being the South corner of Lot 40 and the West corner of Lot 41;

THENCE with the Northeast line of Seguin Avenue and the Southwest line of Lot 40, North 52° 05' West 96.25 feet to the POINT OF BEGINNING, and containing 1.126 acres, more or less, according to a survey prepared under the supervision of D. R. Frazor, Registered Professional Engineer of San Antonio, Texas, reference to which is here made for all purposes, together with the improvements, including all buildings thereon, and being the same property described in the following deeds:

- (a) One dated March 9, 1892, recorded in Volume V Pages 309-310 of the Deed Records of Comal County, Texas;
- (b) One dated August 27, 1906, recorded in Volume 28, Pages 249-250 of the Deed Records of Comal County, Texas;
- (c) One dated January 25, 1909, recorded in Volume 30, Pages 329-330 of the Deed Records of Comal County, Texas;
- (d) One dated February 4, 1929, recorded in Volume 56, Pages 150-153 of the Deed Records of Comal County, Texas; and,
- (e) One dated May 15, 1969, recorded in Volume 169, Pages 719-723 of the Deed Records of Comal County, Texas, reference to all of said deeds and their recordings being here made for all purposes.

LESS, SAVE and EXCEPT from the tracts described in the above described deeds (a) through (d), that certain parcel of land conveyed by deed dated November 12, 1929, recorded in Volume 57, Pages 307-309 of the Deed Records of Comal County, Texas, which tract was conveyed to San Antonio Public Service Company.

Exhibit B

Real Estate Transfer Agreement

This Real Estate Transfer Agreement (“Agreement”) is between New Braunfels Utilities (“NBU”) and the City of New Braunfels (“City”), and it is effective (“Effective Date”) as of the date last signed by NBU and the City.

NBU: NEW BRAUNFELS UTILITIES

Address: 263 Main Plaza
New Braunfels, Texas 78130
Attn: Connie C. Lock, General Counsel & Chief Ethics Officer

Phone/Fax: P: (830) 629-8428 F: (830) 629-8435

Email: clock@nbutexas.com

CITY: CITY OF NEW BRAUNFELS

Address: 550 Landa Street
New Braunfels, Texas 78130
Attn: Valeria Acevedo, City Attorney

Phone/Fax: P: (830) 221-4281 F: (830) 626-5578

Email: vacevedo@nbtexas.org

Property: All that certain tract, piece or parcel of land situated in Comal County, Texas, and being Lots 40, 42, and part of Lot 36, Block 1005, being a 1.126 acre tract in the City of New Braunfels, Comal County, Texas, and being those lots described by deed recorded in Volume 56, Pages 150-153, LESS that portion of Lot 36 conveyed by deed recorded in Volume 57, Pages 307-309, Deed Records of Comal County, Texas, said 1.126 acre tract being commonly known as 263 Main Plaza, New Braunfels, Comal County, Texas, 78130, and being more particularly described by metes and bounds in the attached **APPENDIX A.**

Title Company: Corridor Title
Attn: Cindy Carroll
410 W. San Antonio Street, Suite 100
New Braunfels, Texas 78130
P: (830) 387-4739 F: (830) 387-4739
email: Cindy.Carroll@corridortitle.com

Transfer Price: \$4,550,000

A. Deadlines and Other Dates.

All deadlines in this Agreement expire at *11:59 P.M.* local time where the Property is located. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to *11:59 P.M.* the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence.

1. **Delivery of Title Commitment:** Within twenty (20) business days following the Effective Date, NBU, at NBU's sole cost and expense, will cause the Title Company to issue and deliver to the City a commitment for title insurance with a list of all encumbrances, easements and other matters affecting title to the Property (the "Commitment").

2. **Delivery of Survey:** NBU does not have a survey of the Property. If the City or the title insurance company requires a survey of the Property, the City will obtain a survey ("Survey") of the Property and provide a copy of the Survey to NBU no later than seven (7) days before the Transfer Date. If the City obtains a Survey under this provision, NBU and the City agree to use the metes and bounds description resulting from the Survey as the legal description of the Property in all Transfer Documents (defined below) upon the reasonable acceptance of the Survey by both parties.

3. **Transfer Date:** Subject to the approval of the NBU Board of Trustees and City Council, the transfer of the Property ("Transfer") will be conducted by the Title Company, on a date mutually agreed by the City and NBU ("Transfer Date"), no later than August 1, 2024. Operational control of the Property will transfer to the City on the Transfer Date, subject to NBU's right to lease the Property from the City from and after the Transfer Date, as set out in Section A.4. of this Agreement.

4. **Lease:** NBU will have the right to lease the Property from the City for the period starting on the Transfer Date and ending on the date that is one hundred twenty (120) days after the date NBU obtains a final certificate of occupancy for NBU's new headquarters, for rent in the amount of \$10.00. The terms of the lease will be set out in a written Lease Agreement ("Lease") in substantially the form attached hereto as **APPENDIX B**, to be executed by NBU and the City on the Transfer Date.

5. **Temporary Certificate of Occupancy.** Upon satisfactory completion of the inspection of the fire safety systems at NBU's new headquarters, the City agrees to issue a temporary certificate of occupancy to NBU to enable NBU to begin moving furniture, fixtures and equipment into the NBU headquarters prior to issuance of the final certificate of occupancy. The obligation set forth in this Section A.5. will survive the performance of this Agreement to include the effectuation of the Transfer of the Property.

B. Conditions Precedent

This Agreement is subject to the approval of the NBU Board of Trustees and New Braunfels City Council, both of which are conditions precedent to the Transfer of the Property upon the terms set forth in this Agreement.

C. Exhibits

The following are attached to and are a part of this Agreement:

- APPENDIX A** – Description of the Property
- APPENDIX B** – Lease Agreement Form
- APPENDIX C** – Special Warranty Deed Form

D. Transfer of Property and Payment of Transfer Price

1. Subject to the terms and conditions of this Agreement, NBU agrees to convey the Property to the City on the Transfer Date, in exchange for which the City agrees to pay NBU the Transfer Price for the Property in the manner set forth in Section D.2 of this Agreement.

2. The City shall pay \$500,000 of the Transfer Price to NBU on the Transfer Date, by wire transfer or other immediately available funds. Thereafter, the balance of \$4,050,000 will be paid to NBU by the City in four (4) installments on or before the following dates:

- (a) \$500,000 on October 1, 2024;
- (b) \$500,000 on October 1, 2025;
- (c) \$500,000 on October 1, 2026; and
- (d) \$2,550,000 on the sooner of the following to occur (i) the date that NBU turns over possession of the Property to the City under the Lease; or (ii) the Lease Termination Date, as defined in the Lease.

3. NBU and the City will each account for the transfer of the Property and the associated payments as part of each party’s respective accounting records. The obligation of the City to pay the Transfer Price to NBU under Section D of this Agreement will survive the performance of this Agreement to include the effectuation of the Transfer of the Property and will not require execution of a separate promissory note. NBU may use this Agreement in lieu of a promissory note as evidence of the debt for all purposes.

E. Title and Survey

If the Commitment or the Survey, if applicable, reflects defects or exceptions that are objectionable to the City (the “Title Defects”), then the City shall notify NBU (the “Title Notice”), in writing, within ten (10) days following receipt of the Commitment and the Survey, but in no event later than the Transfer Date. If the City sends a Title Notice to NBU, then NBU shall have a period of fourteen (14) days from receipt of the Title Notice to notify the City of any Title Defects

that NBU is unwilling or unable to cure (“NBU’s Notice”). In the event that NBU elects to cure the Title Defects, NBU shall use commercially reasonable efforts to do so and shall have until the Transfer Date to do so. If NBU is unwilling or unable to cure some or all of the Title Defects in the Title Notice, the City shall be entitled to terminate this Agreement by delivering written notice to NBU prior to the Transfer Date or elect to accept the Property subject to any such Title Defects. If the City does not elect to terminate this Agreement pursuant to this section, then any matters disclosed by the Commitment and the Survey which are not objected to by the City or which NBU is unable or unwilling to cure shall constitute “Permitted Exceptions.” Notwithstanding anything to the contrary, whether or not objected to by the City, NBU shall endeavor to satisfy or remove any mortgage, tax, mechanics, or judgment lien attributable to NBU’s period of operation of the Property, if any.

F. Environmental Testing and Inspections

The City shall have the right during the pendency of this Agreement to conduct such inspections and environmental studies regarding the Property as the City deems necessary or desirable, provided that the City will reasonably coordinate any such inspections and studies with NBU and will further conduct any such inspections and studies in a manner that does not interfere with NBU’s business operations on the Property.

G. Condition of the Property

1. There is no litigation pending or threatened against the Property that might affect the Property or NBU’s ability to perform its obligations under this Agreement, and NBU has not received notice of any violation of any law, ordinance, regulation, or requirement affecting the Property or NBU’s use of the Property. In addition, NBU is not aware of any hazardous materials or toxic substances on the Property and has not received any inquiries or notices from any governmental authority or third party with respect to the presence of hazardous materials or toxic substances on the Property or the migration of hazardous materials or toxic substances from the Property.

2. THE PROPERTY WILL BE TRANSFERRED TO THE CITY IN AN “AS IS, WHERE IS” CONDITION, WITH ALL FAULTS. ALL REPRESENTATIONS OTHER THAN THE REPRESENTATION IN SECTION G.1. AND ALL WARRANTIES, EXCEPT THE LIMITED WARRANTY OF TITLE IN THE SPECIAL WARRANTY DEED, ARE EXPRESSLY DISCLAIMED.

3. AFTER THE TRANSFER, AS BETWEEN THE CITY AND NBU, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, CONDITIONS, AND CLAIMS, EVEN IF ARISING FROM EVENTS BEFORE THE TRANSFER, WILL BE THE SOLE RESPONSIBILITY OF THE CITY, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS, CONDITIONS, OR CLAIMS, WERE KNOWN OR UNKNOWN AT TRANSFER, SUBJECT ONLY TO NBU’S BREACH OF ITS EXPRESS REPRESENTATION SET OUT IN SECTION G.1. ABOVE (“EXPRESS REPRESENTATION”). SUBJECT ONLY TO NBU’S BREACH OF SUCH EXPRESS REPRESENTATION, ONCE TRANSFER HAS OCCURRED, THE CITY

RELEASES NBU FROM LIABILITY FOR ANY DEFECTS, LATENT OR OTHERWISE, AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS, CONDITIONS, OR CLAIMS, AFFECTING THE PROPERTY, INCLUDING BUT NOT LIMITED TO LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, AND THE TEXAS WATER CODE.

4. EXCEPT FOR THE WARRANTY OF TITLE CONTAINED IN THE SPECIAL WARRANTY DEED AND THE REPRESENTATION IN SECTION G.1. OF THIS AGREEMENT, NBU HAS NOT, DOES NOT, AND WILL NOT MAKE ANY WARRANTIES, GUARANTIES, OR REPRESENTATIONS, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING (I) THE CONDITION OF THE PROPERTY OR ANY ELEMENT THEREOF, INCLUDING, WITHOUT LIMITATION, WARRANTIES RELATED TO ENVIRONMENTAL CONDITIONS, SUITABILITY FOR HABITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (II) THE NATURE OR QUALITY OF CONSTRUCTION, STRUCTURAL ELEMENTS, DESIGN, OR ENGINEERING OF THE IMPROVEMENTS; (III) THE AVAILABILITY OF ANY UTILITIES TO THE PROPERTY OR ANY PORTION THEREOF INCLUDING, WITHOUT LIMITATION, WATER, SEWAGE, GAS, AND ELECTRICITY; (IV) GEOLOGICAL CONDITIONS, SOIL CONDITIONS, DRAINAGE, FLOODPLAIN DESIGNATION, ACCESS OR OTHER CONDITIONS; OR (V) ANY OTHER WARRANTIES OR REPRESENTATIONS WHATSOEVER.

Language substantially similar to the language in Sections G.2., G.3. and G.4. of this Agreement will be included in the Special Warranty Deed (“Deed”) in the manner reflected in Appendix C.

H. Condition of the Property until Transfer; Notice of Claims; No Recording of Agreement

1. *Maintenance and Operation.* NBU will continue to operate and maintain the Property in the manner operated and maintained on the Effective Date through the Transfer Date.

2. *Casualty Damage.* If the Property is damaged by casualty on or before the Transfer Date, NBU will notify the City promptly after discovery of any casualty damage to the Property. NBU will have no obligation to repair or replace the Property if it is damaged by casualty before the Transfer. The City may terminate this Agreement in the event of a casualty by giving notice to NBU prior to the Transfer. If the City does not terminate this Agreement, NBU will (a) convey the Property to the City in its damaged condition, (b) assign to the City all of NBU’s rights under any casualty insurance policies covering the Property, and (c) pay to the City the amount of any deductible and/or coinsurance under any casualty insurance policies covering the Property, but not in excess of the cost to repair the casualty damage.

3. *Claims; Hearings.* NBU will notify the City promptly of any claim or

administrative hearing that is threatened, filed, or initiated on or before the Transfer Date that affects the Property.

4. *No Recording.* Neither party will record this Agreement or any memorandum or notice of this Agreement in the real property records of any county.

5. *Representations.* NBU will promptly notify the City if any of the representations of NBU in Section G.1. is no longer accurate.

I. Termination

The City or NBU may terminate this Agreement at any time prior to the consummation of the Transfer contemplated by this Agreement. Upon termination, neither party will have any further duties or obligations to the other under this Agreement.

J. Transfer

1. *Transfer.* On the Transfer Date, the following will occur:
 - a. *Transfer Documents.* The parties will execute and deliver the Transfer Documents (defined below) described in Section J.3.
 - b. *Transaction Costs.* The parties will pay the Transaction Costs (defined below) described in Section J.2.
 - c. *Possession.* NBU will deliver operational control of the Property to the City, subject to the Lease with NBU.
2. *Transaction Costs.* On the Transfer Date, the costs incurred in connection with the transaction contemplated by this Agreement will be allocated by the Title Company as follows:
 - a. *NBU's Costs.* NBU will pay (i) the cost of the Commitment; (ii) the cost to prepare the Deed; (iii) \$10.00 for rent under the Lease; (iv) the cost to release any liens encumbering the Property, if any; (v) one-half of the settlement fee owed to the Title Company for conducting the transaction; and (vi) any other expenses and attorney's fees incurred directly by NBU in connection with the Transfer contemplated by this Agreement.
 - b. *City's Costs.* The City will pay (i) the cost of the Survey, if applicable; (ii) the premium of any title insurance policy desired by the City, if any; (iii) the cost to record the Deed to the City; (iv) the cost to record any documents relating to any financing obtained by the City, if any; (v) one-half of the

settlement fee owed to the Title Company; and (v) any other expenses and attorney's fees incurred by the City in connection with the Transfer contemplated by this Agreement.

- c. *Ad Valorem Taxes.* The City and NBU are tax exempt entities; therefore, no taxes will be prorated or paid.

3. *Transfer Documents.*

- a. On the Transfer Date, NBU will execute and deliver the following documents:

- (i) Lease in substantially the form attached in **APPENDIX B**;
- (ii) Deed in substantially the form attached in **APPENDIX C**;
- (iii) settlement statement reasonably approved by NBU; and
- (iv) any other documents required by the Title Company or reasonably requested by the City to effectuate the Transfer.

- b. On the Transfer Date, the City will execute and deliver the following documents:

- (i) Lease in substantially the form attached in **APPENDIX B**;
- (ii) Deed in substantially the form attached in **APPENDIX C**;
- (iii) settlement statement reasonably approved by the City; and
- (i) any other documents required by the Title Company or reasonably requested by the NBU to effectuate the Transfer.

The documents listed in Section J.3. of this Agreement are collectively referenced as the "Transfer Documents."

K. Miscellaneous Provisions

- 1. *Notices.* Any notice required by or permitted under this Agreement must be in writing. Any notice required by this Agreement will be given by email, personal delivery, or courier delivery (FedEx, UPS or DHL) and will be effective when received.

2. *Entire Agreement.* This Agreement, together with its exhibits, constitutes the entire agreement of the parties concerning the proposed Transfer of the Property by NBU to the City. There are no representations, warranties, agreement, or promises pertaining to the Transfer not incorporated in writing in this Agreement.

3. *Amendment.* This Agreement may be amended only by an instrument in writing signed by the parties.

4. *Prohibition of Assignment.* Neither party may assign this Agreement. This Agreement binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

5. *Counterpart Execution.* This Agreement may be executed and delivered (including by facsimile or Portable Document Format (.pdf) transmission) in several counterparts, each of which will be fully effective as an original and all of which together will constitute one and the same instrument. Facsimile and other electronic copies will have the same effect as manually-signed originals and will be binding on the undersigned parties.

6. *Choice of Law; Venue.* This Agreement will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in Comal County, Texas.

7. *No Third-Party Beneficiaries.* There are no third-party beneficiaries of this Agreement.

8. *Severability.* The provisions of this Agreement are severable. If a court of competent jurisdiction finds that any provision of this Agreement is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.

9. *Ambiguities Not to Be Construed against Party Who Drafted Agreement.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Agreement.

[Signatures follow on next page]

NBU

CITY

NEW BRAUNFELS UTILITIES

CITY OF NEW BRAUNFELS

By: _____
Name: Ryan Kelso
Title: Chief Executive Officer

By: _____
Name: Robert Camareno
Title: City Manager

APPENDIX A
Description of the Property

All that certain tract, piece or parcel of land situated in Comal County, Texas, and being Lots 40, 42, and part of Lot 36, Block 1005, being a 1.126 acre tract in the City of New Braunfels, Comal County, Texas, and being those lots described by deed recorded in Volume 56, Pages 150-153, LESS that portion of Lot 36 conveyed by deed recorded in Volume 57, Pages 307-309, Deed Records of Comal County, Texas, said 1.126 acre tract being described by metes and bounds as follows:

BEGINNING at a point, the intersection of the Northeast line of Seguin Avenue and the Southeast line of East San Antonio Street, the same point being the West corner of Lot 40, Block 1005 of the City of New Braunfels, an "X" cut in a concrete walk;

THENCE with the Southeast line of East San Antonio Street and the Northwest line of Lot 40, North $38^{\circ} 42' 08''$ East 191.59 feet to an iron pin set for the North corner of Lot 40, and in the Southwest line of Lot 36;

THENCE with the Southwest line of Lot 36, North $52^{\circ} 00'$ West 31.05 feet to a fence corner, said corner being the West corner of a part of Lot 36 included in this tract and the South corner of a part of Lot 36 conveyed by instrument recorded in Volume 57, Pages 307-309 of the Deed Records of Comal County, Texas;

THENCE with the Northwest line of this tract, the Southeast line of the tract described in said conveyance, North $38^{\circ} 38' 24''$ East 95.70 feet to a fence corner, said point lying in the Southwest line of Lot 37, the Northeast line of Lot 36;

THENCE with the Southwest line of Lot 37, and the Northeast line of Lot 36, South $52^{\circ} 04' 19''$ East 127.07 feet to an iron pin set for the East corner of Lot 36, the South corner of Lot 37, and lying in the West line of Lot 42;

THENCE with the Northwest line of Lot 42 and the Southeast line of Lot 37, North $38^{\circ} 41' 47''$ East 96.05 feet to an iron pin set in the Southwest line of Comal Avenue and being the North corner of Lot 42 and the East corner of Lot 37;

THENCE with the Southwest line of Comal Avenue, the Northeast line of Lot 42, South 52° 00' 02" East 96.04 feet to an iron pin set for the East corner of Lot 42, and the North corner of Lot 43;

THENCE with the Southeast line of Lot 42, the Northwest line of Lot 43, South 38° 32' 10" West 191.38 feet to an iron pin, said pin being the South corner of Lot 42, West corner of Lot 43, North corner of Lot 44 and the East corner of Lot 41;

THENCE with the Southwest line of Lot 42, the Northeast line of Lot 41, North 52° 18' 01" West 96.27 feet to an iron pin set for the West corner of Lot 42, the North corner of Lot 41, the East corner of Lot 40, and the South corner of Lot 36;

THENCE with the Southeast line of Lot 40 and the Northwest line of Lot 41, South 38° 41' 58" West 191.60 feet to a screw set in a concrete walk, said screw lying in the North line of Seguin Avenue and being the South corner of Lot 40 and the West corner of Lot 41;

THENCE with the Northeast line of Seguin Avenue and the Southwest line of Lot 40, North 52° 05' West 96.25 feet to the POINT OF BEGINNING, and containing 1.126 acres, more or less, according to a survey prepared under the supervision of D. R. Frazor, Registered Professional Engineer of San Antonio, Texas, reference to which is here made for all purposes, together with the improvements, including all buildings thereon, and being the same property described in the following deeds:

- (a) One dated March 9, 1892, recorded in Volume V Pages 309-310 of the Deed Records of Comal County, Texas;
- (b) One dated August 27, 1906, recorded in Volume 28, Pages 249-250 of the Deed Records of Comal County, Texas;
- (c) One dated January 25, 1909, recorded in Volume 30, Pages 329-330 of the Deed Records of Comal County, Texas;
- (d) One dated February 4, 1929, recorded in Volume 56, Pages 150-153 of the Deed Records of Comal County, Texas; and,
- (e) One dated May 15, 1969, recorded in Volume 169, Pages 719-723 of the Deed Records of Comal County, Texas, reference to all of said deeds and their recordings being here made for all purposes.

LESS, SAVE and EXCEPT from the tracts described in the above described deeds (a) through (d), that certain parcel of land conveyed by deed dated November 12, 1929, recorded in Volume 57, Pages 307-309 of the Deed Records of Comal County, Texas, which tract was conveyed to San Antonio Public Service Company.

APPENDIX B
Lease Agreement Form

LEASE
Basic Information

Date: [Transfer Date]

Landlord: CITY OF NEW BRAUNFELS

Landlord's Address: 550 Landa Street
New Braunfels, TX 78130

Tenant: NEW BRAUNFELS UTILITIES

Tenant's Address: 263 Main Plaza
New Braunfels, TX 78130

Premises: All that certain tract, piece or parcel of land situated in Comal County, Texas, and being Lots 40, 42, and part of Lot 36, Block 1005, being a 1.126 acre tract in the City of New Braunfels, Comal County, Texas, and being those lots described by deed recorded in Volume 56, Pages 150-153, LESS that portion of Lot 36 conveyed by deed recorded in Volume 57, Pages 307-309, Deed Records of Comal County, Texas, said 1.126 acre tract being described by metes and bounds in **Lease Exhibit A**, attached hereto.

Lease Commencement Date: [Transfer Date]

Lease Termination Date: The date that is one hundred twenty (120) days after the date Tenant obtains a final certificate of occupancy for Tenant's new headquarters

Base Rent: Ten and No/100 Dollars (\$10.00) for the Term (defined below)

Permitted Use: Office and general business use reasonably related thereto

A. Definitions

- A.1. "Lease" means this Lease Agreement.
- A.2. "Rent" means Base Rent, which is the only type of rent applicable to this Lease.
- A.3. "Term" means the period beginning on the Lease Commencement Date and ending on the Lease Termination Date.

B. Tenant's Obligations

B.1. Tenant agrees to—

B.1.a. Lease the Premises for the entire Term.

B.1.b. Accept the Premises in their present condition "AS IS," the Premises being currently suitable for the Permitted Use.

B.1.c. Obey (i) all laws relating to Tenant's use, maintenance of the condition, and occupancy of the Premises and Tenant's use of any common areas and (ii) any requirements imposed by utility companies serving or insurance companies covering the Premises.

B.1.d. Obtain and pay for all utility services used by Tenant.

B.1.e. Repair, replace, and maintain any part of the Premises, normal wear excepted.

B.1.f. Submit in writing to Landlord any request for repairs, replacement and maintenance that are the obligations of Landlord, if any.

B.1.g. Vacate the Premises on the last day of the Term.

B.1.h. Use best efforts to relocate personnel from the Premises to Tenant's new headquarters upon receipt of the final certificate of occupancy for the new headquarters.

B.2. Tenant agrees not to—

B.2.a. Use the Premises for any purpose other than the Permitted Use.

B.2.b. Create a nuisance.

B.2.c. Permit any waste.

B.2.d. Use the Premises in any way that would increase insurance premiums or void insurance on the Premises.

B.2.e. Alter the Premises, without the written approval of the City Manager or his designee.

B.2.f. Allow a lien to be placed on the Premises.

B.2.g. Assign this Lease or sublease any portion of the Premises without Landlord's written consent.

C. Landlord's Obligations

C.1. Landlord agrees to—

C.1.a. Lease to Tenant the Premises for the entire Term.

C.1.b. Obey all laws relating to Landlord's operation of the Premises.

C.2. Landlord agrees not to—

C.2.a. Interfere with Tenant's use and possession of the Premises as long as Tenant is not in default.

C.2.b. Alter the Premises.

D. General Provisions

Landlord and Tenant agree to the following:

D.1. *Alterations.* Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord.

D.2. *Insurance.* Tenant will maintain commercial general liability insurance coverage and commercial property insurance (casualty) in commercially reasonable amounts through the Texas Municipal League (TML) throughout the Term.

D.3. *Casualty/Total or Partial Destruction.* If the Premises are damaged by an insured event, the parties will mutually agree if the buildings and structures should be restored, repaired or rebuilt and if they agree, Landlord will, utilizing proceeds from Tenant's insurance, restore the roof, foundation, and structural soundness of those structures on the Premises.

D.5. *Default by Landlord/Events.* Defaults by Landlord are failing to comply with any provision of this Lease within thirty days after written notice.

D.6. *Default by Tenant/Events.* Defaults by Tenant are failing to comply with any provision of this Lease within thirty days after written notice.

D.7. *Default/Waiver.* It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of a remedy does not preclude pursuit of another remedy.

D.8. *Holdover.* If Tenant does not vacate the Premises following termination of this Lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term.

D.9. *Venue.* Exclusive venue is in Comal County, Texas.

D.10. *Entire Agreement.* This Lease, with its exhibits, and the Transfer Agreement and Transfer Documents (defined therein), between Landlord and Tenant concerning the Property, constitute the entire agreement of the parties concerning the lease of the Premises by Landlord to Tenant.

D.12. *Amendment of Lease.* This Lease may be amended only by an instrument in writing signed by Landlord and Tenant.

D.13. *Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO REPRESENTATIONS OR WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

D.14. *Notices.* Any notice required or permitted under this Lease must be in writing. Any notice required by this Lease will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Lease. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

D.15. *Abandoned Property.* Unless otherwise agreed by Landlord and Tenant in writing prior to expiration of the Term, Tenant will retain ownership of and remove all personal property prior to the expiration of the Term. Landlord may retain, destroy, or dispose of any personal property left on the Premises at the end of the Term and Tenant will be responsible for the reasonable costs relating thereto.

LANDLORD

TENANT

CITY OF NEW BRAUNFELS

NEW BRAUNFELS UTILITIES

By: Robert Camareno
ITS: City Manager

By: Ryan Kelso
ITS: Chief Executive Officer

Lease Exhibit A
(page 1)

All that certain tract, piece or parcel of land situated in Comal County, Texas, and being Lots 40, 42, and part of Lot 36, Block 1005, being a 1.126 acre tract in the City of New Braunfels, Comal County, Texas, and being those lots described by deed recorded in Volume 56, Pages 150-153, LESS that portion of Lot 36 conveyed by deed recorded in Volume 57, Pages 307-309, Deed Records of Comal County, Texas, said 1.126 acre tract being described by metes and bounds as follows:

BEGINNING at a point, the intersection of the Northeast line of Seguin Avenue and the Southeast line of East San Antonio Street, the same point being the West corner of Lot 40, Block 1005 of the City of New Braunfels, an "X" cut in a concrete walk;

THENCE with the Southeast line of East San Antonio Street and the Northwest line of Lot 40, North $38^{\circ} 42' 08''$ East 191.59 feet to an iron pin set for the North corner of Lot 40, and in the Southwest line of Lot 36;

THENCE with the Southwest line of Lot 36, North $52^{\circ} 00'$ West 31.05 feet to a fence corner, said corner being the West corner of a part of Lot 36 included in this tract and the South corner of a part of Lot 36 conveyed by instrument recorded in Volume 57, Pages 307-309 of the Deed Records of Comal County, Texas;

THENCE with the Northwest line of this tract, the Southeast line of the tract described in said conveyance, North $38^{\circ} 38' 24''$ East 95.70 feet to a fence corner, said point lying in the Southwest line of Lot 37, the Northeast line of Lot 36;

THENCE with the Southwest line of Lot 37, and the Northeast line of Lot 36, South $52^{\circ} 04' 19''$ East 127.07 feet to an iron pin set for the East corner of Lot 36, the South corner of Lot 37, and lying in the West line of Lot 42;

THENCE with the Northwest line of Lot 42 and the Southeast line of Lot 37, North $38^{\circ} 41' 47''$ East 96.05 feet to an iron pin set in the Southwest line of Comal Avenue and being the North corner of Lot 42 and the East corner of Lot 37;

Lease Exhibit A
(page 2)

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THENCE with the Southwest line of Comal Avenue, the Northeast line of Lot 42, South 52° 00' 02" East 96.04 feet to an iron pin set for the East corner of Lot 42, and the North corner of Lot 43;

THENCE with the Southeast line of Lot 42, the Northwest line of Lot 43, South 38° 32' 10" West 191.38 feet to an iron pin, said pin being the South corner of Lot 42, West corner of Lot 43, North corner of Lot 44 and the East corner of Lot 41;

THENCE with the Southwest line of Lot 42, the Northeast line of Lot 41, North 52° 18' 01" West 96.27 feet to an iron pin set for the West corner of Lot 42, the North corner of Lot 41, the East corner of Lot 40, and the South corner of Lot 36;

THENCE with the Southeast line of Lot 40 and the Northwest line of Lot 41, South 38° 41' 58" West 191.60 feet to a screw set in a concrete walk, said screw lying in the North line of Seguin Avenue and being the South corner of Lot 40 and the West corner of Lot 41;

THENCE with the Northeast line of Seguin Avenue and the Southwest line of Lot 40, North 52° 05' West 96.25 feet to the POINT OF BEGINNING, and containing 1.126 acres, more or less, according to a survey prepared under the supervision of D. R. Frazor, Registered Professional Engineer of San Antonio, Texas, reference to which is here made for all purposes, together with the improvements, including all buildings thereon, and being the same property described in the following deeds:

- (a) One dated March 9, 1892, recorded in Volume V Pages 309-310 of the Deed Records of Comal County, Texas;
- (b) One dated August 27, 1906, recorded in Volume 28, Pages 249-250 of the Deed Records of Comal County, Texas;
- (c) One dated January 25, 1909, recorded in Volume 30, Pages 329-330 of the Deed Records of Comal County, Texas;
- (d) One dated February 4, 1929, recorded in Volume 56, Pages 150-153 of the Deed Records of Comal County, Texas; and,
- (e) One dated May 15, 1969, recorded in Volume 169, Pages 719-723 of the Deed Records of Comal County, Texas, reference to all of said deeds and their recordings being here made for all purposes.

LESS, SAVE and EXCEPT from the tracts described in the above described deeds (a) through (d), that certain parcel of land conveyed by deed dated November 12, 1929, recorded in Volume 57, Pages 307-309 of the Deed Records of Comal County, Texas, which tract was conveyed to San Antonio Public Service Company.

APPENDIX C
Special Warranty Deed Form

SPECIAL WARRANTY DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Date: [Transfer Date]

Grantor: NEW BRAUNFELS UTILITIES, acting by and through its Board of Trustees as agent of the City of New Braunfels
263 Main Plaza
New Braunfels, TX 78130

Grantee: CITY OF NEW BRAUNFELS
550 Landa Street
New Braunfels, TX 78130

Consideration: TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

Property (including any improvements): All that certain tract, piece or parcel of land situated in Comal County, Texas, and being Lots 40, 42, and part of Lot 36, Block 1005, being a 1.126 acre tract in the City of New Braunfels, Comal County, Texas, and being those lots described by deed recorded in Volume 56, Pages 150-153, LESS that portion of Lot 36 conveyed by deed recorded in Volume 57, Pages 307-309, Deed Records of Comal County, Texas, said 1.126 acre tract being commonly known as 263 Main Plaza, New Braunfels, Comal County, Texas, 78130, and being more particularly described by metes and bounds in the attached **Deed Exhibit A**.

Recitals: The Property was conveyed to Grantor in the name of City of New Braunfels (Utilities) by Deed executed June 9, 1975 in Vol. 228, Page 255, Official Public Records, Comal County, Texas. Grantor and Grantee acknowledge that Grantor is entitled to convey the Property despite the discrepancy between the name of the Grantor in the vesting deed and the name of the Grantor in this deed.

Reservations from Conveyance: None

Exceptions to Conveyance and Warranty: Those matters set forth on **Deed Exhibit B**, attached hereto.

Grantor, for the Consideration and subject to the Reservations from Conveyance and Exceptions to Conveyance and Warranty, GRANTS, TRANSFERS, and CONVEYS to Grantee

the Property, together with all and singular the rights and appurtenances thereto in any way belonging, TO HAVE AND TO HOLD it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to WARRANT AND FOREVER DEFEND all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part hereof when the claim is by, through or under Grantor but not otherwise, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

Except for the express representations of Grantor contained in Section G.1. of that certain Real Estate Transfer Agreement ("Transfer Agreement") by and between Grantor and Grantee concerning the Property, Grantee, for itself, its successors and assigns, forever releases Grantor from liability for any property defects, latent or otherwise, and from any liability for environmental problems, conditions, or claims pertaining to the Property, including, but not limited to, liability under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), the Texas Solid Waste Disposal Act ("TSWDA"), or the Texas Water Code ("TWC").

The Property is conveyed "AS IS," "WHERE IS," and with all faults. Except for the warranty of title contained in the Special Warranty Deed and the representations in section G.1. of the Transfer Agreement, Grantor has not, does not, and will not make any warranties, guaranties, or representations, oral or written, past or present, express or implied, concerning (i) the condition of the Property or any element thereof, including, without limitation, warranties related to environmental conditions, suitability for habitation, merchantability or fitness for a particular purpose; (ii) the nature or quality of construction, structural elements, design, or engineering of the improvements; (iii) the availability of any utilities to the Property or any portion thereof including, without limitation, water, sewage, gas, and electricity; (iv) geological conditions, soil conditions, drainage, floodplain designation, access or other conditions; or (v) any other warranties or representations whatsoever.

When the context requires, singular nouns and pronouns include the plural.

GRANTOR

NEW BRAUNFELS UTILITIES,
a Texas municipally owned utility

By: [DO NOT SIGN – FORM ONLY]

Ryan Kelso, Chief Executive Officer

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF COMAL §

This instrument was acknowledged before me on the _____ day of _____ 2024, by Ryan Kelso, Chief Executive Officer of New Braunfels Utilities, on behalf of same and in the capacity herein stated.

(SEAL)

Notary Public, State of Texas

Notary Name Printed

Notary commission expires: _____

GRANTEE

CITY OF NEW BRAUNFELS

By: [DO NOT SIGN – FORM ONLY]

Robert Camareno, City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF COMAL §

This instrument was acknowledged before me on the ____ day of _____2024, by Robert Camareno, City Manager for the City of New Braunfels, on behalf of same and in the capacity herein stated.

(SEAL)

Notary Public, State of Texas

Notary Name Printed

Notary commission expires: _____

Deed Exhibit A
(page 1)

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Deed Exhibit B

Permitted Exceptions

[To be derived from the Commitment]