

R-2023-179

A RESOLUTION BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES AUTHORIZING THE INTERIM CHIEF EXECUTIVE OFFICER TO EXECUTE A SPECIAL WARRANTY DEED SELLING A CERTAIN TRACT OF REAL PROPERTY LOCATED AT 1493 GRUENE ROAD, NEW BRAUNFELS, COMAL COUNTY, TEXAS, 78130 BEING TRACT 2 OF WILLIAM E. FIELD SUBDIVISION AS RECORDED IN VOLUME 5, PAGE 39 OF THE MAP AND PLAT RECORDS OF COMAL COUNTY, TEXAS, AND OTHER MATTERS IN CONNECTION THEREWITH

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

WHEREAS, NBU, as agent of the City of New Braunfels, Texas, has operational control of that certain tract of real property located at 1493 Gruene Road, New Braunfels, Comal County, Texas 78130 being Tract 2 of William E. Field Subdivision as recorded in Volume 5, Page 39 of the Map and Plat Records of Comal County, Texas (the “Property”);

WHEREAS, on June 24, 2021, the NBU Board of Trustees (the “Board”), acting as an agent of the City, passed, approved, and adopted Resolution R#2021-148, a copy of which is attached hereto as Exhibit A, (i) declaring the Property as surplus property; (ii) approving the public auction of the Property; and (iii) authorizing NBU staff to prepare all documents to accomplish the public auction, conduct the auction of the Property, and, upon completion of the public auction and selection of the successful bidder, prepare all necessary documents for the sale of the property to be presented to the Board for review and approval of the sale;

WHEREAS, on August 28, 2023, the City of New Braunfels, Texas, the owner of the Property, by and through its City Council passed, adopted and approved Resolution No. 2023-R53, a copy of which is attached hereto as Exhibit B, (i) granting the authority to NBU, as agent of the City of New Braunfels, to sell the Property; and (ii) authorizing the Board or designee of such Board to execute all necessary documents to sell the Property;

WHEREAS, on October 16, 2023, NBU held a public auction for the sale of the Property in accordance with Local Government Code, Section 253.008;

WHEREAS, LGD 1, LLC, a Texas limited liability company, was the successful bidder at the public auction and desires to purchase the Property for the bid price of \$725,000.00;

WHEREAS, NBU staff recommends execution of the Special Warranty Deed, attached hereto as Exhibit C, for sale of the Property to LGD 1, LLC; and

WHEREAS, the Board of Trustees has reviewed the Special Warranty Deed 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 sale of the Property to LGD 1, LLC for the bid price of \$725,000.00 and (ii) the Special Warranty Deed, attached hereto as Exhibit C.

SECTION 2. The Interim Chief Executive Officer of New Braunfels Utilities is hereby authorized to execute the Special Warranty Deed in substantially the form set forth in Exhibit C hereto and all other documents, including the closing documents, that are necessary to effectuate the sale of the Property.

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 force and effect from and after its final passage, and it is so resolved.

PASSED, APPROVED, AND ADOPTED, this the ___ day of _____, 2023.

Dr. Judith Dykes-Hoffmann
President, Board of Trustees
New Braunfels Utilities

ATTEST:

Ryan Kelso
Secretary, Board of Trustees
New Braunfels Utilities

Exhibit A

R#2021-148

A RESOLUTION BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES DECLARING CERTAIN REAL PROPERTY LOCATED AT A-2 SUR-1 J M VERAMENDI, ACRES 5.004; PROPERTY ID: 72049; COMMONLY KNOWN AS 1493 GRUENE ROAD, NEW BRAUNFELS, COMAL COUNTY, TEXAS 78130, AS SURPLUS PROPERTY; AUTHORIZING THE PUBLIC AUCTION OF SAID PROPERTY IN ACCORDANCE WITH STATE LAW; AND OTHER MATTERS IN CONNECTION THEREWITH

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

WHEREAS, NBU, as agent of the City of New Braunfels, is the owner of certain real property located at A-2 SUR-1 J M VERAMENDI, ACRES 5.004; Property ID: 72049; commonly known as 1493 Gruene Road, New Braunfels, Comal County, Texas 78130 (the “Property”);

WHEREAS, the Property is no longer necessary for use by NBU and is surplus property;

WHEREAS, NBU staff requests to sell the above-described Property by public auction in accordance with Local Government Code, Section 258.003 for fair market value, as determined by appraisal of the Property or greater value, if the fair market value is determined at the time of public auction to be more than the appraised amount;

WHEREAS, the sale of the Property will be presented to the Board of Trustees for review and approval after the public auction; and

WHEREAS, the Board of Trustees is of the opinion that public auction is the appropriate method for disposition of the Property and 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 declares that certain real property located at A-2 SUR-1 J M VERAMENDI, ACRES 5.004; Property ID: 72049; commonly known as 1493 Gruene Road, New Braunfels, Comal County, Texas 78130, as surplus property.

SECTION 2. NBU staff is hereby authorized to prepare all documents necessary to accomplish the public auction of the Property; to auction the Property in accordance with Section 258.003 of the Local Government Code for no less than the appraised value; and upon the completion of the public auction and selection of the successful bidder, to prepare all documents necessary for the sale of the property to be presented to the Board of Trustees for review and approval at such time.

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.

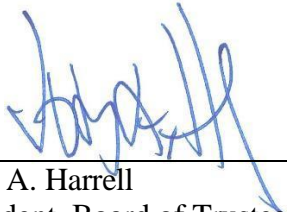
SECTION 5. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

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 force and effect from and after its final passage, and it is so resolved.

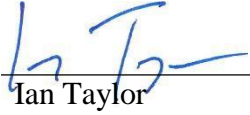
PASSED, APPROVED, AND ADOPTED, this the 24th day of June, 2021.



John A. Harrell
President, Board of Trustees

New Braunfels Utilities

ATTEST:



Ian Taylor

Secretary, Board of Trustees
New Braunfels Utilities

Exhibit B

RESOLUTION NO. 2023 - R53

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, GRANTING THE AUTHORITY TO NEW BRAUNFELS UTILITIES TO SELL THE PROPERTY LOCATED AT 1493 GRUENE ROAD, NEW BRAUNFELS, COMAL COUNTY, TEXAS, 78130 BEING TRACT 2 OF WILLIAM E. FIELD SUBDIVISION AS RECORDED IN VOLUME 5, PAGE 39 OF THE MAP AND PLAT RECORDS OF COMAL COUNTY, TEXAS AND AUTHORIZING THE NEW BRAUNFELS UTILITIES BOARD OF TRUSTEES OR DESIGNEE OF SUCH BOARD TO EXECUTE ALL NECESSARY DOCUMENTS.

WHEREAS, the CITY OF NEW BRAUNFELS, TEXAS, is the Owner of that certain 5.004 acre tract of real property located at 1493 Gruene Road in the City of New Braunfels, Comal County, Texas, 78130 being Tract 2 of William E. Field Subdivision as recorded in Volume 5, Page 39 of the Map and Plat Records of Comal County, Texas, hereinafter referenced as "Property"; and

WHEREAS, New Braunfels Utilities, has held the Property under its operational control since its purchase in 1975 as the former Gruene Road wastewater treatment facility; and

WHEREAS, New Braunfels Utilities has ceased operations and decommissioned the wastewater treatment facility on the Property; and

WHEREAS, New Braunfels Utilities has no further operational use for the Property and would like to sell the Property by auction open to the public;

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

HEREBY, approves and authorizes New Braunfels Utilities, an agency of the City, to sell the Property and further authorizes the New Braunfels Utilities Board of Trustees or designee of such board to execute all necessary documents to sell the Property.

PASSED, ADOPTED AND APPROVED this 28 day of August, 2023.

City of New Braunfels, Texas



Roy Neal Linnartz, Mayor

Attest:


Gayle Wilkinson, City Secretary

Exhibit C

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 THE 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.

SPECIAL WARRANTY DEED

Date: _____, 2023.

Grantor: New Braunfels Utilities as agent of the City of New Braunfels

Grantor's Mailing Address (including county): New Braunfels Utilities
263 Main Plaza
New Braunfels,
Comal County, Texas 78130

Grantee: LGD 1, LLC

Grantee's Mailing Address (including county): LGD 1, LLC,
a Texas limited liability company
25214 Callaway
San Antonio, TX 78260

Consideration: For the amount of ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged. [In the event that the Buyer finances the purchase of the Property through a third-party lender, this provision may be revised to reflect the Grantee's obligation to the third-party lender and the title of the deed may be changed to "Special Warranty Deed With Vendor's Lien."]

Property (including any improvements): Tract 2, William E. Field Subdivision as recorded in Volume 5, Page 39, of the Map and Plat Records of Comal County, Texas, more commonly known as 1493 Gruene Road, New Braunfels, Comal County, Texas 78130.

Reservations from and Exception to Conveyance and Warranty: That such deed is subject to all restrictions, covenants, conditions, easements, rights-of-way and prescriptive rights whether recorded or not, and all recorded instruments and reservations and zoning and other laws affecting the property.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and to hold it to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty, when the claim is by, through or under Grantor, but not otherwise.

THIS DEED IS THE PRODUCT OF AN ARM'S-LENGTH TRANSACTION BETWEEN THE PARTIES. THE PURCHASE PRICE WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION AND REFLECTS THE AGREEMENT OF THE PARTIES THAT THERE ARE NO REPRESENTATIONS, DISCLOSURES, OR EXPRESS OR IMPLIED WARRANTIES, EXCEPT THOSE EXPRESS REPRESENTATIONS IN THE CONTRACT. GRANTEE IS IN THE BUSINESS OF SEEKING OR ACQUIRING, BY PURCHASE OR LEASE, GOODS OR SERVICES FOR COMMERCIAL OR BUSINESS USE, HAS KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS THAT ENABLE IT TO EVALUATE THE MERITS AND RISKS OF THE TRANSACTION CONTEMPLATED HEREBY AND IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION.

THE PARTIES AGREE THAT, TO THE EXTENT REQUIRED BY APPLICABLE LAW TO BE OPERATIVE, THE DISCLAIMERS OF CERTAIN WARRANTIES CONTAINED IN THIS PARAGRAPH ARE "CONSPICUOUS" DISCLAIMERS FOR THE PURPOSES OF ANY APPLICABLE LAW, RULE OR ORDER. EXCEPT FOR THE EXPRESS REPRESENTATIONS SET FORTH IN THE REAL ESTATE CONTRACT BETWEEN THE PARTIES, IT IS UNDERSTOOD AND AGREED THAT GRANTOR IS NOT MAKING, AND SPECIFICALLY DISCLAIMS,--AND GRANTEE IS NOT RELYING ON ANY WARRANTIES OR REPRESENTATIONS BY GRANTOR OR ANY OTHER PERSON OF ANY KIND OR CHARACTER--EXPRESS, IMPLIED, OR STATUTORY--WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR REPRESENTATIONS AS TO MATTERS RELATING TO ZONING, TAX CONSEQUENCES, ENVIRONMENTAL OR OTHER PROPERTY CONDITIONS, AVAILABILITY OF ACCESS, INGRESS OR EGRESS, OR OPERATIONS ON THE PROPERTY, INCLUDING, WITHOUT LIMITATION: (I) THE VALUE, PHYSICAL CONDITION (INCLUDING, WITHOUT LIMITATION, THE QUALITY, QUANTITY OR AVAILABILITY OF WATER, BOTH SURFACE AND GROUND, AND THE PRESENCE OF MOLD OR OAK TREE WILT DISEASE), ENVIRONMENTAL CONDITION, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE PROPERTY, (II) THE MANNER OR QUALITY OF THE CONSTRUCTION, DESIGN OR MATERIALS INCORPORATED INTO ANY OF THE PROPERTY, OR (III) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY.

GRANTEE REPRESENTS THAT IT IS A KNOWLEDGEABLE GRANTEE OF REAL ESTATE AND THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF GRANTEE'S CONSULTANTS, AND THAT GRANTEE HAS CONDUCTED OR HAS PROVIDED FOR CONDUCT OF SUCH INSPECTIONS AND INVESTIGATIONS AS GRANTEE DEEMS NECESSARY AND APPROPRIATE, INCLUDING, BUT NOT LIMITED TO, THE ENVIRONMENTAL AND OTHER CONDITIONS THEREOF, AND SHALL RELY UPON SAME, AND, UPON CLOSING, SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE ENVIRONMENTAL AND OTHER CONDITIONS MAY NOT HAVE BEEN ACCURATELY OR ADEQUATELY REVEALED BY GRANTEE'S INSPECTIONS AND INVESTIGATIONS. GRANTEE ACKNOWLEDGES AND AGREES THAT UPON CLOSING, THE SALE AND CONVEYANCE OF THE PROPERTY IS TO BE MADE BY GRANTOR AND EXPRESSLY ACCEPTED BY GRANTEE ON AN "AS IS", "WHERE IS" AND "WITH ALL FAULTS" BASIS, WITHOUT REPRESENTATION OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY OR OF ANY OF OTHER KIND WHATSOEVER, EITHER EXPRESS, IMPLIED OR STATUTORY, ALL SUCH WARRANTIES AND REPRESENTATIONS BEING EXPRESSLY DISCLAIMED. GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT ALL MATERIALS THAT HAVE BEEN PROVIDED BY GRANTOR HAVE BEEN PROVIDED WITHOUT ANY REPRESENTATION, EXPRESSED OR IMPLIED, AS TO THEIR CONTENT, SUITABILITY FOR ANY PURPOSE, ACCURACY, TRUTHFULNESS OR COMPLETENESS, AND GRANTEE WILL NOT HAVE ANY RECOURSE AGAINST GRANTOR IN THE EVENT OF ANY ERRORS OR OMISSIONS IN THOSE MATERIALS. GRANTOR IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PROPERTY FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON.

[In the event that the Buyer finances the purchase of the Property through a third-party lender, a provision substantially similar to the following may be added to this deed: It is expressly agreed and stipulated that a vendor's lien and the superior title are retained against the Property until the obligation set out in the Note is fully performed and paid, whereupon this deed shall become absolute. Grantor does hereby assign and transfer said vendor's lien and superior title to the lender referenced in the Consideration paragraph as security for the Note, without representation by or recourse against Grantor.]

(Signatures Appear on the Following Page)

(Signature Page-Special Warranty Deed)

Executed on the ____ day of _____, 2023.

GRANTOR:

New Braunfels Utilities
as agent of the City of New Braunfels

By: _____

Ryan Kelso
Interim Chief Executive Officer

Approved as to Form:

Connie Lock, General Counsel
New Braunfels Utilities

ACKNOWLEDGEMENT

STATE OF TEXAS

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COUNTY OF COMAL

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BEFORE ME, the undersigned Notary Public, on this day personally appeared Ryan Kelso, Interim Chief Executive Officer of New Braunfels Utilities, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of New Braunfels Utilities, for the purpose and considerations therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the _____ day of _____, 2023.

NOTARY PUBLIC, STATE OF TEXAS

PRINT NOTARY'S NAME:

AGREED TO AND ACCEPTED on this the ____ day of _____, 2023.

GRANTEE:

[GRANTEE NAME]

By: _____

[Grantee]

ACKNOWLEDGEMENT

STATE OF TEXAS

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COUNTY OF COMAL

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BEFORE ME, the undersigned Notary Public, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of [Grantee], for the purpose and considerations therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the _____ day of _____, 2023.

NOTARY PUBLIC, STATE OF TEXAS

PRINT NOTARY'S NAME:

AFTER FILING RETURN TO:

New Braunfels Utilities
Connie Lock, General Counsel
263 Main Plaza
New Braunfels, Texas 78130