

**A RESOLUTION BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES AUTHORIZING (I) THE TRANSFER OF .4388 ACRES OF REAL PROPERTY LOCATED AT 1032 W. COLL STREET, NEW BRAUNFELS, TEXAS TO THE CITY OF NEW BRAUNFELS (“CITY”) IN EXCHANGE FOR .581 ACRES OF REAL PROPERTY LOCATED ALONG FM 1044, NEW BRAUNFELS, TEXAS (NEAR THE INTERSECTION OF OLD MARION ROAD AND FM 1044) FROM THE CITY TO NBU FOR CONSTRUCTION AND OPERATION OF AN ELEVATED STORAGE TANK (THE “EST”); (II) ACCEPTANCE OF AN ACCESS EASEMENT, UTILITY EASEMENT, DRAINAGE EASEMENT, AND TEMPORARY CONSTRUCTION EASEMENTS FROM THE CITY FOR CONSTRUCTION AND OPERATION OF THE EST; (III) EXECUTION OF ANY AND ALL DOCUMENTS NECESSARY TO EFFECTUATE THE CONVEYANCES; AND (IV) OTHER MATTERS IN CONNECTION THEREWITH**

WHEREAS, NBU is a Texas municipally owned utility that provides water, wastewater, and electricity to customers in its service area;

WHEREAS, NBU is required to construct an elevated storage tank in the Morningside pressure zone (the “EST”) in order to meet Texas Commission on Environmental Quality elevated storage capacity requirements;

WHEREAS, the City owns and has exclusive operational control over a 4.016 acre tract of unimproved property along FM 1044 near the intersection of Old Marion Road and FM 1044 (the “FM 1044 Property”);

WHEREAS, the FM 1044 Property is located in the Morningside pressure zone;

WHEREAS, NBU desires to construct and operate the EST on a portion of the FM 1044 Property;

WHEREAS, NBU holds exclusive operational control of a .4388 acre tract of real property commonly known as 1032 W. Coll Street, New Braunfels, Texas (the “Coll Property”);

WHEREAS, the City desires to use the Coll Property for additional green space within the City limits;

WHEREAS, NBU is willing to transfer operational control of the Coll Property to the City;

WHEREAS, in exchange for operational control of the Coll Property, the City is willing to convey the following to NBU: (i) operational control of a .581 acre portion of the FM 1044 Property (the “Tank Site”); (ii) an access easement thirty (30) feet in width (the “Access Easement”) for NBU to access the Tank Site from FM 1044; (iii) a utility easement twenty-five

(25) feet in width (the “Utility Easement”) for the construction and operation of a water line and related facilities serving the Tank Site; (iv) a drainage easement fifteen (15) feet in width (the “Drainage Easement”) for the construction and operation of drainage facilities to allow water to drain from the Tank Site and the EST to a detention pond on an adjacent tract of property owned by the City; and (v) temporary construction easements for NBU’s use in connection with the initial construction of the EST (the “Temporary Construction Easements” and together with the Access Easement, the Utility Easement, and the Drainage Easement referenced collectively as the “Easements”), all as more fully described and depicted in the Memorandum of Understanding (“MOU”) attached hereto as Exhibit A.

WHEREAS, the Board of Trustees has reviewed the MOU, together with the exhibits attached thereto, in relation to the proposed exchange of the Coll Property for the Tank Site and the Easements, 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 the transfer of operational control of the Coll Property to the City upon the terms and conditions set forth in the MOU.

SECTION 2. The Board of Trustees hereby further approves the acceptance of the following from the City upon the terms and conditions set forth in the MOU: (i) operational control of the Tank Site; (ii) the Access Easement; (iv) the Utility Easement; (v) the Drainage Easement; and (vi) the Temporary Construction Easements.

SECTION 3. The Chief Executive Officer of NBU or his designee is hereby authorized to negotiate and execute any and all documents necessary to (i) transfer operational control of the Coll Property to the City; (ii) accept operational control of the Tank Site from the City; and (ii) acquire the Easements from the City, including without limitation, the MOU, the Assignments of Operational Control, and the Easements in a form substantially similar to those attached to the MOU. 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 transaction.

SECTION 4. 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 5. 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 6. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 7. 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 8. 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 9. 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.

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Wayne Peters  
President, Board of Trustees  
New Braunfels Utilities

ATTEST:

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Ryan Kelso  
Secretary, Board of Trustees  
New Braunfels Utilities

## EXHIBIT A

### MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING** (“MOU”) is executed by and between the **CITY OF NEW BRAUNFELS** (the “City”), a home-rule city under the laws of the State of Texas, and **NEW BRAUNFELS UTILITIES** (“NBU”), a municipally-owned water, wastewater, and electric utility (individually referenced as “Party” or collectively referenced as the “Parties”) and intended to be effective as of the Effective Date (defined below).

### RECITALS

**WHEREAS**, the City owns an approximately 4.016 acre tract of unimproved property on FM 1044, more fully described in the attached **Exhibit A** (“FM 1044 Property”), which is under the exclusive operational control of the City;

**WHEREAS**, the City owns an approximately .4388 acre tract of property commonly known as 1032 W. Coll Street, New Braunfels, Texas 78130, more fully described in the attached **Exhibit B** (“Coll Property”), which is under the exclusive operational control of NBU, as agent of the City;

**WHEREAS**, in exchange for the transfer of operational control of the Coll Property, the City is amenable to (i) transferring operational control of an approximately .581 acre portion of the FM 1044 Property, more fully depicted in green on the attached **Exhibit C** (the “Tank Site”) to NBU, (ii) conveying an access easement 30 feet in width (the “Access Easement”) on, over, and across the portion of the FM 1044 Property further depicted in pink on Exhibit C (the “Access Easement Property”) to NBU, (iii) conveying a utility easement 25 feet in width (the “Utility Easement”) on, over, under and across the portion of the FM 1044 Property further depicted in solid purple on Exhibit C (the “Utility Easement Property”) to NBU, and (iv) conveying a drainage easement approximately 15 feet in width (the “Drainage Easement”) on, over, and across the portion of the FM 1044 Property outlined in blue on Exhibit C (the “Drainage Easement Property”) to NBU, all upon the terms and conditions set forth herein (the Access Easement, Utility Easement and Drainage Easement are collectively referenced herein as the “Easements”; the Access Easement Property, Utility Easement Property, and Drainage Easement Property are collectively referenced herein as the “Easement Property”);

**WHEREAS**, in exchange for the transfer of operational control of the Tank Site and conveyance of the Easements, NBU is amenable to transferring operational control of the Coll Property to the City, upon the terms and conditions set forth herein;

**WHEREAS**, the Parties regard the exchange of the Tank Site and Easements for the Coll Property (referenced herein as the “Property Exchange”) as an even exchange of real property, such that the Parties do not anticipate the exchange of monetary consideration at the closing (“Closing”) of the Property Exchange;

**WHEREAS**, the Closing is subject to the prior approval of the NBU Board of Trustees (“NBU Board”) and New Braunfels City Council (“City Council”), both of which are conditions precedent to the Parties’ obligations to close the Property Exchange;

**WHEREAS**, the Parties acknowledge the benefits of the Property Exchange to each of them, in that it enables each Party to assume operational control over a tract of property for which it has an immediate need through the exchange of a comparable tract of property, thereby expediting construction, realizing cost savings, increasing efficiency, and improving their respective asset portfolios; and

**WHEREAS**, the Parties wish to enter into this non-binding MOU to set out their respective expectations regarding the transaction contemplated hereby.

**NOW THEREFORE**, in consideration of the representations, covenants, and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **AGREEMENT**

1. *Recitals.* The Parties acknowledge the truth and accuracy of the Recitals, which constitute a substantive part of this MOU.
2. *Closing.* Unless otherwise agreed by the Parties, the Closing of the Property Exchange will take place at the NBU Main Office located at 263 Main Plaza, New Braunfels, Texas, on a date reasonably agreed by the Parties, no later than 5:00 PM on September 6, 2024.
3. *Obligations at Closing.* On or before the date of Closing, the Parties will take the following actions:
  - (a) The City will take the following steps and/or perform the following actions in connection with the Closing:
    - (i) execute a document assigning operational control of the Tank Site to NBU (“Tank Site Assignment”), in a form substantially similar to the form attached hereto as **Exhibit D**, thereby conveying to NBU operational control of the Tank Site, including all the rights, benefits, and obligations attendant thereto;
    - (ii) execute an express easement document conveying the Access Easement on, over, and across the Access Easement Property to NBU, in a form substantially similar to the form attached hereto as **Exhibit E**;
    - (iii) execute a document conveying the Utility Easement on, over, under and across the Utility Easement Property to NBU, in a form substantially similar to the form attached hereto as **Exhibit F**;

- (iv) execute a document conveying the Drainage Easement on, over, under, and across the Drainage Easement Property to NBU, in a form substantially similar to the form attached hereto as **Exhibit G**;
    - (v) execute the Coll Assignment on behalf of the City; and
    - (vi) execute such other and further documentation as reasonably requested by NBU or if applicable, the title insurance company, to effectuate the conveyances described herein.
  - (b) NBU will take the following steps and/or perform the following actions in connection with the Closing:
    - (i) execute a document assigning operational control of the Coll Property to the City (“Coll Assignment”), in a form substantially similar to the form attached hereto as **Exhibit H**, thereby conveying to the City operational control of the Coll Property, including all the rights, benefits, and obligations attendant thereto;
    - (ii) execute the Tank Site Assignment on behalf of NBU; and
    - (ii) execute such other and further documentation as reasonably requested by the City or if applicable, the title insurance company, to effectuate the conveyances described herein.
- 4. *Due Diligence.* Prior to Closing and upon reasonable notice to NBU, the City shall be entitled to access the Coll Property and conduct such inspections as the City deems necessary or desirable concerning the condition of the Coll Property, provided the City restores the Coll Property to the condition it was in on the date on which the City’s inspections commenced if the City’s inspections result in damage to the Coll Property. Prior to Closing and upon reasonable notice to the City, NBU shall be entitled to access the Tank Site and Easement Property and conduct such inspections as NBU deems necessary or desirable concerning the condition of the Tank Site and the Easement Property, provided NBU restores the Tank Site and the Easement Property to the condition the Tank Site and Easement Property were in on the date on which NBU’s inspections commenced if the Tank Site or Easement Property sustain damage.
- 5. *Conditions Precedent.*
  - (a) The Parties’ respective obligations to perform the actions described in Section 3 of this MOU are subject to the prior approval of the NBU Board and City Council, both of which are conditions precedent to the Parties’ obligation to close the Property Exchange contemplated by this MOU.
  - (b) In addition, the City’s obligation to perform the actions described in Section 3(a) of this MOU is subject to the City’s satisfaction of the outcome of the City’s

inspections of the Coll Property, which is a condition precedent to the City's obligation to close the Property Exchange contemplated by this MOU.

- (c) NBU's obligation to perform the actions described in Section 3(b) of this MOU is subject to NBU's satisfaction of the outcome of NBU's inspections of the Tank Site and Easement Property, which is a condition precedent to NBU's obligation to close the Property Exchange contemplated by this MOU.
6. *Termination of MOU.* Either Party may elect to terminate this MOU for any reason or no reason, including but not limited to, failure of any condition precedent, by providing written notice to the other Party prior to Closing. If the City elects to close the Property Exchange contemplated by this MOU, the City acknowledges that it has waived any unsatisfied conditions precedent and elected to take over operational control of the Coll Property in its AS IS, WHERE IS AND WITH ALL FAULTS condition, without representation or warranty. If NBU elects to close the Property Exchange contemplated by this MOU, NBU acknowledges that it has waived any unsatisfied conditions precedent and elected to take over operational control of the Tank Site and accept the Easements in their AS IS, WHERE IS AND WITH ALL FAULTS condition, without representation or warranty.
7. *Closing Costs.* Closing costs shall be addressed as follows:
- (a) NBU shall pay for the Easements to be recorded;
  - (b) if the City elects to record the Coll Assignment, the City shall bear the cost of recording the Coll Assignment;
  - (c) if NBU elects to record the Tank Site Assignment, NBU shall bear the cost of recording the Tank Site Assignment;
  - (d) in the event that either party decides to obtain title insurance or order a title examination for any property they are acquiring under this MOU, the Party requesting the subject title examination and/or title insurance, as applicable, will bear any costs associated with the title examination, title insurance and Closing necessitated thereby; and
  - (e) the Parties agree to work together and negotiate in good faith to satisfy and equitably divide any Closing costs not addressed specifically in this MOU, if any, and any other issues that arise prior to Closing.
8. *Legal Description.* NBU will obtain a survey of the Tank Site and the Easement Property at NBU's expense and provide a copy of the resulting survey image(s) and metes and bounds description(s) to the City upon receipt thereof. Upon acceptance by the Parties, the Parties agree to use the metes and bounds description(s) and survey image(s) of the Tank Site and Easement Property generated by NBU's surveyor in any Closing documents relating to the Tank Site and Easement Property.

9. *Temporary Construction Right of Way and Access.* NBU shall also be entitled to utilize the property depicted in red in the attached Exhibit C, as a temporary construction easement for staging and construction purposes during the period of initial construction of the water tank on the Tank Site; and (b) the property referenced as the City Existing Site Access Driveway in the attached Exhibit C, as a means of access during the period of initial construction of the water tank on the Tank Site. This provision survives Closing of the Property Exchange.
10. *Duration.* This MOU shall be effective as of the date last signed below (“Effective Date”) and shall remain in effect until the earlier of the following: (a) Closing, or (b) until either Party elects to terminate this MOU under Section 6 of this MOU.
11. *Plat Note.* The Parties acknowledge NBU is released, waived and discharged from any obligation to comply with General Note No. 6 on the Plat of Grantor’s Property recorded as Document No. 201606027216, Map and Plat Records, Comal County, Texas and no such obligation will be assigned or conveyed from Grantor to Grantee. The provision shall survive closing of this Agreement.
11. *Reasonable Assurance.* Each Party agrees to execute any additional documents or take any additional action reasonably requested by the other Party to effectuate the conveyances described herein and to memorialize the transaction in a manner reasonably satisfactory to third-parties from whom either Party need to obtain approvals or permits for their intended use. This provision survives Closing of the Property Exchange.
12. *Non-Binding.* This MOU is intended to be and at all times and in all circumstances shall be construed as non-binding.

*[The remainder of this page is intentionally left blank.]*



**IN WITNESS WHEREOF**, the City and NBU mutually consent to enter into this MOU as of the Effective Date.

**NEW BRAUNFELS UTILITIES**

**CITY OF NEW BRAUNFELS**

\_\_\_\_\_  
Ryan Kelso, CEO

\_\_\_\_\_  
Robert Camareno, City Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Valeria M. Acevedo, City Attorney

\_\_\_\_\_  
Connie C. Lock, NBU General Counsel

**Exhibit A**  
**FIELD NOTES**  
**FOR**  
**A 4.016 ACRE TRACT**

Being a 4.016 acre tract of land situated in the John Thompson Survey No. 21, Abstract No. 608, Comal County, Texas, being part of the remaining portion of a 39.175 acre tract described in Warranty Deed recorded in Doc# 200106034241 and referenced in Designation of Successor Trustee recorded in Doc# 200506037482, both of the Official Public Records of Comal County, Texas, said 4.016 acre tract of land being more particularly described as follows:

**BEGINNING:** At a ½" iron pin found on the Northeast line of F.M. Highway No. 1044, for the most Southerly corner of a tract of land called 5.01 acres described in Doc# 200106038391 of the Official Public Records of Comal County, Texas, for the most Westerly corner and Point of Beginning of this herein described tract;

**THENCE:** Leaving said F.M. Highway No. 1044, along the Southerly line of said 5.01 acre tract, N 56° 23' 18" E 449.58 feet to a ½" iron pin with orange cap stamped "Hollmig Engr" set for the most Easterly corner of said 5.01 acre tract, said point being in the Southwest line of Henk Subdivision, Unit One, recorded in Volume 4, Page 5 of the Map and Plat Records of Comal County, Texas, for the most Northerly corner of this herein described tract;

**THENCE:** Along the Southwest line of said Henk Subdivision, Unit 1 and Henk Subdivision, Unit Two, recorded in Volume 5, Page 51 of the Map and Plat Records of Comal County, Texas, S 25° 14' 12" E 243.01 feet to a ½" iron pin found at the most Southerly corner of said Henk Subdivision, Unit Two, for a corner of this herein described tract;

**THENCE:** S 64° 32' 02" W 34.25 feet to a ½" iron pin found for an interior corner of this herein described tract;

**THENCE:** S 23° 46' 27" E 206.57 feet to a ½" iron pin found for the most Easterly corner of this herein described tract;

**THENCE:** S 68° 22' 22" W 428.93 feet to a ½" iron pin found in the Northeast line of F.M. Highway No. 1044, for the most Southerly corner of this herein described tract;

THENCE: Along the Northeast line of F.M. Highway No. 1044, along the arc of a curve to the left, having a radius of 1950.08 feet, an arc length of 277.75 feet, a central angle of  $08^{\circ} 09' 38''$ , and a chord bearing and distance of  $N 20^{\circ} 35' 38'' W$  277.51 feet to a  $\frac{1}{2}$ " iron pin with orange cap stamped "Hollmig Engr" set at the end of said curve;

THENCE: Continuing along the Northeast line of F.M. Highway No. 1044,  $N 24^{\circ} 58' 46'' W$  80.57 feet to the Point of Beginning and containing 4.016 acres of land, more or less.

Bearings based on Texas State Plane Coordinate System, NAD 83 datum.

The foregoing field notes represent the results of an on-the-ground survey made under my supervision, October 21, 2008. Reference plat prepared of this 4.016 acre tract.



*Drew A. Mawyer*  
Drew A. Mawyer, RPLS #5348

Job #08-728

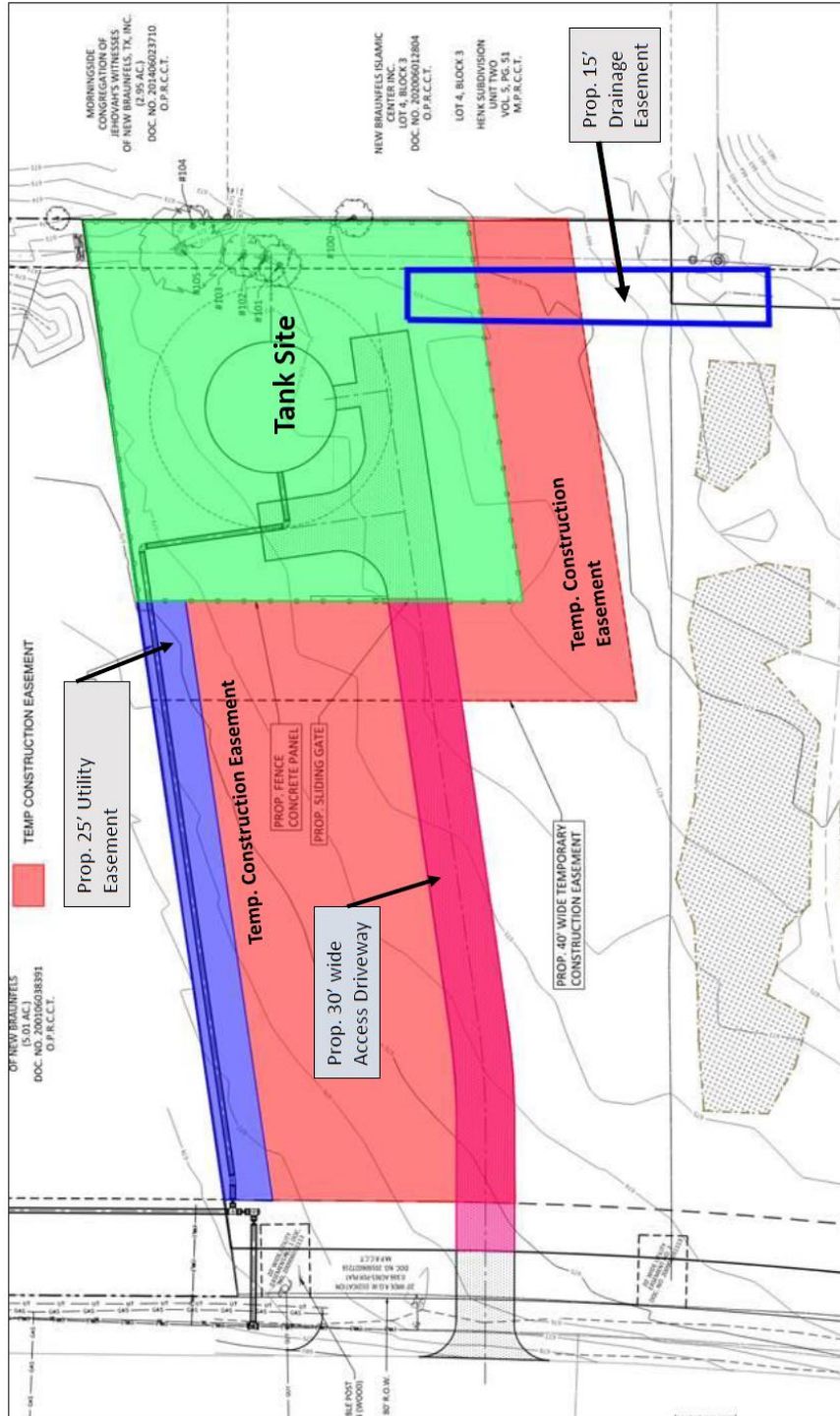
**Exhibit B**

**Coll Property**

Lot 1 & 2, Block 9, City Block 4041, Southwest Addition to the City of New Braunfels, and being the same property conveyed to the City of New Braunfels by deed dated September 12, 1921, recorded as Deed Record Volume 45, Page 13, Official Public Records, Comal County, Texas.

# Exhibit C

## Current Image of Tank Site and Easements



**Exhibit D**

**Form Assignment of Operational Control of Tank Site**

**ASSIGNMENT OF OPERATIONAL CONTROL**

The undersigned, City of New Braunfels (“Assignor”), as Assignor and record title holder of the property described herein, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, does hereby assign, transfer and convey to New Braunfels Utilities (“Assignee”), as Assignee, operational control of and to the following described property, which right Assignor conveys to Assignee AS IS, WHERE IS AND WITH ALL FAULTS without representation or warranty:

[Insert Metes and Bounds Description of Tank Site]

This Assignment of Operational Control (“Assignment”) is made pursuant to a Memorandum of Understanding between Assignor and Assignee dated [Effective Date of MOU], authorized by resolutions of City Council and the Board of Trustees of New Braunfels Utilities, on behalf of Assignor and Assignee, respectively. Assignee joins in the execution of this Assignment to acknowledge receipt and acceptance of same. This document may be executed in multiple counterparts, which together shall constitute one and the same document.

Dated effective the [Closing Date].

**ASSIGNOR:**

CITY OF NEW BRAUNFELS

By: \_\_\_\_\_  
Robert Camareno, City Manager

THE STATE OF TEXAS §

COUNTY OF COMAL §

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by Robert Camareno, as City Manager, of the City of New Braunfels, on behalf of same and in the capacity herein stated.

\_\_\_\_\_  
Notary Public, State of Texas  
My Commission Expires \_\_\_\_\_

**ASSIGNEE:**

NEW BRAUNFELS UTILITIES

By: \_\_\_\_\_  
Ryan Kelso, CEO

THE STATE OF TEXAS           §

COUNTY OF COMAL           §

This instrument was acknowledged before me on \_\_\_\_\_,  
20\_\_\_\_, by Ryan Kelso, as CEO of New Braunfels Utilities, on behalf of same and in the capacity  
herein stated.

\_\_\_\_\_  
Notary Public, State of Texas  
My Commission Expires \_\_\_\_\_

**Exhibit E**

**Access Easement Form**

**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.**

STATE OF TEXAS            §  
  §           **KNOW ALL PERSONS BY THESE PRESENTS:**  
COUNTY OF COMAL       §

**NEW BRAUNFELS UTILITIES  
ACCESS EASEMENT**

**Effective Date:**           [Closing Date]

**Grantor:**                   CITY OF NEW BRAUNFELS  
                                  Attn: City Manager  
                                  550 Landa Street  
                                  New Braunfels, Texas 78130

**Grantee:**                   NEW BRAUNFELS UTILITIES,  
                                  an agent of the City of New Braunfels  
                                  Attention: CEO  
                                  263 Main Plaza  
                                  New Braunfels, Texas 78130

**Easement Property:** The property described in *Exhibit "1"* and depicted on *Exhibit "2"* attached hereto and incorporated herein, located in Comal County, Texas.

**Easement Purpose:** The purpose of the easement conveyed hereby is for providing unobstructed pedestrian and vehicular access to and from the real property described on the attached *Exhibit "3"* ("Servient Property") to and from FM 1044.

**Consideration:** Good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

**Grant:** Grantor, for the Consideration and subject to the Reservation from Conveyance, grants, sells and conveys to Grantee, and its heirs, successors, and assigns, an easement over, upon and across the Easement Property for the Easement Purpose and for the benefit of Grantee and its heirs, successors, and assigns; to have and hold it to Grantee and its heirs, successors, and assigns, subject to the terms hereof. Grantor binds



Grantor and Grantor's heirs, successors, and assigns to warrant and forever defend all and singular the easements and rights herein conveyed to Grantee, and its heirs, successors, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. Such rights and easement shall run with the land and shall be binding upon Grantor and its heirs, successors, and assigns and shall bind and burden the Easement Property.

**Reservation from Conveyance:** Subject to the limitations hereinafter provided, Grantor reserves the right to continue to use and enjoy the Easement Property for all purposes that do not interfere with or interrupt the use or enjoyment of the easement conveyed herein by Grantee and its heirs, successors, and assigns for the Easement Purpose.

**Terms:** The following terms apply to this easement:

1. *Character of Easement.* The easement is non-exclusive. The duration of the easement is perpetual and irrevocable.
2. *Encroachments.* Grantee shall also have the right to remove from the Easement Property, all bushes, trees and parts thereof, any vegetation, and any structures or improvements that are within, under, over, protrude, bisect, encroach, or overhang into the Easement Property and which, in the reasonable opinion of Grantee or its heirs, successors, or assigns, endanger or interfere with the efficient, safe or proper use of the Easement Property for the Easement Purpose.
3. *Improvement.* Grantee shall have the right but not the obligation to improve the Easement Property. Grantee shall further be entitled to construct a fence or gate across the Easement Property in the location depicted on Exhibit C in the Memorandum of Understanding between Grantor and Grantee and referenced as "Prop. Sliding Gate."

[Signatures on following page(s)]

**IN WITNESS WHEREOF**, the Grantor has executed this document as of the date of the acknowledgment to be effective as of the Effective Date.

***GRANTOR:***

CITY OF NEW BRAUNFELS

By: \_\_\_\_\_  
Robert Camareno, City Manager

THE STATE OF TEXAS                   §

COUNTY OF COMAL                   §

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by Robert Camareno, as City Manager of the City of New Braunfels, on behalf of same and in the capacity herein stated.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires \_\_\_\_\_

**Exhibit F**

**Form of Utility Easement**

STATE OF TEXAS            §  
  §       **KNOW ALL PERSONS BY THESE PRESENTS:**  
COUNTY OF COMAL       §

**NEW BRAUNFELS UTILITIES  
UTILITY EASEMENT**

**Effective Date:**       [Closing Date]

**Grantor:**               CITY OF NEW BRAUNFELS  
                                  Attn: City Manager  
                                  550 Landa Street  
                                  New Braunfels, Texas 78130

**Grantee:**               NEW BRAUNFELS UTILITIES,  
                                  an agent of the City of New Braunfels  
                                  Attention: CEO  
                                  263 Main Plaza  
                                  New Braunfels, Texas 78130

**Easement Property:** The property described in *Exhibit "1"* and depicted on *Exhibit "2"* attached hereto and incorporated herein, located in Comal County, Texas.

**Easement Purpose:** The purpose of the easement is for erecting, constructing, installing, replacing, repairing, upgrading, operating, using, inspecting, reconstructing, modifying, removing and maintaining (in whole or in part) water lines, wastewater line, electric service, distribution and/or transmission lines, electronic data transmission lines and devices, and preventative maintenance telecommunication devices, together with all pipes, conduits, poles, guy wires, anchors and all necessary or desirable equipment, improvements, structures and appurtenances ancillary or related thereto (collectively, the "Facilities").

**Consideration:** Good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

**Grant:** Grantor, for the Consideration and subject to the Reservation from Conveyance, grants, sells, and conveys to Grantee, and its heirs, successors, and assigns, an easement over, under, upon and across the Easement Property for the Easement Purpose and for the benefit of Grantee and its heirs, successors, and assigns; to have and hold it to Grantee and its heirs, successors, and assigns, subject to the terms hereof. Grantor binds Grantor and Grantor's heirs, successors, and assigns to warrant and forever defend all and singular the easements and rights herein conveyed to Grantee, and its heirs, successors, and assigns, against

every person whomsoever lawfully claiming or to claim the same or any part thereof. Such rights and easement shall run with the land and shall be binding upon Grantor and its heirs, successors, and assigns and shall bind and burden the Easement Property.

**Reservation from Conveyance:** Subject to the limitations hereinafter provided, Grantor reserves the right to continue to use and enjoy the Easement Property for all purposes that do not interfere with or interrupt the use or enjoyment of the easement conveyed herein by Grantee and its heirs, successors, and assigns for the Easement Purpose.

**Terms:** The following terms apply to this easement:

1. *Character of Easement.* Subject to the Reservation from Conveyance, the easement is exclusive. The duration of the easement is perpetual and irrevocable.
2. Grantee shall have the right to remove from the Easement Property, all bushes, trees and parts thereof, any vegetation, and any structures or improvements that are within, under, over, protrude, bisect, encroach, or overhang into the Easement Property and which, in the reasonable opinion of Grantee or its heirs, successors, or assigns, endanger or interfere with the efficient, safe or proper operation, use, access, and maintenance of the Facilities or any other use of the Easement Property for the Easement Purpose.
3. *Easement Facilities.* All matters concerning the design, construction, installation, maintenance, replacement and removal of the Facilities are at the reasonable discretion of Grantee, or, as applicable, its heirs, successors, or assigns. All Facilities or other Grantee improvements constructed within, on, over, across, or under the Easement Property will be and remain the property of Grantee or, as applicable, its heirs, successors, or assigns.

[Signatures on following page(s)]

**IN WITNESS WHEREOF**, the Grantor has executed this document as of the date of the acknowledgment to be effective as of the Effective Date.

**GRANTOR:**

CITY OF NEW BRAUNFELS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE STATE OF TEXAS                   §

COUNTY OF COMAL                   §

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_, of the City of New Braunfels, on behalf of same and in the capacity herein stated.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires \_\_\_\_\_

**Exhibit G**

**Form for Drainage Easement**

STATE OF TEXAS            §  
  §           **KNOW ALL PERSONS BY THESE PRESENTS:**  
COUNTY OF COMAL       §

**NEW BRAUNFELS UTILITIES  
DRAINAGE EASEMENT**

**Effective Date:**           [Closing Date]

**Grantor:**                   CITY OF NEW BRAUNFELS  
                                  Attn: City Manager  
                                  550 Landa Street  
                                  New Braunfels, Texas 78130

**Grantee:**                   NEW BRAUNFELS UTILITIES,  
                                  an agent of the City of New Braunfels  
                                  Attention: CEO  
                                  263 Main Plaza  
                                  New Braunfels, Texas 78130

**Grantor’s Property:** 4.016 acre tract of property on FM 1044, more fully described in the attached *Exhibit “1”* (“Grantor Property”).

**Easement Property:** The property described in *Exhibit “2”* and depicted on *Exhibit “3”* attached hereto and incorporated herein, located in Comal County, Texas.

**EST Property:** The property described in *Exhibit “4”* and depicted on *Exhibit “5”* attached hereto and incorporated herein, located in Comal County, Texas.

**Adjacent Property:** Being a 23.67 acre tract of land out of the John Thompson Survey, Abstract No. 608 in Comal County, Texas, and being the same property described in the Deed filed of record on November 7, 2008 as Document No. 200806041112, Official Public Records, Comal County, Texas.

**Easement Purpose:** The purpose of the easement is for (i) the drainage, diversion, and flow of storm water and water from an elevated storage tank (“EST”) to be constructed by Grantee on Grantor’s Property to a detention pond on the Adjacent Property; and further for (ii) erecting, constructing, installing, accessing, replacing, repairing, upgrading, operating, using, inspecting, reconstructing, modifying, removing, and maintaining (in whole or in part) a drainage discharge pipe and related equipment and facilities on the Easement Property to allow the drainage, diversion, and flow of storm water and water from the EST to a detention pond on the Adjacent Property, together with all necessary improvements, structures, equipment,

and appurtenances on the Easement Property reasonably necessary or desired to effectuate the Easement Purpose (collectively, the “Facilities”).

**Consideration:** Good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

**Grant:** Grantor, for the Consideration and subject to the Reservation from Conveyance, grants, sells, and conveys to Grantee, and its heirs, successors, and assigns, an easement over, under, upon and across the Easement Property for the Easement Purpose and for the benefit of Grantee and its heirs, successors, and assigns; to have and hold it to Grantee and its heirs, successors, and assigns, subject to the terms hereof. Grantor binds Grantor and Grantor’s heirs, successors, and assigns to warrant and forever defend all and singular the easements and rights herein conveyed to Grantee, and its heirs, successors, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. Such rights and easement shall run with the land and shall be binding upon Grantor and its heirs, successors, and assigns and shall bind and burden the Easement Property.

**Reservation from Conveyance:** Subject to the limitations hereinafter provided, Grantor reserves the right to continue to use and enjoy the Easement Property for all purposes that do not interfere with or interrupt the use or enjoyment of the easement conveyed herein by Grantee and its heirs, successors, and assigns for the Easement Purpose.

**Terms:** The following terms apply to this easement:

1. *Character of Easement.* Subject to the Reservation from Conveyance, the easement is exclusive. The duration of the easement is perpetual and irrevocable.
2. *Encroachments.* Grantee shall have the right to remove from the Easement Property, all bushes, trees and parts thereof, any vegetation, and any structures or improvements that are within, under, over, protrude, bisect, encroach, or overhang into the Easement Property and which, in the reasonable opinion of Grantee or its heirs, successors, or assigns, endanger or interfere with the efficient, safe or proper operation, use, access, and maintenance of the Facilities or any other use of the Easement Property for the Easement Purpose.
3. *Easement Facilities.* All matters concerning the design, construction, installation, maintenance, replacement and removal of the Facilities are at the reasonable discretion of Grantee, or, as applicable, its heirs, successors, or assigns.

[Signatures on following page(s)]

**IN WITNESS WHEREOF**, the Grantor has executed this document as of the date of the acknowledgment to be effective as of the Effective Date.

**GRANTOR:**

CITY OF NEW BRAUNFELS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE STATE OF TEXAS                   §

COUNTY OF COMAL                   §

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_, of the City of New Braunfels, on behalf of same and in the capacity herein stated.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires \_\_\_\_\_



**Exhibit H**

**Form Assignment of Operational Control of Coll Property**

**ASSIGNMENT OF OPERATIONAL CONTROL**

The undersigned, New Braunfels Utilities (“Assignor”), as Assignor and party presently exercising operational control of the property described herein as agent of the City of New Braunfels, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, does hereby assign, transfer and convey to the City of New Braunfels (“Assignee”), as Assignee, operational control of and to the following described property, which right Assignor conveys to Assignee AS IS, WHERE IS AND WITH ALL FAULTS without representation or warranty:

Lot 1 & 2, Block 9, City Block 4041, Southwest Addition to the City of New Braunfels, and being the same property conveyed to the City of New Braunfels by deed dated September 12, 1921, recorded as Deed Record Volume 45, Page 13, Official Public Records, Comal County, Texas.

This Assignment of Operational Control (“Assignment”) is made pursuant to a Memorandum of Understanding between Assignor and Assignee dated [Effective Date of MOU], authorized by resolutions of City Council and the Board of Trustees of New Braunfels Utilities, on behalf of Assignee and Assignor, respectively. Assignee joins in the execution of this Assignment to acknowledge receipt and acceptance of same. This document may be executed in multiple counterparts, which together shall constitute one and the same document.

Dated effective the [Closing Date].

**ASSIGNOR:**

NEW BRAUNFELS UTILITIES

By: \_\_\_\_\_  
Ryan Kelso, CEO

THE STATE OF TEXAS §

COUNTY OF COMAL §

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by Ryan Kelso, as CEO of New Braunfels Utilities, on behalf of same and in the capacity herein stated.

\_\_\_\_\_  
Notary Public, State of Texas  
My Commission Expires \_\_\_\_\_

**ASSIGNEE:**

CITY OF NEW BRAUNFELS

By: \_\_\_\_\_  
Robert Camareno, City Manager

THE STATE OF TEXAS           §

COUNTY OF COMAL           §

This instrument was acknowledged before me on \_\_\_\_\_,  
20\_\_\_\_, by Robert Camareno, as City Manager, of the City of New Braunfels, on behalf of same  
and in the capacity herein stated.

\_\_\_\_\_  
Notary Public, State of Texas  
My Commission Expires \_\_\_\_\_