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Attention: Erik G. Moskowitz

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

**SECOND AMENDED AND RESTATED UTILITY CONSTRUCTION
COST SHARING AGREEMENT
SOUTHSTAR AT MAYFAIR, LLC**

This Second Amended and Restated Utility Construction Cost Sharing Agreement (this "**Agreement**") is entered into to be effective as of _____ 2024 (the "**Second Amended Effective Date**"), by and among New Braunfels Utilities ("**NBU**"), charged with exclusive management and control of the water and wastewater systems of the City of New Braunfels, Texas (the "**City**"), Southstar at Mayfair, LLC, a Texas limited liability company (the "**Developer**"), MNB Real Estate Investments, LLC, a Texas limited liability company ("**MNB**"), Southstar at Mayfair Developer, LLC, a Texas limited liability company ("**Southstar at Mayfair Developer**"), and Beaverhead NB, LLC, a Texas limited liability company ("**Beaverhead**") and together with NBU, Developer, MNB, and Southstar at Mayfair Developer, collectively the "**Parties**," and each a "**Party**").

WITNESSETH:

WHEREAS, the Parties entered into that certain Utility Construction Cost Sharing Agreement with an effective date of February 8, 2022 (the "**Original Effective Date**"), recorded in the Land Records of Comal County, Texas on February 10, 2022, as Document No. 202206006599 (the "**Original Agreement**") to set forth the conditions under which NBU would supply domestic water service and wastewater service to the Property (hereinafter defined);

WHEREAS, the Parties entered into that certain First Amendment to Utility Construction Cost Sharing Agreement dated as of May 30, 2023, recorded in the Land Records of Comal County, Texas on May 31, 2023, as Document No. 202306016603 (the "**First Amended Agreement**") to modify that the design, permitting, and construction of the IWWTF (hereinafter defined) would occur in two (2) phases;

WHEREAS, the Parties entered into that certain Amended and Restated Utility Cost Sharing Agreement with an effective date of December 14, 2023, recorded in the Land Records of Comal County, Texas on January 30, 2024, as Document No. 202406002727 (the “**First Restated Agreement**”) to modify the Developer’s pro rata share of costs for certain infrastructure, update certain infrastructure completion deadlines, and incorporate the First Amended Agreement modifications;

WHEREAS, the Parties now desire to enter into this Agreement in order to amend and restate in its entirety the First Restated Agreement to further modify certain infrastructure completion deadlines, modify the Developer’s bonding requirements for certain infrastructure, and update the Developer’s water conservation restriction obligations for commercial and multi-family lots;

WHEREAS, as of the Original Effective Date, MNB, Southstar at Mayfair Developer, and Beaverhead (the “**Landowners**”) owned approximately 1,888 acres of real property located in Comal County, Texas (the “**County**”) within the extraterritorial jurisdiction of the City and within the geographical boundaries of the Comal County Water Improvement Districts Nos. 3, 3A and 3B (collectively, the “**District**”), as such real property is more particularly described on Exhibit “A” attached hereto and made a part hereof (the “**Property**” or the “**Mayfair Development**”);

WHEREAS, as of the Original Effective Date, the Southstar at Mayfair Investments West, LLC, a Texas limited liability company (“**Southstar at Mayfair Investments West**”) owned approximately 96.044 acres on the northwest side of the Property, as more particularly described on Exhibit “A-1” attached hereto and made a part hereof (the “**Excluded Property**”), and the Developer and Southstar at Mayfair Investments West acknowledged and agreed that (i) NBU is not, and shall not be deemed to be, responsible for providing water or wastewater services to any portion of the Excluded Property; (ii) if NBU, in its sole discretion, ever agrees to provide such services, the provision of any such services would be governed by a separate signed written agreement between NBU and the then-owner of the Excluded Property and would be subject to various terms, provisions and requirements (which would be subject to NBU’s approval in its sole discretion), including, without limitation, that the then-owner of the Excluded Property would be required to install, or cause to be installed, any necessary new or upgraded infrastructure across the Property to enable any such service to be potentially feasible; and (iii) NBU is not, and shall not be deemed to be, obligated to enter into, or to entertain entering into, any such agreement;

WHEREAS, the Property is located outside NBU’s Certificate of Convenience and Necessity (“**CCN**”) for water service and wastewater service;

WHEREAS, the Developer submitted a master framework plan for the Mayfair Development to the City on June 28, 2021 (the “**Master Framework Plan**”), set forth on Exhibit “B” attached hereto and made a part hereof, pursuant to which the Developer seeks to develop a mixed-use development on the Property (the “**Project**”) with such proposed uses more particularly described on Exhibit “C” attached hereto and made a part hereof;

WHEREAS, the Developer estimates that the Project at completion will require a total of 5,800 LUEs of water service and 5,800 LUEs of wastewater service and will have an estimated 5,500 single family residential units (such estimates, the “**Maximum LUEs**”);

WHEREAS, the Developer is a party to that certain Development Agreement by and between the City and the Developer, as successor by assignment to Southstar at Mayfair, LP, a Delaware limited partnership (the “**Development Agreement**”) authorizing the Project in accordance with the Master Framework Plan, as may be amended from time to time under the terms of the Development Agreement; and, pursuant to the Development Agreement, the City has required the Developer enter into this Agreement for domestic water service and wastewater service;

WHEREAS, the Developer has requested that NBU supply the Property with domestic water service and wastewater service in accordance with the terms of this Agreement even though the Property is not located within NBU’s water or wastewater CCN and NBU has no obligation to serve the Property with water;

WHEREAS, the Developer acknowledges that NBU may contract to supply water and wastewater service to the Property pursuant to this Agreement, but will not be obligated to do so unless the Developer complies with its obligations described in this Agreement;

WHEREAS, the Developer acknowledges that NBU supplying water and wastewater service for the Property and charging a Water Development Fee, a Sewerage Development Fee, and impact fees as provided herein results in a benefit to the Developer;

WHEREAS, the Developer filed a service extension application dated November 2, 2021, (the “**Application**”) pursuant to Section 1.03(D) of NBU’s Water-Wastewater Extension Policy (as may be amended from time to time, the “**Extension Policy**”) for potable water and wastewater service for the Property, which Application requests cost participation by NBU for oversizing water or wastewater lines pursuant to the Extension Policy and for reimbursement of capital recovery fees pursuant to NBU’s Impact Fee Policy (Capital Recovery Policy) (as may be amended from time to time, the “**Capital Recovery Policy**” and collectively with the Extension Policy, the “**NBU Policy**”) (the terms ‘capital recovery fees’ and ‘impact fees’ are used interchangeably in this Agreement, both having the meaning ascribed to capital recovery fees in the Capital Recovery Policy);

WHEREAS, as provided in Section 2.04 of the Extension Policy and Section 2.08 of the Capital Recovery Policy, a written contract is required between the Developer and NBU with respect to the subject matter of this Agreement;

WHEREAS, as required pursuant to Section 2.02 of the Extension Policy, the Developer must provide a signed and sealed water and wastewater engineering design report/study (the “**Engineering Study**”) setting forth engineering cost estimates to be used in determining the appropriate amount of cost reimbursement to the Developer for oversizing costs hereunder, all of which must be agreed upon in writing by the Developer and NBU;

WHEREAS, the amount of reimbursement of capital recovery fees shall be determined as required pursuant to Section 2.08C of the Capital Recovery Policy and, in no event, shall exceed, as allowed by Section 2.08C of the Capital Recovery Policy, the total amount of capital recovery fees due from new developments utilizing the water or wastewater facility;

WHEREAS, NBU will be responsible for constructing (i) the offsite waterline connection from the Project to the NBU service system and the offsite water infrastructure as more particularly

set forth in Sections 4.1(a)(ii)(A), 4.1(a)(ii)(C), 4.1(a)(ii)(E), and 4.1(a)(ii)(F) hereof (collectively, the “**NBU Offsite Water Infrastructure**”); and (ii) the offsite wastewater infrastructure as more particularly set forth in Sections 4.4(h)(ii)(B) and 4.4(h)(ii)(D) hereof (the “**NBU Offsite Wastewater Infrastructure**”);

WHEREAS, the Application provides for an interim wastewater solution for preliminary development within the Project (the “**IWWTF**”), which Developer shall fund and construct, at its sole cost and expense as set forth in Section 4.4;

WHEREAS, the Developer will be responsible for constructing, at its sole cost and expense, the following (together with any changes to the scope thereof as may be made as a result of changed circumstances and a signed written agreement of the Parties (subject to approval by NBU in its sole discretion)), which are collectively referred to herein as the “**Developer New Infrastructure**”: (i) all internal water and wastewater infrastructure necessary for providing service to the Project as more particularly set forth in Sections 4.1(a)(i), 4.4(a), and 4.4(h)(i) hereof (the “**Internal Water Infrastructure**,” the IWWTF, and the “**Internal Wastewater Infrastructure**,” respectively); (ii) the offsite wastewater infrastructure from the Project to the NBU McKenzie Interceptor Main as more particularly set forth on Exhibit “H” attached hereto and made a part hereof (the “**Developer Offsite Wastewater Infrastructure**” and together with the NBU Offsite Wastewater Infrastructure, the “**Offsite Wastewater Infrastructure**”); (iii) the 16-Inch IH 35 Crossing; (iv) the 16/20-Inch Kohlenberg Eastern Connection Water Line (together with the NBU Offsite Water Infrastructure and the 16-Inch IH 35 Crossing, collectively, the “**Offsite Water Infrastructure**”); and (v) all other Bonded Items;

WHEREAS, the Developer will be responsible for constructing, at its sole cost and expense, other internal water and wastewater distribution and conveyance infrastructure in support of the Project, such as multiple 8-inch and larger water mains, in accordance with NBU’s policies and the proposed Engineering Study;

WHEREAS, the Offsite Wastewater Infrastructure and the Offsite Water Infrastructure are collectively referred to as the “**Offsite Infrastructure**”;

WHEREAS, the Internal Wastewater Infrastructure, the Internal Water Infrastructure, the Offsite Infrastructure, the IWWTF, and all other infrastructure contemplated by this Agreement together with any changes to the scope thereof as may be made as a result of changed circumstances and a signed written agreement of the Parties (subject to approval by NBU in its sole discretion) are collectively referred to as the “**New Infrastructure**”;

WHEREAS, with respect to reimbursement of oversizing costs, the CEO (as hereinafter defined) pursuant to Section 2.05 of the Extension Policy has determined that: (i) the 16/20-Inch Kohlenberg Eastern Connection Water Line connection is anticipated to be included on the future impact fee capital improvements plan for that category of capital improvement (the “**Oversizing Infrastructure**”); (ii) the proposed Oversizing Infrastructure, if built as designed, complies with the generally accepted engineering practices and other planning criteria of NBU and the final design and routing will comply with the NBU Policy and the NBU Water/Sewer Connection Policy Manual if built as designed; (iii) the Engineering Study fairly apportions the improvement among prospective

users of the Oversizing Infrastructure; (iv) the proposed Oversizing Infrastructure is a reasonable extension and addition to NBU's water and wastewater systems; and (v) funds for participation in the Oversizing or Developer Constructed Rebate-Eligible Infrastructure Hard Construction Costs (as hereinafter defined) will be available to meet the proposed payment schedule;

WHEREAS, with respect to reimbursement of capital improvement fees, the CEO has determined, pursuant to Section 2.08 of the Capital Recovery Policy, that the portion of the New Infrastructure more particularly set forth on Exhibit "L" attached hereto and made a part hereof has been designated on the capital improvement plan (the "**Rebate-Eligible Infrastructure**");

WHEREAS, after considering the factors set forth in the NBU Policy, the Board of Trustees of NBU finds that it is appropriate to enter into this Agreement and to reimburse the Developer for (i) utility facility oversizing in excess of the Developer Oversizing Responsibility identified in this Agreement in accordance with the terms of the Extension Policy and (ii) capital recovery fees identified in this Agreement in accordance with the Capital Recovery Policy;

WHEREAS, this Agreement is authorized by and the Parties fully intend for it to be in compliance with all Applicable Laws (as hereinafter defined), including without limitation those of the City, NBU, the County, and the State, with respect to the subject matter of this Agreement; and

WHEREAS, the Parties are entering into this Agreement for the purpose of setting forth their respective obligations with respect to the matters set forth herein.

NOW THEREFORE, in consideration of the foregoing and the mutual agreements, covenants, and payments authorized herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I

DEFINITIONS

1.1 **Defined Terms**. Wherever used in this Agreement, the following terms shall have the meanings ascribed to them below:

- (a) "**16-Inch IH 35 Crossing**" has the meaning ascribed to it in Section 4.1(a)(i)(A) and is further described in Exhibit "H" attached hereto and incorporated herein for all purposes.
- (b) "**16-Inch IH 35 Crossing Short Segment**" has the meaning ascribed to it in Section 4.1(a)(ii)(B).
- (c) "**16-Inch IH 35 Crossing Long Segment**" has the meaning ascribed to it in Section 4.1(a)(ii)(B).
- (d) "**16/20-Inch Kohlenberg Eastern Connection Water Line**" has the meaning ascribed to it in Section 4.1(a)(i)(B) and is further described on Exhibit "H" attached hereto and incorporated herein for all purposes.

- (e) “**Acceptance Date**” means the date of the Acceptance Letter.
- (f) “**Acceptance Letter**” has the meaning ascribed to it in Section 7.2(a).
- (g) “**Act**” has the meaning ascribed to it in Section 5.11(a).
- (h) “**Agreement**” has the meaning ascribed to it in the preamble.
- (i) “**Amended Effective Date**” has the meaning ascribed to it in the preamble.
- (j) “**Applicable Laws**” means any and all applicable present and future judicial decisions, statutes, laws, rulings, rules, regulations, orders, writs, injunctions, decrees, permits, policies, certificates, or ordinances of any Governmental Authority.
- (k) “**Application**” has the meaning ascribed to it in the recitals.
- (l) “**Bank**” has the meaning ascribed to it in Section 5.11(b).
- (m) “**Beaverhead**” has the meaning ascribed to it in the preamble.
- (n) “**Bonded Items**” means the Oversizing Infrastructure, the 16-Inch IH 35 Crossing, the 16/20-Inch Kohlenberg Eastern Connection Water Line, the IWWTF and its decommissioning, and the McKenzie Interceptor Main Connection Work.
- (o) “**Build-Out**” means, as described in the Development Agreement, the permanent completion of all sales and development activities relating to the Project by the Developer.
- (p) “**Calendar Year**” means January 1 through December 31 of a given year.
- (q) “**Capital Recovery Policy**” has the meaning ascribed to it in the recitals.
- (r) “**CEO**” means the Chief Executive Officer of NBU.
- (s) “**CCN**” has the meaning ascribed to it in the recitals.
- (t) “**Certification Affidavit**” means a Certification Affidavit Regarding Annual Report in the form set forth on Exhibit “D” attached hereto and incorporated herein for all purposes.
- (u) “**City**” has the meaning ascribed to it in the preamble.
- (v) “**City Parties**” means the City, and its officials, officers, agents, consultants, employees, attorneys, and representatives, in both their public and private capacities.

- (w) “**Conrads (Goodwin Lane) EST**” is described on Exhibit “R” attached hereto and incorporated herein for all purposes.
- (x) “**Construction Contract**” has the meaning ascribed to it in Section 5.6(a).
- (y) “**County**” has the meaning ascribed to it in the recitals.
- (z) “**Default Rate**” has the meaning ascribed to it in Section 9.3.
- (aa) “**Developer**” has the meaning ascribed to it in the preamble.
- (bb) “**Developer Constructed Rebate-Eligible Infrastructure**” means the Rebate-Eligible Infrastructure constructed by the Developer.
- (cc) “**Developer Fiscal Security**” has the meaning ascribed to it in Section 5.10.
- (dd) “**Developer Fiscal Security Item**” or “**Developer Fiscal Security Items**” has the meaning ascribed to it in Section 5.10. NBU, in its sole discretion, may choose to perform the Work on the Developer Fiscal Security Items itself or to engage a third party to complete some or all of such Work.
- (ee) “**Developer New Infrastructure**” has the meaning ascribed to it in the recitals.
- (ff) “**Developer New Infrastructure Property**” has the meaning ascribed to it in Section 7.1(c).
- (gg) “**Developer Offsite Wastewater Infrastructure**” has the meaning ascribed to it in the recitals.
- (hh) “**Developer Oversizing Responsibility**” has the meaning ascribed to it in Section 4.5.
- (ii) “**Developer Parties**” means the Developer and its officers, agents, engineers, consultants, employees, and representatives.
- (jj) “**Developer Reimbursement Amount**” has the meaning ascribed to it in Section 8.2.
- (kk) “**Developer Reimbursement Conditions**” has the meaning ascribed to it in Section 8.2.
- (ll) “**Developer’s Completion Packet**” has the meaning ascribed to it in Section 7.1.
- (mm) “**Developer’s Conrads (Goodwin Lane) EST Share**” has the meaning ascribed to it in Section 4.1(a)(ii)(E).

- (nn) “**Developer’s FM 306 Pump Station Share**” has the meaning ascribed to it in Section 4.1(a)(ii)(A).
- (oo) “**Developer’s Goodwin Lane Water Line Share**” has the meaning ascribed to it in Section 4.1(a)(ii)(C).
- (pp) “**Developer’s Goodwin Lane Water Line and EST Share**” has the meaning ascribed to it in Section 4.1(a)(ii)(E).
- (qq) “**Developer’s Notice of Completion**” has the meaning ascribed to it in Section 7.1.
- (rr) “**Development Agreement**” has the meaning ascribed to it in the recitals.
- (ss) “**Development Fees**” has the meaning ascribed to it in Section 8.4.
- (tt) “**Dispute Notice**” has the meaning ascribed to it in Section 9.7.
- (uu) “**District**” has the meaning ascribed to it in the recitals.
- (vv) “**Easement Estates**” means those certain construction and/or permanent easements to be granted to NBU as more particularly set forth on Exhibit “M” attached hereto and made a part hereof, which exhibit sets forth the Party responsible for the costs and expenses associated in securing each such Easement Estate.
- (ww) “**Engineering Study**” has the meaning ascribed to it in the recitals.
- (xx) “**Escalating Notice**” has the meaning ascribed to it in Section 9.7.
- (yy) “**EST**” means elevated storage tank.
- (zz) “**Event of Bankruptcy or Insolvency**” means the dissolution or termination of the Developer’s existence as a going business, the Developer’s insolvency, appointment of receiver for any significant part of the Developer’s property with such appointment not being terminated within ninety (90) calendar days after such appointment is initially made, any general assignment for the benefit of the Developer’s creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Developer with such proceeding not being dismissed within ninety (90) calendar days after the filing thereof.
- (aaa) “**Event of Default**” has the meaning ascribed to it in Section 9.1.
- (bbb) “**Excluded Property**” has the meaning ascribed to it in the recitals.
- (ccc) “**Expiration Date**” has the meaning ascribed to it in Section 2.3.

- (ddd) “**Extension Policy**” has the meaning ascribed to it in the recitals.
- (eee) “**First Amended Agreement**” has the meaning ascribed to it in the recitals.
- (fff) “**First Restated Agreement**” has the meaning ascribed to it in the recitals.
- (ggg) “**Fire Flow**” means water required for firefighting purposes as defined in the City’s Code of Ordinance.
- (hhh) “**FM 306 Pump Station and Discharge Line**” is described on Exhibit “O” attached hereto and incorporated herein for all purposes.
- (iii) “**FM 1101 Pump Station and Discharge Line**” is described on Exhibit “P” attached hereto and incorporated herein for all purposes.
- (jjj) “**Force Majeure**” means acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, acts or orders of any kind of the government of the United States of America, or of any state or locality thereof, or any civil or military authority, insurrections, riots, pandemics, epidemics, landslides, earthquakes, floods, restraining of government and people, acts of civil disturbances, explosions, or nuclear accidents.
- (kkk) “**Goodwin Lane EST**” now referred to as “**Conrads (Goodwin Lane) EST**” is described on Exhibit “R” attached hereto and incorporated herein for all purposes.
- (lll) “**Goodwin Lane Water Line**” is described on Exhibit “Q” attached hereto and incorporated herein for all purposes.
- (mmm) “**Governmental Authority**” means any and all federal, state, county, district, municipal, city, or otherwise governmental or quasi-governmental unit and any and all applicable courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any such governmental unit or quasi-governmental units. For the avoidance of doubt, for purposes of this definition, NBU is a Governmental Authority.
- (nnn) “**HOAs**” has the meaning ascribed to it in Section 5.7.
- (ooo) “**Indemnified Parties**” has the meaning ascribed to it in Section 10.1.
- (ppp) “**Initial Required Bonded Work**” has the meaning ascribed to it in Section 5.9.
- (qqq) “**Internal Wastewater Infrastructure**” has the meaning ascribed to it in the recitals.
- (rrr) “**Internal Water Infrastructure**” has the meaning ascribed to it in the recitals.

- (sss) “**IWWTF**” is the interim wastewater treatment facility as described in the recitals and further in Section 4.4.
- (ttt) “**Landowners**” has the meaning ascribed to it in the recitals.
- (uuu) “**LUE**” means a living unit equivalent, which equals an average daily demand or flow of water or wastewater, as applicable, with each LUE of water equal to an average daily demand of 425 gallons and with each LUE of wastewater equal to an average daily wastewater flow of 230 gallons.
- (vvv) “**Master Framework Plan**” has the meaning ascribed to it in the recitals.
- (www) “**Maximum LUEs**” has the meaning ascribed to it in the recitals.
- (xxx) “**McKenzie Interceptor Main Connection Work**” has the meaning ascribed to it in Section 4.4(f).
- (yyy) “**McKenzie WWTP**” has the meaning ascribed to it in Section 4.4(a).
- (zzz) “**McKenzie WWTP Expansion**” is described on Exhibit “T” attached hereto and incorporated herein for all purposes.
- (aaaa) “**Milestone Dates**” has the meaning ascribed to it in Section 5.3.
- (bbbb) “**Milestones**” has the meaning ascribed to it in Section 5.3.
- (cccc) “**MNB**” has the meaning ascribed to it in the preamble.
- (dddd) “**NBU**” has the meaning ascribed to it in the preamble.
- (eeee) “**NBU Event of Default**” has the meaning ascribed to it in Section 9.6.
- (ffff) “**NBU McKenzie Interceptor Main**” is described on Exhibit “S” attached hereto and incorporated herein for all purposes.
- (gggg) “**NBU Offsite Wastewater Infrastructure**” has the meaning ascribed to it in the recitals.
- (hhhh) “**NBU Offsite Water Infrastructure**” has the meaning ascribed to it in the recitals.
- (iiii) “**NBU Policy**” has the meaning ascribed to it in the recitals.
- (jjjj) “**NBU’s Construction Standards**” has the meaning ascribed to it in Section 5.4(a).
- (kkkk) “**NBU Standard Size**” has the meaning ascribed to it in the Extension Policy.

- (llll) “**NBU’s Non-Acceptance Notice**” has the meaning ascribed to it in Section 7.3.
- (mmmm) “**New Infrastructure**” has the meaning ascribed to it in the recitals.
- (nnnn) “**Offsite Infrastructure**” has the meaning ascribed to it in the recitals.
- (oooo) “**Offsite Wastewater Infrastructure**” has the meaning ascribed to it in the recitals.
- (pppp) “**Offsite Water Infrastructure**” has the meaning ascribed to it in the recitals.
- (qqqq) “**Original Agreement**” has the meaning ascribed to it the recitals.
- (rrrr) “**Original Effective Date**” has the meaning ascribed to it in the recitals.
- (ssss) “**Outside Date**” has the meaning ascribed to it in Section 8.2.
- (tttt) “**Oversizing Infrastructure**” has the meaning ascribed to it in the recitals.
- (uuuu) “**Oversizing or Developer Constructed Rebate-Eligible Infrastructure Hard Construction Costs**” means actual, out-of-pocket construction costs incurred by the Developer that are attributable solely to the construction of the Oversizing Infrastructure or Developer Constructed Rebate-Eligible Infrastructure excluding all Oversizing or Developer Constructed Rebate-Eligible Infrastructure Soft Construction Costs.
- (vvvv) “**Oversizing or Developer Constructed Rebate-Eligible Soft Construction Costs**” means all soft cost items actually incurred by the Developer in connection with the construction of the of Oversizing Infrastructure or Developer Constructed Rebate-Eligible Infrastructure, including, without limitation, costs in connection with engineering, design, site acquisition, permits, inspections, consultants, studies, regulatory related fees, bonds, easements, and any other form of fiscal security, accounting fees and services, project management costs, attorneys’ fees, and financial costs including but not limited to construction period interest and loan fees.
- (wwww) “**Parties**” has the meaning ascribed to it in the preamble.
- (xxxx) “**Party**” has the meaning ascribed to it in the preamble.
- (yyyy) “**Plans and Specifications**” has the meaning ascribed to it in Section 5.4(a).
- (zzzz) “**Potable Water**” means all water distributed by NBU which meets the applicable State, local and federal standards for human consumption or which may be used in the preparation of foods or beverages, specifically including, by

way of example and not in limitation, the rules of TCEQ set out in 30 Texas Administrative Code Section 290.

- (aaaaa) “**Project**” has the meaning ascribed to it in the recitals.
- (bbbbb) “**Project Schedule**” means the chart set forth on Exhibit “E” which details the key events related to the Work to be performed by the Developer under this Agreement, along with respective dates.
- (ccccc) “**Property**” has the meaning ascribed to it in the recitals.
- (ddddd) “**Rebate-Eligible Infrastructure**” has the meaning ascribed to it in the recitals.
- (eeeee) “**Reimbursement Agreement**” means the Reimbursement Agreement dated July 27, 2020, between NBU and the Developer in which the Developer agrees to pay for a portion of NBU’s legal fees and expenses incurred in connection with negotiating this Agreement.
- (fffff) “**Sequencing Schedule**” has the meaning ascribed to it in Section 6.6(d).
- (ggggg) “**Sewerage Development Fee**” has the meaning ascribed to it in Section 8.4.
- (hhhhh) “**Southstar at Mayfair Developer West**” has the meaning ascribed to it in the recitals.
- (iiiiii) “**Southstar at Mayfair Developer**” has the meaning ascribed to it in the preamble.
- (jjjjj) “**Standalone Restrictions**” has the meaning ascribed to it in Section 5.7.
- (kkkkk) “**State**” means the State of Texas.
- (lllll) “**Substantial Completion**” means the time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of a professional engineer licensed by the State, the Work (or a specified part thereof) is sufficiently complete, in accordance with the underlying Construction Contract or construction contract and with this Agreement, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended.
- (mmmmm) “**TCEQ**” means the Texas Commission on Environmental Quality.
- (nnnnn) “**Term**” has the meaning ascribed to it in Section 2.3.
- (ooooo) “**Total Annual Rebate**” has the meaning ascribed to it in Section 8.3(d).

(ppppp) “**Total Rebate Payment**” has the meaning ascribed to it in Section 8.3(c)

(qqqqq) “**Unforeseen Condition**” means an unanticipated field condition, regulatory requirement, or similar contingency, including Force Majeure, which the Developer reasonably believes may require a revision to the Project Schedule.

(rrrrr) “**Water Development Fee**” has the meaning ascribed to it in Section 8.4.

(sssss) “**Work**” means any of the labor, materials, equipment, administration, and other similar efforts and items necessary or beneficial for the completion of the Project and the construction of the New Infrastructure.

ARTICLE II

GENERAL PROVISIONS

2.1 **Recitals.** The recitals to this Agreement are incorporated herein for all purposes as matters of contract and not mere recitals.

2.2 **Purpose.** The purpose of this Agreement is to protect the health, safety and general welfare of the community and to limit the harmful effects of substandard subdivisions; to facilitate the Developer’s construction of the Project; and to protect the City and NBU from bearing any unnecessary expense of constructing or completing the New Infrastructure.

2.3 **Term.** The term of this Agreement (the “**Term**”) shall begin on the Original Effective Date and shall terminate on a date that is fifteen (15) years after the Original Effective Date (the “**Expiration Date**”); *provided*, however, that if the final Build-Out has not occurred prior to the Expiration Date, the Term may be extended for an additional five (5) years on mutual agreement of the Parties as evidenced by a fully executed, notarized, and duly recorded amendment to this Agreement.

ARTICLE III

REPRESENTATIONS, WARRANTIES, AND COVENANTS OF THE DEVELOPER AND NBU; DISCLAIMER

3.1 **Representations and Warranties of the Developer and the Landowners.** The Developer (and, with respect to representations, warranties and covenants about the Landowners and the Property, the Landowners) hereby makes the following representations, warranties, and covenants to NBU as of the Original Effective Date and throughout the Term of this Agreement as if being remade throughout such Term:

(a) **Existence.** The Developer is and for the term of this Agreement will continue to be a limited liability company duly created and validly existing under the laws of the State of Texas and is and for the term of this Agreement will continue to be authorized to transact business in the State. The Developer has all requisite power and authority to enter into this

Agreement. Each Landowner is and for the term of this Agreement will continue to be a limited liability company duly created and validly existing under the laws of the State of Texas and is and for the term of this Agreement will continue to be authorized to transact business in the State. The Landowners have all requisite power and authority to enter into this Agreement.

(b) Authorization. The execution, delivery, and performance by the Developer of this Agreement have been duly authorized by all necessary action and will not violate the organizational documents of the Developer or result in the breach of or constitute a default under any loan or credit agreement, or other agreement to which the Developer is a party or by which the Developer or its assets may be bound or affected. The execution of this Agreement by the Developer does not require any consent or approval that has not been obtained, including without limitation the consent or approval of any Governmental Authority. The execution, delivery, and performance by each Landowner of this Agreement have been duly authorized by all necessary action and will not violate the organizational documents of the respective Landowner or result in the breach of or constitute a default under any loan or credit agreement, or other agreement to which a Landowner is a party or by which such Landowner or its assets may be found or affected. The execution of this Agreement by the Landowners does not require any consent or approval that has not been obtained, including without limitation the consent or approval of any Governmental Authority.

(c) Enforceable Obligations. This Agreement, all documents executed by the Developer pursuant hereto, and all obligations of the Developer hereunder and thereunder are enforceable against the Developer in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditor's rights generally, and by general equity principles. This Agreement, all documents executed by the Landowners pursuant hereto, and all obligations of the Landowners hereunder and thereunder are enforceable against the Landowners in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditor's rights generally, and by general equity principles.

(d) No Legal Bar. The execution and delivery of this Agreement and the performance of its obligations hereunder by the Developer will not conflict with any provision of any Applicable Law to which any of the Developer, the Property, or the Project is subject or conflict with, or result in a breach of, or constitute a default under any of the terms, conditions, or provisions of any agreement or instrument to which the Developer is a party or by which the Developer, the Property, or the Project is bound or any order or decree applicable to the Developer, the Property, or the Project. The execution and delivery of this Agreement and the performance of its obligations hereunder by the Landowners will not conflict with any provision of any Applicable Law to which any of the Landowners, the Property, or the Project is subject or conflict with, or result in a breach of, or constitute a default under any of the terms, conditions, or provisions of any agreement or instrument to which the a Landowner is a party or by which a Landowner, the Property, or the Project is bound or any order or decree applicable to the Landowners, the Property, or the Project.

(e) Ownership. Landowners have acquired the Property and have not conveyed, assigned, transferred, mortgaged, or hypothecated (or entered into any agreement or understanding to convey, assign, transfer, whether orally or in writing, except as permitted under Section 3.2(b)) all or any portion of this right to any other person or entity.

(f) Litigation. There are no legal actions or proceedings pending or, to the knowledge of the Developer, threatened against the Developer or with respect to the Property or the Project. There are no legal actions or proceedings pending or, to the knowledge of the Landowners, threatened against the Landowners or with respect to the Property or the Project.

(g) Documents. All documents made available by the Developer or its representatives to NBU or the City including without limitation documents relating to the Developer, the Project, or the Property are true and correct and are complete copies of the instruments which they purport to be and accurately depict the subject matter addressed therein; provided, however that the schedules and timelines are projections only, which the Developer believes to be reasonable, and in no way guarantees of performance. All documents made available by Landowners or their representatives to NBU or the City including without limitation documents relating to the Landowners, the Project, or the Property are true and correct and are complete copies of the instruments which they purport to be and accurately depict the subject matter addressed therein; provided, however, that the schedules and timelines are projects only, which the Landowners believe to be reasonable, and in no way guarantees of performance.

(h) Knowledge. The Developer has no knowledge of any facts or circumstances which currently evidence, or with the passage of time or giving of notice or both, would evidence, that any of the representations made by the Developer under this Agreement are in any way inaccurate, incomplete, or misleading. The Landowners have no knowledge of any facts or circumstances which currently evidence, or with the passage of time or giving of notice or both, would evidence, that any of the representations made by the Landowners under this Agreement are in any way inaccurate, incomplete, or misleading.

(i) Construction Standards. The Developer New Infrastructure has been and will be designed and constructed in all respects in compliance with NBU's Construction Standards and all Applicable Laws.

(j) Project Schedule. The Project Schedule and the Milestone Dates accurately reflect the projected schedule for the anticipated development and construction of the Project and have been created based on commercially reasonable parameters with input from appropriate and skilled professionals and consultants.

3.2 Continuing Covenants of the Developer.

(a) Annual Certification Affidavit. The Developer shall provide to NBU no later than thirty (30) days following the end of each Calendar Year during the Term an annual Certification Affidavit, pursuant to which the Developer shall certify that the Developer's representations and warranties in this Agreement are true and correct as of the date of such annual Certification Affidavit and the Developer shall remake the Developer's representations and warranties made in this Agreement as of the date of such annual Certification Affidavit. The

Certification Affidavit shall also include (i) a summary of the progress of the design, permitting and construction of the IWWTF, the construction of the Developer New Infrastructure, and the Project; (ii) a summary of and a copy of any liens or claims related to the Work with respect to the Developer New Infrastructure, together with the Developer's plan for resolving the same; (iii) a summary of the progress of the Developer New Infrastructure as it relates to the projected schedule of LUEs for the phases of construction set forth on Exhibit "F" attached hereto and made a part hereof, including without limitation a projection of the portions of the Project expected to be connected to the NBU water and wastewater systems (which projections cannot exceed at any time the number of LUEs projected to be available at such time pursuant to the terms of this Agreement, including, without limitation, Article IV hereof), and the associated estimated number of LUEs related thereto, within the year following such projection; and (iv) any other information that NBU may reasonably require. Failure of the Developer to comply with this Section shall be considered an Event of Default under Section 9.1(j) of this Agreement. Notwithstanding anything in this Agreement to the contrary, NBU shall have no obligation whatsoever to pay to the Developer the Developer Reimbursement Amount under this Agreement unless the complete annual Certification Affidavits (in form and substance satisfactory to NBU) and the quarterly reports required by Section 5.6(b) of this Agreement (in form and substance satisfactory to NBU) have been properly and timely submitted to NBU.

(b) Assignment; Ownership. The Developer and Landowners hereby covenant that neither the Developer nor any Landowner shall convey, assign, or transfer all or any portion of its current or future interest in the Property to any other person or entity without the prior written consent of NBU, unless the following conditions have been met:

- (i) Promptly upon entering into any agreement to convey, assign, or transfer any portion of the Property, Developer and each applicable Landowner has provided NBU with written notice thereof; and
- (ii) Developer and each applicable Landowner shall have provided the written notice set forth on Exhibit "U," and the purchase agreement and deed(s) related thereto each contain an express acknowledgment of this Agreement, the Developer's obligations hereunder, and notice that, if Developer does not comply with the terms set forth herein, such transferee has assumed the risk that water and/or wastewater service may not be available on the Property.

If the Developer or any Landowner conveys, assigns, or transfers any portion of the Property, the Developer shall remain obligated to complete its requirements under this Agreement.

NBU's approval of a plat does not constitute prior written approval to convey, assign, or transfer any interest in the Property pursuant to this Section 3.2.

(c) Financial Updates. On February 15, May 15, August 15, and November 15 of each year, Developer shall provide NBU copies of the Developer's financial reports for the immediately preceding calendar quarter, which shall include, at a minimum: a balance sheet, a statement of cash flow, and a schedule of distributions, and all such financial reports shall be in the

same form and substance as provided to Developer's equity holders. At NBU's request, Developer shall participate in monthly finance meetings during the term of this Agreement.

(d) Fees and Expenses. On or before the execution of the Agreement, Developer shall have paid to NBU the following fees and expenses (i) fifty percent (50%) of all of the legal fees incurred by NBU relating to the negotiation, drafting, and execution of the Agreement (whether or not covered by the Reimbursement Agreement described in Section 11.1) and (ii) one hundred percent (100%) of all fees incurred by NBU related to certificates and evidence verifying entity formation, existence, and good standing (whether or not covered by the Reimbursement Agreement described in Section 11.1).

3.3 **Representations and Warranties of NBU**. NBU hereby makes the following representations, warranties, and covenants to the Developer as of the Original Effective Date.

(a) Existence. NBU is a municipally owned utility that the City created pursuant to the City Charter and the laws of the State of Texas. NBU has all requisite power and authority to enter into this Agreement.

(b) Authorization. The execution, delivery, and performance by NBU of this Agreement have been duly authorized by its governing body.

(c) Litigation. NBU has not been served with any legal actions or proceedings with respect to this Agreement.

3.4 **Disclaimer**. **THE PARTIES EACH ACKNOWLEDGE THAT, EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED WITHIN THIS AGREEMENT, NEITHER PARTY NOR ANY CITY PARTY HAS MADE ANY REPRESENTATION OR WARRANTY WHATSOEVER (WHETHER EXPRESS OR IMPLIED) REGARDING THE SUBJECT MATTER OF THIS AGREEMENT.**

ARTICLE IV

WATER AND WASTEWATER SERVICE

4.1 **Water Service**.

(a) The Developer projects the Property will require a total of 5,800 LUEs of water service for the Build-Out of the Property. Subject to the Developer's satisfaction of its obligations under this Agreement, NBU agrees to offer water service up to the amount of such projection to customers within the Property, subject to NBU's typical water fees and terms of use applicable to end users of NBU's water; provided that NBU shall never be obligated to provide water service in excess of 5,800 LUEs. NBU shall make such service available at such time as the New Infrastructure, or a specific phase of the New Infrastructure as identified herein, is completed according to the terms of this Agreement and the NBU Policy in effect at that time, and accepted by NBU. The projected number of LUEs of water service for each phase of the Project is set forth on Exhibit "F" hereof and the actual number of LUEs of water service shall not exceed such projections. The number and location of the points of connection between water facilities owned

by NBU and the Developer New Infrastructure shall be agreed upon by NBU and the Developer in writing and shall be included in the Engineering Study. All references in this Agreement to “water” shall be deemed to refer to Potable Water unless the water is expressly referred to as nonpotable water. The New Infrastructure necessary for Potable Water service for the Project includes the following:

(i) The Internal Water Infrastructure, which includes:

A. An estimated 4,000 linear feet of 16-inch water main from the Kohlenberg Standpipe crossing on IH 35 to the existing 12-inch main along Conrads Lane (the “**16-Inch IH 35 Crossing**” as further described in Section 4.1(a)(ii)(B) and depicted on Exhibit “H”) to be constructed by Developer.

B. An estimated 24,000 linear feet of 16-inch water main and 24-inch water main generally extending from Kohlenberg Road / FM 1101 across IH 35 to Hunter Road near the Country Hills Pump Station (“**16/20-Inch Kohlenberg Eastern Connection Water Line**”) to be constructed by Developer.

(ii) The Offsite Water Infrastructure, which includes:

A. The FM 306 Pump Station and Discharge Line to be constructed by NBU. Upon Substantial Completion of the FM 306 Pump Station and Discharge Line by NBU, and upon completion of all of the applicable Work required to be constructed by the Developer under and in accordance with this Agreement (including, without limitation, in accordance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), NBU will have access to an initial 500 LUEs of water for the Project but will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule. If the Developer has otherwise satisfied its obligations under this Agreement (including, without limitation, compliance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), NBU agrees to Substantially Complete construction of the FM 306 Pump Station and Discharge Line on or before July 31, 2023, provided the Developer timely pays to NBU the Developer’s eighty-nine percent (89%) pro rata share of the total estimated cost of design, construction management, and construction of the FM 306 Pump Station and Discharge Line (the “**Developer’s FM 306 Pump Station Share**”) in accordance with Section 8.5 of this Agreement.

B. The 16-Inch IH 35 Crossing to be constructed by the Developer in two parts: a line from Conrads Lane to Kohlenberg Road crossing IH-35 (the “**16-Inch IH 35 Crossing Short Segment**”) as described in this Section 4.1(a)(ii)(B); and a line from IH-35 to the Kohlenberg Elevated Storage Tank (the “**16-Inch IH 35 Crossing Long Segment**”) as described in Section 4.1(a)(ii)(D) (and together with the 16-Inch IH 35 Crossing Short Segment, the 16-Inch IH 35 Crossing as depicted on Exhibit H). Upon Substantial Completion of the 16-Inch IH 35 Crossing Short Segment by the Developer in accordance with this Agreement, upon completion of all of the applicable Work required to be constructed by the Developer under and in accordance with this Agreement (including, without limitation, in accordance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), and upon

satisfaction of the conditions set forth in Sections 4.1(a)(ii)(A) above, NBU will have access to an additional 357 LUEs of water for a total of 857 LUEs of water for the Project on or before November 30, 2023, but will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule.

C. The Goodwin Lane Water Line to be constructed by NBU. Upon Substantial Completion of the FM 306 Pump Station and Discharge Line in accordance with Section 4.1(a)(ii)(A), upon completion of the 16-Inch IH 35 Crossing Short Segment in accordance with Section 4.1(a)(ii)(B), upon completion of the Goodwin Lane Water Line by NBU, and upon completion of all of the applicable Work required to be constructed by the Developer under and in accordance with this Agreement (including, without limitation, in accordance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), NBU will have access to an additional 0 LUEs of water for a total of 857 LUEs of water for the Project but will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule. If the Developer has otherwise satisfied its obligations under this Agreement (including, without limitation, compliance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), NBU agrees to Substantially Complete construction of the Goodwin Lane Water Line on or before July 31, 2024, provided the Developer timely pays to NBU the Developer's fifty-two percent (52%) pro rata share of the total estimated cost of design, property acquisition, construction management, and construction of the Goodwin Lane Water Line (the "**Developer's Goodwin Lane Water Line Share**") in accordance with Section 8.5 of this Agreement.

D. The 16-Inch IH 35 Crossing Long Segment to be constructed by the Developer. Upon Substantial Completion of the 16-Inch IH 35 Crossing Long Segment by the Developer in accordance with this Agreement, upon completion of all of the applicable Work required to be constructed by the Developer under and in accordance with this Agreement (including, without limitation, in accordance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule) and upon satisfaction of the conditions set forth in Sections 4.1(a)(ii)(A), (B), and (C) above, NBU will have access to an additional 643 LUEs of water for a total of 1,500 LUEs of water for the Project on or before July 31, 2025, but will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule.

E. The Conrads (Goodwin Lane) EST to be constructed by NBU. Upon Substantial Completion of the FM 306 Pump Station and Discharge Line in accordance with Section 4.1(a)(ii)(A) above, upon completion of the Goodwin Lane Water Line in accordance with Section 4.1(a)(ii)(C) above, upon completion of the Conrads (Goodwin Lane) EST by NBU, and upon satisfaction of the conditions set forth in Sections 4.1(a)(ii)(B) and (D) above, NBU will have access to an additional 1,500 LUEs of water for a total of 3,000 LUEs of water for the Project but will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule. If the Developer has otherwise satisfied its obligations under this Agreement (including, without limitation, compliance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), NBU agrees to Substantially Complete construction of the Conrads (Goodwin Lane) EST on or before July 31, 2025, provided the Developer timely pays to NBU the Developer's fifty-eight percent (58%) pro rata share of the

total estimated cost of design, property acquisition, construction management, and construction of the Conrads (Goodwin Lane) EST (the “**Developer’s Conrads (Goodwin Lane) EST Share**” and, together with the Developer’s Goodwin Lane Water Line Share, the “**Developer’s Goodwin Lane Water Line and EST Share**”) in accordance with Section 8.5 of this Agreement.

F. The FM 1101 Pump Station and Discharge Line to be constructed by NBU. Upon Substantial Completion of the FM 1101 Pump Station and Discharge Line by NBU, upon completion of all of the applicable Work required to be constructed by the Developer under and in accordance with this Agreement (including, without limitation, in accordance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), and upon satisfaction of the conditions set forth in Sections 4.1(a)(ii)(A), (B), (C), (D), and (E), NBU will have access to an additional 1,500 LUEs of water for a total of 4,500 LUEs for the Project but will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule. If the Developer has otherwise satisfied its obligations under this Agreement (including, without limitation, compliance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), NBU agrees to Substantially Complete construction of the FM 1101 Pump Station and Discharge Line on or before July 31, 2028.

G. The 16/20-Inch Kohlenberg Eastern Connection Water Line to be constructed by the Developer. Upon Substantial Completion of the 16/20-Inch Goodwin to Kohlenberg Eastern Connection Water Line, upon completion of all of the applicable Work required to be constructed by the Developer under and in accordance with this Agreement (including, without limitation, in accordance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), and upon satisfaction of the conditions set forth in Sections 4.1(a)(ii)(A), (B), (C), (D), (E), and (F), NBU will have access to an additional 1,300 LUEs of water for a total of the full Build-Out capacity of 5,800 LUEs of water for the Project on or before July 31, 2030, but will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule.

(b) Subject to the Developer completing its obligations under this Agreement, NBU projects that sufficient water capacity exists or will be available to provide the projected LUEs of water to serve the Property as specified in Exhibit “F”; provided, however, that nothing set forth in this Agreement is, or shall be deemed to be, a reservation of LUEs of water for the Property.

(c) FOR THE AVOIDANCE OF DOUBT, UNDER NO CIRCUMSTANCES SHALL ANY WATER CONNECTIONS BE CONSTRUCTED UNTIL THE APPLICABLE PHASE OF THE IWWTF (AND THE OTHER APPLICABLE WASTEWATER INFRASTRUCTURE) BECOMES OPERATIONAL AND IS SUFFICIENT TO TREAT THE WASTEWATER GENERATED BY SUCH WATER CONNECTIONS IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT. THERE MUST BE AN EQUIVALENT LUE OF WASTEWATER CAPACITY AVAILABLE UNDER THE TERMS OF THIS AGREEMENT FOR EVERY WATER LUE THAT IS CONNECTED PURSUANT TO THE TERMS OF THIS AGREEMENT.

4.2 **Fire Flow.** NBU shall deliver water service to points of connection agreed upon by the Parties with sufficient quantity as described in the Engineering Study to meet Fire Flow

requirements of Applicable Law and consistent with standards for NBU service in effect at the time of connection.

4.3 **Capacity Requirement for Potable Water Main System.** NBU will require the Developer to construct a Potable Water system within the Property located within the Kohlenberg Pressure Zone to provide additional pass through flow capacity of 2,500 gallons per minute, or the equivalent of a 16-inch water main, from the intersection of Kohlenberg Road and future Street B to Hunter Road/FM 1102 and future Street A, as identified and described on Exhibit “H” hereto. The final alignment and water main sizes to convey the additional flow capacity will be coordinated with the Developer in writing and shall be included in the Engineering Study.

4.4 **Wastewater Service.** The Developer projects the Property will require a total of 5,800 LUEs of wastewater collection, treatment, and disposal service for the ultimate build out of the Property. Subject to the Developer’s satisfaction of its obligations under this Agreement, NBU agrees to offer wastewater service to customers within the Property, subject to NBU’s typical wastewater fees and terms of use applicable to end users of NBU’s wastewater services. NBU shall provide such service at such time as the New Infrastructure, or a specific phase of the New Infrastructure, is completed according to the terms of this Agreement and the NBU Policy in effect at that time, and accepted by NBU. The projected number of LUEs of wastewater service for each phase of the Project is set forth on Exhibit “F” hereof.

(a) **Interim Waste Water Treatment Facility (“IWWTF”).** The Parties acknowledge and agree that all wastewater from the Project shall ultimately be conveyed from the Project to NBU’s McKenzie Wastewater Treatment Plant (the “**McKenzie WWTP**”) through the NBU McKenzie Interceptor Main. As of the Original Effective Date, the NBU McKenzie Interceptor Main did not have the capacity for conveyance of the wastewater generated by the Project at Build-Out. The Parties agree that an IWWTF will be designed, permitted and constructed by Developer at its sole cost and expense to serve up to 1,500 LUEs of the Project on an interim basis. The IWWTF will be constructed and operated by the Developer on the Property.

(i) **Design, Permitting, Construction and Operation.** The IWWTF will be designed, permitted, constructed, and operated by the Developer, at the Developer’s sole cost and expense, pursuant to the Mayfair Master Planned Community Temporary Wastewater Treatment Plan approved in writing by NBU staff and attached hereto as part of Exhibit “I.” It is anticipated that the IWWTF will be constructed in two (2) phases, with ninety (90) days written notice provided by the Developer to NBU prior to initiation of construction of each phase. The design, permitting, construction, and operation of the IWWTF are subject to the following requirements:

A. The IWWTF will be designed in accordance with the then-current Chapter 217, Texas Administrative Code, Design Criteria for Domestic Wastewater Systems, or its successor, and the drawings, specifications, and the engineering report shall be signed and sealed by a professional engineer licensed to practice in the State of Texas. The IWWTF will have an ultimate treatment and discharge capacity of approximately 300,000 gallons per day, or the TCEQ’s treatment and discharge criteria for 1,500 LUEs, whichever is greater.

B. Developer shall construct the IWWTF in accordance with the design, engineering, and permitting requirements of TCEQ and any other regulating authorities.

(a) Construction of the IWWTF shall not commence before (i) all permitting and construction authorizations are obtained by the Developer from TCEQ and any other regulating authorities and (ii) NBU staff has approved the commencement of construction;

(b) Construction of Phase I (for treatment of a maximum of 857 total LUEs of wastewater) of the IWWTF is anticipated to take six (6) months. While Phase I of the IWWTF is under construction, no water or wastewater connections will be constructed on the Property. After completion of Phase I of the IWWTF, 857 LUEs of wastewater will be available to the Project, but NBU will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule. No additional water or wastewater connections will be constructed until Phase II of the IWWTF is completed.

(c) Construction of Phase II (for treatment of a maximum of 1,500 total LUEs of wastewater) of the IWWTF will begin when inflow to the IWWTF for three (3) consecutive months has reached seventy-five percent (75%) of Phase I design capacity. Upon Developer posting fiscal security for Phase II of the IWWTF pursuant to Section 5.9 and beginning design, an additional 643 LUEs of wastewater (for a total of 1,500 LUEs of wastewater inflow) will be available to the Project, but NBU will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule.

(ii) Cost. Developer shall pay all of the costs associated with preliminary design, permitting, detailed design, construction, operation and maintenance, and decommissioning of the IWWTF. In addition, Developer shall pay all costs associated with the McKenzie Interceptor Main Connection Work.

(b) Operations & Maintenance. The IWWTF shall be owned and operated by the Developer at no cost to NBU. The IWWTF will be operated and maintained in a professional manner using business practices similar to NBU and other Texas municipalities and the IWWTF shall be operated and maintained under the rules and regulations of TCEQ and any other regulating authority. If Developer decides to use a private operating company for operation and maintenance of the IWWTF, such company must have at least five (5) years of successful experience with similar-sized wastewater treatment plants in the state of Texas and be approved by NBU staff. The Developer shall provide to NBU in a format acceptable to NBU copies of all monthly reports to TCEQ and any other regulating authorities.

(i) If Developer uses a private operating company for operation and maintenance of the IWWTF, the operation and maintenance of the IWWTF shall be subject to the following requirements:

A. Developer shall ensure that NBU is listed as a noticed party on all agreements with the operating company such that NBU shall receive copies of all notices issued by the operator to Developer under any such agreements.

B. Developer shall ensure that NBU is a conditional assignee of Developer's obligations under any agreement with the operating company. Should Developer be deemed in default of any agreement with the operating company, NBU shall have the right, at its sole discretion, but not the obligation, to cure Developer's default and be assigned Developer's obligations under such agreement with the operating company. In the event NBU exercises such right, Developer shall reimburse and indemnify NBU for all costs, expenses, and fees incurred to operate and maintain the IWWTF through its decommissioning.

C. The Developer shall ensure that NBU receives notice when inflow to the IWWTF for three (3) consecutive months has reached seventy-five percent (75%) of Phase I design capacity such that Phase II design and construction must begin. Beginning upon Phase II construction completion, the Developer shall ensure that NBU receives notice when inflow to the IWWTF for three (3) consecutive months has reached seventy-five percent (75%) of Phase II design capacity.

(c) Treatment Levels. The treatment requirements and discharge parameters for the IWWTF, as provided in Exhibit "I" for design and permitting purposes shall meet the treatment requirements and discharge parameters required by TCEQ for wastewater treatment plants discharging effluent at the proposed IWWTF site. The operation of the IWWTF must meet or exceed the treatment requirements and discharge parameters documented in the permits issued by TCEQ and any other regulating authority.

(d) Connections. No water or wastewater connections will be constructed on the Property until each phase of the IWWTF is operational and sufficient to treat the wastewater generated by those connections. Upon completion of the McKenzie Interceptor Main and the McKenzie WWTP, all wastewater from the Project will be conveyed through mains provided by the Developer to the McKenzie Interceptor (i.e., under no circumstances shall permanent "pump and haul" be allowed).

(e) Flow Levels. The anticipated raw wastewater influent and treated wastewater effluent parameters are provided in Exhibit "I."

(f) NBU McKenzie Interceptor Main Improvements. NBU shall initiate design, permitting and construction of the NBU McKenzie Interceptor Main improvements upon or sooner than the earliest of the following:

- (i) Inflow to the IWWTF for three (3) consecutive months has reached seventy-five percent (75%) of Phase II design capacity; or
- (ii) December 31, 2028.

Upon NBU's Substantial Completion of the improvements to the McKenzie Interceptor Main, all wastewater from the Project will be diverted by the Developer, at the Developer's sole cost and expense, to the McKenzie Interceptor Main (such Work referred to as the "**McKenzie Interceptor Main Connection Work**"), and the IWWTF will cease operation and be decommissioned by the Developer; provided, however, that the ultimate responsibility hereunder to ensure such decommissioning shall fall upon the Developer.

(g) Decommissioning of the IWWTF. Within forty-five (45) days of diverting the influent from the Project to the NBU McKenzie Interceptor Main, the Developer shall submit to TCEQ a “Clean Closure Plan” and any other documents required of TCEQ, and initiate the process for decommissioning the IWWTF and canceling the related TCEQ permit. It is anticipated that the lift station shall be abandoned in place. In connection therewith, at the Developer’s sole cost and expense, the lift station shall be sealed in accordance with regulatory requirements, Applicable Laws, and professional business practice; all chemicals and chemical containers shall be removed from the site and disposed of in accordance with all regulatory requirements and Applicable Laws; and buildings and modular treatment components shall be emptied and removed from the site. The Developer will comply with all of the requirements of TCEQ and other regulatory authorities and all Applicable Laws. The site shall be reclaimed in accordance with the requirements of TCEQ and other regulatory agencies and Applicable Laws.

(h) Permanent Wastewater Service. The number and location of the points of connection between wastewater facilities owned by NBU and the Developer New Infrastructure shall be agreed upon by NBU and the Developer in writing and shall be included in the Engineering Study. The New Infrastructure necessary for wastewater service for the Project includes the following:

(i) The Internal Wastewater Infrastructure:

A. Except during the period the IWWTF is providing interim wastewater treatment service as discussed above, all wastewater flow generated on the Property will be served by the NBU wastewater collection and treatment systems. The Engineering Study reflects the preliminary alignments and locations of the proposed gravity mains, lift stations, and force mains required to provide wastewater service to the Property.

B. The preliminary sizing of the Internal Wastewater Infrastructure reflected in the Engineering Study was designed to provide service to the Project only. NBU reserves the right to require, at the sole cost and expense of the Developer, extension of proposed gravity wastewater mains within the Property in accordance with the NBU Policy in effect to support future developments north of the Property.

(ii) The Offsite Wastewater Infrastructure, which includes:

A. The Developer Offsite Wastewater Infrastructure to be constructed by the Developer. Upon Substantial Completion of the NBU McKenzie Interceptor Main, all wastewater from the Project will be conveyed to the NBU McKenzie Interceptor Main through the McKenzie Interceptor Main Connection Work constructed by the Developer. The IWWTF will be decommissioned by the Developer as part of the McKenzie Interceptor Main Connection Work.

B. The NBU McKenzie Interceptor Main to be constructed by NBU. Upon Substantial Completion by NBU of the NBU McKenzie Interceptor Main and upon completion by the Developer of the Internal Wastewater Infrastructure as required of the Developer under and in accordance with this Agreement (including, without limitation, in accordance with the then-applicable Milestones, the then-applicable Milestone Dates, and the

Project Schedule), NBU will have access to an additional 0 LUEs of wastewater for a total of 1,500 LUEs of wastewater for the Project but will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule. If the Developer has otherwise satisfied its obligations under this Agreement (including, without limitation, compliance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), NBU agrees to Substantially Complete construction of the NBU McKenzie Interceptor Main on or before January 14, 2027.

C. The McKenzie Interceptor Main Connection Work to be constructed by the Developer. Upon Substantial Completion by the Developer of the McKenzie Interceptor Main Connection Work, and upon completion by NBU of the NBU McKenzie Interceptor Main, and upon completion by the Developer of the Internal Wastewater Infrastructure as required of the Developer under and in accordance with this Agreement (including, without limitation, in accordance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), NBU will have access an additional 500 LUEs of wastewater for a total of 2,000 LUEs of wastewater for the Project but will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule. Developer agrees to Substantially Complete construction of the McKenzie Interceptor Main Connection Work on or before July 27, 2027.

D. The McKenzie WWTP Expansion to be constructed by NBU. Upon Substantial Completion of the McKenzie WWTP Expansion by NBU and upon completion by the Developer of the Developer Offsite Wastewater Infrastructure and the Internal Wastewater Infrastructure required by the Developer under and in accordance with this Agreement (including, without limitation, compliance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule) and the completion of the conditions set forth in Section 4.4, NBU will have access to an additional 3,800 LUEs of wastewater for a total full Build-Out capacity of 5,800 LUEs of wastewater for the Project but will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule. If the Developer has otherwise satisfied its obligations under this Agreement (including, without limitation, compliance with the then-applicable Milestones, the then-applicable Milestone Dates, and the Project Schedule), NBU agrees to Substantially Complete construction of the McKenzie WWTP Expansion on or before July 27, 2027.

(i) Responsibility for Construction. As more fully described in Article V below, the Developer shall be responsible for the construction of the Internal Infrastructure necessary to provide wastewater service meeting the requirements mandated by Applicable Law. Nothing set forth in this Agreement is, or shall be deemed to be, a reservation of LUEs of wastewater capacity for the Property. In the event the Developer fails to complete the IWWTF, NBU shall have the right, but not the obligation, to take over the obligations of the Developer relating to the construction and management of the IWWTF, at the Developer's sole cost and expense.

4.5 **Oversizing.** The Developer shall construct the portions of the New Infrastructure to be oversized as set forth on Exhibit "G" attached hereto and made a part hereof. NBU shall have the right to require additional oversizing of the Offsite Infrastructure beyond what is specified

on Exhibit “G” by providing the Developer with reasonable advance written notice of such additional oversizing requirements. Per Section 2.01 of the Extension Policy, the Developer may apply, pursuant to the terms of this Agreement, for reimbursement of the cost of oversizing water or wastewater lines in excess of one size larger than the NBU Standard Size required to serve the Property; provided, however, that the initial oversizing of one size larger than the NBU Standard Size required to serve the Property shall be constructed by the Developer at its sole cost and expense (referred to the “**Developer Oversizing Responsibility**”). The Developer may not seek reimbursement for the costs of the Developer Oversizing Responsibility under this Agreement.

4.6 **Water and Wastewater Construction and Release.** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NBU WILL NOT CONSTRUCT A WATER OR WASTEWATER SERVICE CONNECTION UNDER THIS AGREEMENT, AS APPLICABLE, UNLESS THERE IS A ONE-TO-ONE RATIO OF WATER AND WASTEWATER CAPACITY AVAILABLE AS DESIGNATED IN THE SEQUENCING SCHEDULE.

ARTICLE V

THE DEVELOPER’S RESPONSIBILITIES

5.1 **Minimum Term of Operation.** The Developer shall construct and operate the New Infrastructure and the Oversizing Infrastructure in accordance with the terms of this Agreement at least until the Expiration Date.

5.2 **Construction Obligations of the Developer.** The Developer shall construct the Developer New Infrastructure, all as more particularly set forth on Exhibit “H” attached hereto and made a part hereof and such Developer New Infrastructure shall be constructed in a good and workmanlike manner in accordance with Applicable Laws, the Engineering Study, the Plans and Specifications, the Policies, NBU’s Construction Standards, and this Agreement, unless otherwise agreed in a signed writing by the Developer and NBU. The Developer shall be solely responsible for funding the acquisition and construction of the Developer New Infrastructure. No individual water wells, onsite standalone water systems (excluding rainwater capture and storage systems), or onsite wastewater treatment plants (i.e., package plants), other than the IWWTF, shall be permitted at any time on any part of the Property, and these restrictions shall survive the termination of this Agreement.

5.3 **Milestones.** Subject to the Sequencing Schedule, the Parties agree that the release of LUEs for water and wastewater will be subject to certain development and funding milestones (which remain subject to change and amendment upon the written approval of the Parties with NBU’s approval of any such changes to be made in NBU’s sole discretion) within the timelines described in this Agreement and outlined below (each a “**Milestone**” and, collectively, the “**Milestones**”), and the Developer covenants and agrees to achieve the Milestones for which it is the responsible Party on or before the Milestone dates (each a “**Milestone Date**”) set forth below; provided, however, all NBU Milestones are subject to the Developer meeting its obligations, specified in this Agreement, including, but not limited to Article IV, Section 5.9, Section 5.10, and Section 8.5.

	Milestone Dates	Infrastructure Required	Responsible Party for Construction	Additional Allowable LUEs	Cumulative Total LUEs	Developer Funding Requirement
Water	July 31, 2023	FM 306 Pump Station and Discharge Line	NBU	500	500	Eighty-nine percent (89%) of the FM 306 Pump Station and Discharge Line
	November 30, 2023	16-Inch IH 35 Crossing Short Segment	Developer	357	857	One hundred percent (100%) of the 16-Inch IH 35 Crossing
	July 31, 2024	Goodwin Lane Water Line	NBU	0	857	Fifty-two (52%) percent of the Goodwin Lane Water Line
	July 31, 2025	16-Inch IH 35 Crossing Long Segment	Developer	643	1,500	One hundred percent (100%) of the 16-Inch IH 35 Crossing
	July 31, 2025	Conrads (Goodwin Lane) EST	NBU	1,500	3,000	Fifty-eight percent (58%) of the Conrads (Goodwin Lane) EST
	July 31, 2028	FM 1101 Pump Station and Discharge Line	NBU	1,500	4,500	0% of the FM 1101 Pump Station and Discharge Line
	July 31, 2030	16/20-Inch Kohlenberg Eastern Connection Water Line	Developer	1,300	5,800	One hundred percent (100%) of the 16/20-Inch Kohlenberg Eastern Connection Line
Wastewater	April 17, 2024	Interim Wastewater Treatment Facility Phase I	Developer	857	857	One hundred percent (100%) of the IWWTF Phase I
	July 31, 2025	Interim Wastewater Treatment Facility Phase II	Developer	643	1,500	One hundred percent (100%) of the IWWTF Phase II
	January 14, 2027	McKenzie Interceptor Main	NBU	0	1,500	Fixed Amount of \$10,812,401 via Sewerage Development Fee per Section 8.4*
	July 27, 2027	McKenzie Interceptor Main Connection Work	Developer	500	2,000	One hundred percent (100%) of McKenzie Interceptor Main Connection Work
	July 27, 2027	McKenzie WWTP Expansion	NBU	3,800	5,800	Fixed Amount of \$22,280,652 via Sewerage Development Fee per Section 8.4*
	July 27, 2027	Decommissioning of the IWWTF	Developer	N/A	N/A	One hundred percent (100%) of the decommissioning of the IWWTF

** Developer funding requirement from Sewerage Development Fee shall be paid as described in Section 8.4. The full funding may not be achieved by the Milestone Date.*

The additional allowable LUEs and cumulative total LUEs specified in the chart above may be available on the Milestone Dates but NBU will only approve LUEs up to the cumulative maximum allowable LUEs specified in the Sequencing Schedule.

5.4 **Design.**

(a) The Developer shall utilize professional engineers licensed by the State to prepare any required permit applications, the design and construction drawings, plans, and specifications for the Developer New Infrastructure (collectively, the “**Plans and Specifications**”), which Plans and Specifications shall be subject to review and approval by NBU; provided, however, that any approval of the Plans and Specifications shall be subject to Section 6.4 of this Agreement. The Developer shall coordinate with NBU with respect to the location and alignment of the Developer New Infrastructure, and such location and alignment shall be subject to approval by NBU staff. Except as expressly provided in this Agreement or as otherwise expressly agreed in a signed writing by NBU, the Developer New Infrastructure shall be designed and constructed in conformance with NBU’s design criteria and construction standards and specifications for utility construction, including without limitation, environmental protection requirements and NBU’s Water Systems Connection and Construction Policy (collectively, “**NBU’s Construction Standards**”).

(b) Following an Event of Default and upon the request of NBU, the Developer shall assign all of the Developer’s Plans and Specifications to NBU.

(c) The Developer has provided to NBU a copy of the required Engineering Study, a copy of which is attached hereto as Exhibit “I” and made a part hereof, which Engineering Study is acceptable for purposes of satisfying Section 2.02 of the Extension Policy.

5.5 **Bidding Process.** For all projects that will be oversized by NBU or that will receive rebates towards Capital Recovery Fees (Impact Fees), the Developer shall solicit and publish invitations for competitive bids and shall cooperate with NBU to ensure that such bid solicitations are in accordance with NBU’s standard bidding procedures, NBU’s standard procurement procedures, and all Applicable Laws. The bid solicitations shall be structured to ascertain the cost of the Oversizing Infrastructure that is attributable solely to the construction of oversized water and wastewater facilities which are larger than necessary to serve the Property as determined by NBU to allow for the calculation of the Developer Reimbursement Amount. Bid solicitation may not commence until NBU has authorized the Developer to commence the bid solicitation in writing. After the bid solicitation, the Developer shall provide to NBU in writing the estimated total costs for the Oversizing Infrastructure and Impact Fee eligible infrastructure to be included in the applicable construction contract together with any such other information reasonably requested by NBU.

5.6 **Construction.**

(a) **Construction Contracts.** Upon receipt of authorization in writing from NBU staff, the Developer shall enter into one or more construction contracts (collectively, the “**Construction Contract**”) for the construction of the Developer New Infrastructure in accordance

with Applicable Laws, the Engineering Study, the approved Plans and Specifications, the Policies, NBU's Construction Standards, and this Agreement (including without limitation, the Project Schedule), unless otherwise agreed in a signed writing by the Developer and NBU. Promptly upon execution of a Construction Contract, the Developer shall deliver a copy of such Construction Contract to NBU.

(b) Oversight. The Developer shall be responsible for monitoring the construction of the Developer New Infrastructure to ensure that it is constructed in strict compliance with all provisions set forth herein. NBU shall be invited to participate in monthly progress meetings regarding the Project and the Developer New Infrastructure; provided, however, NBU shall not be required to attend any such monthly progress meetings. The Developer shall cause the Project to be completed in accordance with the Plans and Specifications, the Construction Contract, and the Project Schedule as shall be revised each year and which revisions shall be subject to written approval by NBU staff, in its sole discretion. No later than fifteen (15) days following each quarter end during each Calendar Year throughout the Term, the Developer shall deliver to NBU: (i) the Project Schedule, with any delays noted and explained, and a detailed description of the progress of the Work with respect to the Developer New Infrastructure; (ii) details regarding any Unforeseen Condition affecting the Developer New Infrastructure or the Project; (iii) copies of any executed change orders to the Construction Contract with respect to the Oversizing Infrastructure, subject to Section 5.6(c) hereof; and (iv) a summary of and copies and details of any liens or claims related to the Work with respect to the Developer New Infrastructure or the Project, together with the Developer's plan to remedy the same (provided, however, that in connection with the fourth quarter report, Section 5.6(b)(iv) need not be included so long as such information is properly included in the timely submitted annual Certification Affidavit covering that calendar quarter).

(c) Change Orders. The Developer shall deliver to Adam Willard, P.E., Chief Engineer of Water Services at 355 FM 306, New Braunfels, Texas 78130, awillard@nbutexas.com, (830) 608-8943 with NBU, or his designee, for NBU's review of any proposed change order to a Construction Contract with respect to the Oversizing Infrastructure or Developer Constructed Rebate-Eligible Infrastructure. Within ten (10) business days of receipt of such proposed change order, NBU shall deliver to the Developer a written notice of its approval (not to be unreasonably withheld, conditioned or delayed) or denial of such proposed change order. If NBU denies a proposed change order pursuant to this Section 5.6(c), NBU shall include in its written notice to the Developer the reason(s) for such denial. If NBU fails to respond within such ten (10) business day period, such proposed change order shall be deemed to have been denied and, upon Developer's written request therefore, NBU shall promptly either approve the change order or provide to Developer the reason(s) for denial.

(d) Access; Site Visits. Each of the NBU Parties and the City Parties shall have access at all reasonable times to the Property to inspect the construction of the Developer New Infrastructure. The Developer shall provide reasonable advance written notice to NBU of and an opportunity to participate in any inspection and walk-through related to the Developer New Infrastructure, including without limitation, the right to participate in the final inspections and development of final punch lists related to the Construction Contract.

(e) **Contractor Bonds and Insurance.** The Developer shall require all contractors in connection with any Construction Contract to obtain and maintain insurance coverage and payment and performance bonds satisfactory in form, substance, and amount to NBU in all respects. Further, all such insurance and bonds shall fully comply with all Applicable Laws and shall not permit any settlement thereunder without the prior written approval of NBU. NBU shall be named on all such insurance and bonds as an additional insured or loss payee (as applicable), except for workers' compensation insurance. The Developer may not settle any claim under any such insurance or bond without the prior written approval of NBU.

5.7 **Conservation Restrictions.** Prior to connecting any LUEs of water or wastewater capacity, the Developer shall create a homeowners association or property owners association in connection with single-family residential lots to be developed into residential subdivisions (collectively "**HOAs**") within the Project, and shall enter into written agreements or recorded declarations with multi-family and commercial developers/owners (collectively, the "**Standalone Restrictions**"); such HOAs and Standalone Restrictions shall at all times cover all portions of the Project that have received LUEs of water or wastewater capacity. During the period in which the Developer controls an HOA and during the term of any Standalone Restriction, the Developer shall cause such HOA or commercial or multifamily property owner to create and record (and to not remove or permit to be removed) water conservation restrictions (which restrictions shall be subject to advance specific written approval by NBU staff and which restrictions shall include prohibitions against changes thereto without the prior consent of NBU) which are binding (collectively) upon the owners of all portions of the Property. Such restrictions are more particularly set forth on Exhibit "N" attached hereto and made a part hereof. It is a condition precedent to NBU's obligations under this Agreement to provide water service to the Project that the Developer shall have implemented binding restrictions requiring and shall have caused to be installed at all residential and commercial buildings at the Project WaterSense Products meeting the then current U.S. Environmental Protection Agency criteria and specifications, including without limitation, with respect to residential toilets, commercial toilets, showerheads, bathroom faucets, urinals, irrigation controllers, and spay sprinkler bodies as more particularly set forth on Exhibit "N" attached hereto and made a part hereof. The provisions set forth in this Section constitute a material inducement to NBU agreeing to the terms hereof, and but for these provisions, NBU would not have agreed to enter into this Agreement.

5.8 **Developer Warranty.** The Developer shall warrant the Developer New Infrastructure for a period of two (2) years following the Acceptance Date.

5.9 **Developer Performance Bond.** The Developer shall provide fiscal security, including a performance bond in favor of NBU issued by a surety acceptable to NBU staff in its sole discretion (the "**Bond**"), to be approved in form and substance by NBU staff in its sole discretion, in an amount equal to the cost of constructing the Bonded Items, as agreed to by the Developer and NBU; provided, however, that the Developer must deliver a performance bond that secures the entirety of the Initial Required Bonded Work as described in the last sentence in this paragraph. The Developer shall deliver such Bonds as approved by NBU to NBU no later than the earlier of (i) ten (10) business days before the date that any plans are approved for any portion of the Bonded Items or (ii) the approval of a plat in accordance with Section 6.6. Notwithstanding anything herein to the contrary (and in no way limiting any other requirements of this Agreement),

the Developer must deliver the Bond (as approved by NBU staff) to NBU for both (i) the entire IWWTF (Phases I and II combined) and (ii) the entire McKenzie Interceptor Main Connection Work (the “**Initial Required Bonded Work**”) no later than the earlier of (i) ten (10) business days before the date that any plans are approved for any portion of the Work contemplated by this Agreement or (ii) the approval of a plat in accordance with Section 6.6. All other water and wastewater conveyance infrastructure to be constructed by Developer in support of the Project not otherwise expressly listed as a Bonded Item shall be bonded by the Developer pursuant to the City of New Braunfels Code of Ordinances §118-38, if applicable.

If the Developer is not in default under this Agreement with respect to a specific portion of the Project, NBU shall release the Bond on the Acceptance Date for that specific portion of the Project. If at any time before completion of all of the Bonded Items (i) an updated cost estimate for the Bonded Items exceeds, or is expected to exceed, the amount of the Bond, (ii) it becomes necessary, in the sole discretion of NBU, to repair or replace any of the completed Bonded Items, or (iii) if a change in the scope of Work is necessitated due to changed circumstances and approved by NBU, in its sole discretion, the Developer shall deliver to NBU a new or replacement Bond, subject to approval in form and substance by NBU staff in its sole discretion, reflecting such increased amount relating to any of the foregoing events within five (5) business days of the earlier of the date the Developer becomes aware of such increased estimate relating to any of the foregoing events or written demand therefor from NBU.

If an Event of Default occurs under this Agreement whereby applicable notice and cure periods have passed and NBU, in its sole discretion, determines that the Developer is unable to complete the Bonded Items, NBU shall have the right to make a claim on the Bond to complete some or all of the Bonded Items, including without limitation, to pay for or to reimburse NBU for the costs to complete the Bonded Items or to correct errors or deficiencies in the already completed Work with respect to the Bonded Items. NBU, in its sole discretion, may choose to perform the Work on the Bonded Items itself or to engage a third party to complete some or all of such Work. Notwithstanding the foregoing or anything in this Agreement to the contrary, NBU shall have no obligation whatsoever to complete any of the Work on the Bonded Items following a Developer Event of Default.

5.10 **Developer Fiscal Security.** The Developer shall provide fiscal security issued in form and substance acceptable to NBU in its sole discretion, including a letter of credit or a cash payment, for the following: (i) 89% of the total cost of design, construction management, and constructing the FM 306 Pump Station and Discharge Line, (ii) 58% of the total cost of design, property acquisition, construction management and constructing the Conrads (Goodwin Lane) EST and 52% of the total cost of design, property acquisition, construction management, and constructing the Goodwin Lane Water Line (the “**Developer Fiscal Security**” and each of (i) and (ii) a “**Developer Fiscal Security Item**” and collectively the “**Developer Fiscal Security Items**”), irrevocably and unconditionally securing the Developer’s obligations to NBU relating to the Developer Fiscal Security Items up to the face value of the Developer Fiscal Security.

For all projects, excluding the FM 306 Pump Station and Discharge Line, the Developer shall deliver the Developer Fiscal Security as approved by NBU as to form and substance, in its sole discretion, to NBU no later than the earlier of (i) ten (10) business days from the award of a bid for

the applicable Developer Fiscal Security Item (and the Parties agree that any award of a bid shall be expressly contingent upon the Developer delivering the Developer Fiscal Security by such deadline) or (ii) when a plat is submitted for approval in accordance with Section 6.6.

If Developer is not in default under this Agreement with respect to a specific portion of the Project, NBU shall release the Developer Fiscal Security, if such Developer Fiscal Security is in a form other than cash, on the date of payment of Developer's pro rata share of the construction costs, property acquisition costs, design costs, and construction management costs pursuant to Section 8.5. If Developer is not in default under this Agreement with respect to a specific portion of the Project, and the applicable Developer Fiscal Security is in the form of cash, such Developer Fiscal Security shall be applied to Developer's pro rata share of the construction costs, property acquisition costs, design costs, and construction management costs as such payments become due pursuant to Section 8.5.

If at any time before completion of any of the Developer Fiscal Security Items (i) an updated cost estimate for the Developer Fiscal Security Items exceeds, or is expected to exceed, the amount of the Developer Fiscal Security, (ii) it becomes necessary, in the sole discretion of NBU, to repair or replace any of the completed Developer Fiscal Security Items, or (iii) if a change in the scope of Work is necessitated due to changed circumstances and approved by NBU, in its sole discretion, the Developer shall deliver to NBU a new or replacement Developer Fiscal Security, subject to approval in form and substance by NBU in its sole discretion, reflecting such increased amount relating to any of the foregoing events within five (5) business days of written demand therefor from NBU.

Any Developer Fiscal Security issued by Developer shall not place any lien or encumbrance on, or otherwise have any interest in or recourse to, the New Infrastructure. NBU shall be entitled to draw on or file a claim under the Developer Fiscal Security, as applicable, for any costs, obligations, or damages relating to the Developer Fiscal Security Items owed by Developer to NBU under this Agreement.

If an Event of Default occurs under this Agreement, NBU shall have the right to draw on the Developer Fiscal Security to complete some or all of the Developer Fiscal Security Items, including, without limitation, to pay for or to reimburse NBU for the costs to complete the Developer Fiscal Security Items or to correct errors or deficiencies in the already completed Work with respect to the Developer Fiscal Security Items. Notwithstanding the foregoing or anything in this Agreement to the contrary, NBU shall have no obligation whatsoever to complete any of the Work on the Developer Fiscal Security Items following a Developer Event of Default.

5.11 **No Employment of Undocumented Workers.** The Developer and each Landowner certifies and agrees as follows:

(a) the Developer and each Landowner certifies that its operations within the County and the State will not knowingly employ an undocumented worker, as defined in Chapter 2264 of the Texas Government Code (as amended, the "**Act**"); and

(b) pursuant to the Act, if the Developer or a Landowner is convicted of a violation under 8 U.S.C. Section 1324a(f) with respect to its operations in the County or the State, after receiving all or any portion of a "public subsidy" (as defined in the Act), if it is determined

that any public subsidy is authorized and was provided pursuant to this Agreement, the Developer or Landowner, as applicable, shall (x) promptly give NBU written notice of such violation, and (y) repay to NBU any amounts paid by NBU to the Developer hereunder, at the rate of the prime rate of interest per annum of NBU's depository bank (the "**Bank**") in effect on the date the Developer or such Landowner is convicted of the violation. Such repayment shall be made not later than the one hundred twentieth (120th) calendar day after the date the Developer or the Landowner is convicted of the violation.

ARTICLE VI

UTILITY SERVICES

6.1 **Operation and Maintenance.** The Parties agree that from and after the Acceptance Date of the Developer New Infrastructure, NBU will operate and maintain the Developer New Infrastructure (excluding the IWWTF and any portions of the Internal Water Infrastructure, and the Internal Wastewater Infrastructure located on the Developer's or other end user's side of retail water meters and retail wastewater connections) and will provide water and wastewater service to customers within the Property subject to the conditions stated in this Agreement and according to Applicable Laws.

6.2 **No Reservation of Capacity.** Notwithstanding the foregoing or anything in this Agreement to the contrary, nothing in this Agreement shall mean, or be deemed to mean, that NBU has reserved any LUEs of water or wastewater capacity for the Developer, any Landowner, or the Property. In no event shall NBU be required to provide the Project with LUEs of water and wastewater in excess of the Maximum LUEs defined in this Agreement.

6.3 **No Guarantees; No Rights.** Notwithstanding final acceptance pursuant to an Acceptance Letter by NBU of the Developer New Infrastructure:

(a) This Agreement does not exempt the Developer, the Landowners or their successors and assigns, from the requirements of any Applicable Law applicable to development or other activities within the Property;

(b) This Agreement does not guarantee approval of any final plat of the Project and any final plat will be subject to the Developer and each Landowner complying with its obligations under this Agreement, the City Code of Ordinances, NBU policies, and any relevant federal, state, or local laws;

(c) The Agreement does not guarantee the approval of any other applications or permits related to the Project;

(d) This Agreement does not, and shall not be deemed to, create or confer upon the Developer, the Landowners or their successors or assigns, or on any future owner of any portion of the Property, any ownership rights in the NBU water or wastewater systems, including without limitation, in the Developer New Infrastructure after final acceptance of such Developer New Infrastructure by NBU;

(e) This Agreement does not, and shall not be deemed to, create or confer upon the Developer, the Landowners or their successors or assigns, or on any future owner of any portion of the Property, any preferential rights to capacity in the NBU water or wastewater systems, including without limitation, in the Developer New Infrastructure.

6.4 **Effect of Approval**. Notwithstanding anything contained in this Agreement to the contrary, approval by NBU, an NBU Party, the City, or any City Party of the Plans and Specifications, a Construction Contract, any change order to a Construction Contract, this Agreement, or any other item related to this Agreement or submitted to NBU, an NBU Party, or a City Party in connection with this Agreement, the Project, or the Property:

(a) is not, and shall not be deemed to be, any representation, warranty, or agreement by NBU that such Plans and Specifications, Construction Contract, change orders, or other items are true, correct, complete, or sufficient or that such Plans and Specifications, Construction Contract, change order, or other item satisfies Applicable Laws;

(b) shall not waive or relieve the Developer or Landowners from strictly complying with all Applicable Laws with respect to the Plans and Specifications, Construction Contract, change orders to the Construction Contract, the Work, the Developer New Infrastructure, the Project, the Property, such other items related to this Agreement, and this Agreement, including without limitation, Applicable Laws of TCEQ;

(c) does not modify any Applicable Law;

(d) is not, and shall not be deemed to, constitute a release of the responsibility and liability of the Developer Parties for the accuracy, completeness, suitability, and competency of such item being approved;

(e) does not shift or impose any responsibility or liability on or to NBU for any defect therein; and

(f) only signifies NBU's general approval of the general design concept of the Developer New Infrastructure described therein.

6.5 **CCN**. The Developer and the Landowners acknowledge that no portion of the Property is located in the CCN for water service or wastewater service of any utility provider and, as a result, NBU has no obligation to serve the Property with water or provide wastewater service. The Developer and the Landowners further acknowledge that, by entering into this Agreement, NBU is not obligated to supply water and wastewater service to the Property unless the Developer and each Landowner complies with its obligations described in this Agreement. Subject to the terms of this Agreement, the Developer agrees that NBU has the first right to provide retail water and wastewater service to all parts of the Property. In the event NBU seeks to include the Property or portions thereof within its water CCN or its wastewater CCN on file with the Texas Public Utility Commission, the Developer and each Landowner agrees to support such extension and upon NBU's reasonable request, shall execute and deliver such documentation related to the same as NBU shall deem necessary or desirable. Additionally, in the event a third party seeks to include the Property or portions thereof within a water CCN or wastewater CCN, the Developer and the

Landowners will oppose such third-party application and upon NBU's reasonable request, shall execute and deliver such documentation related to the same as NBU shall deem necessary or desirable.

6.6 **Plats; Building Permits; Notice to Buyers.** If the Developer provides fiscal security (including a letter of credit, a bond, or a cash payment pursuant to Section 5.9 and/or Section 5.10) for all onsite and offsite infrastructure required by this Agreement, whether constructed by Developer or, if constructed by NBU subject to Developer's payment of its financial contribution, NBU staff shall approve (which approval shall be an approval with conditions) a final plat, provided that the following conditions are met:

- (a) Developer and Landowners are not in default under this Agreement;
- (b) The plat complies with Chapter 212 of the Texas Local Government Code, the City's Code of Ordinances, NBU policies, including the NBU Water Connection Policy, and any relevant federal, state, or local law;
- (c) The plat is expressly subject to the terms of this Agreement, and includes conditional language indicating that NBU will only serve water or wastewater if the Developer and Landowners comply with their obligations under this Agreement; and
- (d) The plat must not exceed the number of LUEs allowable for each related Milestone Date under the sequencing schedule set forth on Exhibit "V" attached hereto and incorporated herein for all purposes, as such schedule may be reviewed and updated by Developer and NBU staff on a semi-annual basis (the "**Sequencing Schedule**") unless otherwise agreed to in writing by NBU.

Any plat that is not submitted in accordance with the Sequencing Schedule, or that exceeds the cumulative maximum allowable LUEs specified in the Sequencing Schedule at the time of submittal, will be rejected due to a lack of capacity or any other permissible reason allowed under Texas law unless otherwise agreed to in writing by NBU.

The Developer shall also be required to provide a written disclosure substantially in the form set forth on Exhibit "U" attached hereto and made a part hereof to all potential buyers of property within the Project advising such potential buyers that such buyer is buying such property at its own risk and that the availability of water and sewer service is expressly conditioned upon the Developer complying with the terms of this Agreement.

The fiscal security required under this Agreement is separate and apart from the fiscal security required by the City pursuant to Chapter 118 of the City's Code of Ordinances.

ARTICLE VII

ACCEPTANCE OF THE DEVELOPER NEW INFRASTRUCTURE

7.1 **NBU's Acceptance of the Developer New Infrastructure**. When the Developer New Infrastructure is capable of delivering the utility services contemplated hereunder, the Developer shall send written notice to NBU that the Developer desires and is ready for NBU to accept the Developer New Infrastructure or a portion thereof as described in Section 7.4 (the "**Developer's Notice of Completion**"). Prior to NBU's acceptance of the Developer New Infrastructure, the Developer shall satisfy each of the requirements set forth below and shall deliver each of the documents set forth below (collectively, the "**Developer's Completion Packet**"), each in form and substance acceptable to NBU in its sole discretion (any of which requirements may be waived by NBU in its sole discretion, if permitted by Applicable Laws, with such waiver effective only if set forth in a written instrument signed by NBU):

(a) provide an opportunity to NBU to inspect the Developer New Infrastructure for compliance with NBU Construction Standards (NBU may provide, in its sole and absolute discretion, confirmation that the Developer New Infrastructure complies with NBU Construction Standards);

(b) a signed and notarized certification from the Developer that all of the Developer New Infrastructure has been constructed in accordance with, and that all of the Developer New Infrastructure strictly complies with, this Agreement and with all Applicable Laws, including without limitation, those of the City, NBU, the State, and the U.S. Environmental Protection Agency; together with a signed and notarized certification (in form and substance acceptable to NBU) for the benefit of NBU from a third-party engineer duly licensed and in good standing under the laws of the State that all of the Developer New Infrastructure has been built in accordance with the Plans and Specifications;

(c) Counterparts executed by the Landowners and, where applicable, the Developer, of the following transfer documents, as applicable, for the conveyance of the fee simple title or easement estate, as applicable, for the real property on which the Developer New Infrastructure is located (the "**Developer New Infrastructure Property**") at no cost to NBU, and the Developer and Landowners shall ensure that NBU has sufficient access rights to each piece of Developer New Infrastructure Property conveyed to NBU:

(i) special warranty deed(s) substantially in the form set forth on Exhibit "J" attached hereto and made a part hereof, with respect to the conveyance of fee simple title;

(ii) bills of sale, with respect to the conveyance of fee simple title;

(iii) easement agreement(s) substantially in the form set forth on Exhibit "K" attached hereto and made a part hereof, with respect to the conveyance of Easement Estates; provided, however, that any construction Easement Estate shown on Exhibit "M" as a Developer requirement that is needed by NBU in connection with the construction of any portion of the New Infrastructure for which NBU is responsible for constructing, shall be delivered to NBU

substantially in the form of Exhibit “K” free and clear of all liens and encumbrances, except as may be approved by NBU staff in its sole discretion, at no cost or expense to NBU and no later than the dates set forth on the Milestone schedule in Section 5.3; and

(iv) such other instruments of transfer as may be deemed reasonably necessary or desirable by NBU;

(d) at the sole cost and expense of the Developer, an owner’s title policy in favor of NBU on the standard form available in the State from a title company acceptable to NBU staff with respect to the Developer New Infrastructure Property, evidencing that the Developer or the Landowner, as applicable, owns the Developer New Infrastructure Property and that the Developer New Infrastructure Property is free and clear of all liens and encumbrances, except as may be approved by NBU in its sole discretion, with the Developer acknowledging and agreeing that the existence of any such liens or encumbrances on any portion of the Developer New Infrastructure Property shall be a material Event of Default hereunder and shall expressly negate NBU’s reimbursement obligations under Section 8.2 of this Agreement;

(e) final, unconditional lien waiver affidavits, in the statutory forms, evidencing payment in full and waiver and release of all liens, from every contractor and subcontractor in connection with any Construction Contract related to any portion of the Work performed with respect to the Developer New Infrastructure; and

(f) assignments to NBU of all warranties, guarantees, and other assurances of performance with respect to the Developer New Infrastructure or any Work related thereto, executed by the Developer, the Landowners, if applicable, and all necessary third parties;

(g) all Plans and Specifications (including but not limited to final, as-built versions signed and sealed by a professional engineer licensed in the state of Texas), record drawings, project manuals, equipment manuals, operation and maintenance manuals, all Construction Contracts together with all applicable change orders, and all other documentation related to the Developer New Infrastructure;

(h) a signed reaffirmation and remaking of the indemnity obligations and release agreements set forth in Sections 10.1 and 10.2 to be effective as of the date remade;

(i) no Event of Default, or event that but for the passage of time or giving of notice or both, shall exist under this Agreement; and

(j) such additional evidence, documentation, agreements, and information as NBU shall reasonably request.

7.2 **Final Acceptance.**

(a) Upon the Developer’s satisfaction of all of the requirements set forth in Section 7.1 and NBU staff approval, NBU shall deliver to the Developer a letter of final acceptance of the Developer New Infrastructure or a portion thereof (the “**Acceptance Letter**”).

(b) The Developer and the Landowners acknowledge and agree that upon the Acceptance Date, all the Property accepted shall be subject to enforcement of all Applicable Laws of NBU and the City, including without limitation, utility ordinances of the City and policies of NBU, including without limitation, water conservation ordinances and the NBU Drought Management Plan, as may be amended from time to time.

(c) Within forty-five (45) days of the Acceptance Date, the Developer shall submit to NBU a signed and certified written report of the total costs of the Developer New Infrastructure, together with supporting documentation. Further, the Developer shall deliver to NBU within ten (10) business days of request any additional documentation or supporting information as reasonably requested by NBU.

7.3 **No Acceptance.** In the event that NBU does not accept the Developer New Infrastructure pursuant to this Article VII, NBU shall deliver to the Developer, within forty-five (45) days of receipt of the Developer's Notice of Completion and a complete Developer's Completion Packet, written notice that NBU does not accept the Developer New Infrastructure, which such notice shall include the reasons for such non-acceptance ("**NBU's Non-Acceptance Notice**"). If the Developer disagrees with NBU's non-acceptance of the Developer New Infrastructure and if the Developer does not then address the reasons of non-acceptance by correcting the defects in the Developer New Infrastructure to NBU's satisfaction, before the Developer may pursue any other remedy that may be available to it pursuant to this Agreement and Applicable Law, the Developer, at the Developer's sole cost and expense, can require NBU to select a third-party engineer duly licensed and in good standing under the laws of the State to inspect the Developer New Infrastructure and the Developer's Completion Packet and to provide a signed written opinion as to whether NBU's non-acceptance is commercially reasonable. If such engineer determines that NBU's non-acceptance of the Developer New Infrastructure is commercially reasonable with respect to any of the reasons enumerated in NBU's Non-Acceptance Notice, then the Developer shall immediately address such reasons of non-acceptance by correcting the defects in the Developer New Infrastructure to NBU's satisfaction. If such engineer determines that NBU's non-acceptance of the Developer New Infrastructure is not commercially reasonable and does not comply with this Agreement, then NBU shall revise its NBU Non-Acceptance Notice to incorporate feedback from the written opinion from such third-party engineer.

7.4 **Phased Acceptance.** With NBU's written approval, the Developer may choose to phase the acceptance process by submitting the required documentation (as outlined in this Article VII) for the specific infrastructure applicable to a specific plat or to a specific Milestone.

7.5 **IWWTF.** The Parties acknowledge and agree that any provisions in this Agreement with respect to the IWWTF (including, without limitation, Section 4.4 and Section 6.1) shall in all events control over this Article VII with respect to the IWWTF.

ARTICLE VIII

CONSTRUCTION COSTS AND FEES

8.1 **Construction and Costs.** The Developer shall pay all construction costs, property acquisition costs, design costs, and construction management costs incurred in connection with the Developer New Infrastructure, the Developer's FM 306 Pump Station Share, the Developer's Goodwin Lane Water Line and EST Share, the 16/20-Inch Kohlenberg Eastern Connection Water Line, the IWWTF, the 16-Inch IH 35 Crossing, and the decommissioning of the IWWTF.

8.2 **Developer Reimbursement Amount.** Subject to compliance with the Developer Reimbursement Conditions in this Section, the Developer may seek reimbursement by NBU for construction costs incurred by the Developer in accordance with this Agreement in an amount equal to the Oversizing or Developer Constructed Rebate-Eligible Infrastructure Hard Construction Costs, in excess of the Developer Oversizing Responsibility, attributable solely to the construction of oversized water and wastewater facilities that are larger than necessary to serve the Property as determined by NBU (the "**Developer Reimbursement Amount**"). No later than thirty (30) days after the Acceptance Date (the "**Outside Date**"), the Developer shall have submitted to NBU a formal written request for the Developer Reimbursement Amount and shall have satisfied all Developer Reimbursement Conditions (which Developer Reimbursement Amount shall be payable by the later of sixty (60) days after the Acceptance Date or the next September 1, subject to the Developer's satisfaction of all of the following conditions (the "**Developer Reimbursement Conditions**")):

(a) the Developer shall have fully complied with all terms and conditions set forth in this Agreement;

(b) the Developer shall have fully complied with all terms and conditions set forth in Section 2.06 of the Extension Policy;

(c) no Event of Default, or event that but for the passage of time or giving of notice would constitute an Event of Default, under this Agreement shall have occurred;

(d) all Oversizing and Developer Constructed Rebate-Eligible Infrastructure Hard Construction Costs shall have been in accordance with and authorized by the terms of this Agreement, Applicable Laws, and the NBU Policy;

(e) in no event shall the Developer Reimbursement Amount include any amounts incurred in connection with the Work commenced pursuant to a change order prior to NBU staff's approval of such change order in accordance with the terms of Section 5.6(c) hereof; and

(f) in no event shall the Developer Reimbursement Amount include the actual costs to build or install any portion of the New Infrastructure other than the Oversizing Infrastructure or to build or install any other facilities necessary to provide water and wastewater service to the Property pursuant to the minimum requirements of the NBU Policy.

8.3 **Impact Fees.**

(a) Pursuant to Chapter 395 of the Act, the City has enacted an impact fee ordinance to impose water and wastewater capital recovery fees against new development in the NBU service area to generate revenue for funding or recouping costs of capital improvements or facility expansion necessitated by or attributable to new development. The ordinance authorizes the Board of Trustees of NBU to adopt the Capital Recovery Policy for assessment of impact fees and to amend such policy from time to time.

(b) The Developer acknowledges and agrees that capital recovery fees will be assessed against the Property pursuant to the provisions of Section 2.05 of the Capital Recovery Policy. Such fees shall be due and payable per lot based on the final plat recordation and shall be collected on a lot by lot basis at the time a meter is requested. The Developer may seek a rebate of capital recovery fees in accordance with Section 2.08 C. of the Capital Recovery Policy for the Rebate-Eligible Infrastructure.

(c) Provided that the Developer has complied with the terms and conditions of this Agreement, and provided further that the Acceptance Date has occurred and the Developer New Infrastructure has been accepted by NBU, the maximum total allowable rebate (the “**Total Rebate Payment**”) shall be in accordance with the Capital Recovery Policy and shall be paid by NBU to the Developer in annual payments for no more than fifteen (15) years beginning on October 1 of the year following the Acceptance Date and on October 1 of each subsequent year until NBU no longer collects capital recovery fees under this Agreement. Nothing herein shall be construed to require NBU to make rebates of impact fees except as required under the Capital Recovery Policy applied equally to all other customers; and only the impact fees paid per lot based on the final plat recordation for lots located within the Property will be used for rebates or credits to Developer up to the Total Rebate Payment (and, for the avoidance of doubt, the foregoing in no way limits the use of those impact fees collected to be used solely for rebate payments).

(d) The amount of each annual rebate payment will be the amount of the impact fees collected for meters set during the fiscal year in accordance with the Capital Recovery Policy for the prior fiscal year period (the “**Total Annual Rebate**”). NBU will not be obligated to pay interest on the rebate. In no event will the Total Annual Rebate paid to the Developer exceed that Total Rebate Payment authorized by the Capital Recovery Policy. The Developer agrees to provide all information and documents reasonably required by NBU for proper processing and for accurate accounting and documentation of actual project costs.

(e) The obligations of NBU under this Agreement to make rebate payments in any fiscal year constitute a current expense for that fiscal year payable solely from the revenues from the Property deposited into a capital recovery fee account pursuant to the Capital Recovery Policy for that fiscal year. If no water or wastewater impact fees are collected from the Property for any fiscal year, no rebate payments are due for that year.

8.4 **Development Fees.** The Developer acknowledges and agrees to pay to NBU a Water Development Fee and a Sewerage Development Fee. The Water Development Fee is set at \$5,948.80 per water LUE for all water LUEs in each phase of the Project (the “**Water**

Development Fee”). The Sewerage Development Fee is set at \$6,686.57 per wastewater LUE for all wastewater LUEs in each phase of the Project (the “**Sewerage Development Fee**”). The Sewerage Development Fee has been calculated as the quotient of: (i) the sum of the Developer contributions for the McKenzie Interceptor Main and McKenzie WWTP Expansion (\$33,093,053) divided by (ii) 4,949.18 LUEs (5,800 total expected LUEs less the 850.82 approved as of the Amended Effective Date). The Water Development Fee and the Sewerage Development Fee are collectively referred to as the “**Development Fees**.” The Development Fees are to be paid for each lot expected in a tract sold by metes and bounds and for each lot submitted as part of a plat within each phase. The Development Fees are to be paid: (i) ten (10) business days prior to plat recordation; or (ii) immediately upon the sale, conveyance, or transfer by Developer of any unplatted tract of land by metes and bounds, such Development Fees to be calculated and included in a HUD/Closing Statement by the Developer for the benefit of NBU and such HUD/Closing Statement to be provided to NBU at least seventy-two (72) hours prior to closing on such sale, conveyance, or transfer. The project phasing shall be in accordance with the projected schedule set forth on Exhibit “F.” Any deed for the sale, conveyance, or transfer of unplatted land must include the maximum number of LUEs the tract shall contain for water and wastewater. NBU shall have no obligation to support more LUEs than: (i) are listed in any deed for unplatted land, (ii) are shown on any plat, or (iii) those for which Development Fees have been paid in connection with a deed or plat. The Development Fees are in addition to any impact fees payable to NBU and in addition to charges for water use and consumption, all of which will be assessed and charged as provided in the ordinances of the City. The Water Development Fee may be adjusted at any time and from time to time by NBU. If NBU desires to adjust the Water Development Fee charged under this Agreement, NBU shall give written notice to the Developer at least one hundred eighty (180) days prior to the first day on which the adjustment is to be effective. The adjusted Water Development Fee will then be applied to all subsequent water LUEs within each phase of the remaining project. The total of all adjustments to the Water Development Fee within any one-year period shall be no more than four percent (4%) annually. The Developer acknowledges that the Development Fees payable under this Agreement are fair and reasonable and were negotiated between NBU and the Developer.

8.5 **Pro rata Share of Construction Expenses.** The Developer acknowledges and agrees to pay its pro rata share of the construction costs, property acquisition costs, design costs, and construction management costs for the portions of the New Infrastructure equal to the Developer’s (i) Goodwin Lane Water Line Share and (ii) Conrads (Goodwin Lane) EST Share, with each such pro rata share being due and payable within forty-five (45) days from the date upon which the Board of Trustees of NBU approves a construction contract with respect to the underlying work applicable to such pro rata share, subject to reconciliation of any increased costs within five (5) business days from the date when actual costs are determined upon contract approval and subject to further reconciliation of any increased costs within five (5) business days from the date when actual costs are determined thereafter. These pro rata shares are in addition to any Water Development Fee, Sewerage Development Fee, and impact fees payable to NBU and in addition to charges for water use and consumption, which will be assessed and charged as provided in the ordinances of the City. The Developer acknowledges that the pro rata shares described in this Section 8.5 and set forth on the Milestone schedule in Section 5.3 and payable under this Agreement are fair and reasonable and were negotiated between NBU and the Developer.

Developer and NBU acknowledge that, prior to the Original Effective Date, NBU has begun work on the FM 306 Pump Station and Discharge Line and that such construction contract has been approved by the Board of Trustees of NBU. The Developer acknowledges and agrees to pay its pro rata share of the total estimated costs of design, construction management, and construction costs of the portion of the New Infrastructure equal to the Developer's FM 306 Pump Station Share. The Developer shall pay the FM 306 Pump Station Share by the later of thirty (30) days from NBU's execution of the Original Agreement or thirty (30) days from the City's execution of the Development Agreement; provided, however, the date of payment shall in no case be later than July 31, 2022. The Developer's FM 306 Pump Station Share shall also be subject to reconciliation of any increased costs within five (5) business days from the date when actual costs are determined.

8.6 **No General Obligation.** NBU's obligations to make payments under Section 8.2 and Section 8.3 do not constitute a general obligation or indebtedness of the City or NBU for which the City is obligated to levy or pledge any form of taxation.

8.7 **No Interest on Amounts Owed by NBU.** In no event shall interest be due on any amount owed by NBU under this Agreement, including without limitation, on any unpaid amount of the Developer Reimbursement Amount.

ARTICLE IX

EVENTS OF DEFAULT; TERMINATION; NBU RIGHTS AND REMEDIES

9.1 **Events of Default.** An "**Event of Default**" shall mean, including without limitation, the occurrence of one or more of the following:

(a) the Developer fails to commence, diligently pursue, or complete the design, permitting or construction of any portion of the Developer New Infrastructure in accordance with this Agreement;

(b) the Developer fails to post the Bond or provide the Developer Fiscal Security by the date required in Section 5.9 or Section 5.10 of this Agreement or to increase the amount of the Bond or the Developer Fiscal Security when requested to do so by NBU in accordance with this Agreement;

(c) the Property or a portion of the Property is transferred or conveyed through foreclosure or an assignment or conveyance in lieu of foreclosure;

(d) any actual or beneficial interest in the Property or the Project is ever transferred, conveyed, or assigned, in whole or in part, by the Developer or the Landowners in contravention or violation of the terms of this Agreement;

(e) the Developer fails to submit a request for reimbursement and all documentation required by Section 8.2 by the Outside Date;

(f) the Developer fails to satisfy a Milestone by the applicable Milestone Date (as the same may be modified in accordance with Section 5.3) under this Agreement;

- (g) the Developer or a Landowner suffers an Event of Bankruptcy or Insolvency;
- (h) any event described in this Agreement as an Event of Default occurs;
- (i) the Developer fails to make a payment required under this Agreement, including, without limitation, any Developer share of the infrastructure described in Section 5.3;
- (j) if the Developer uses a private operating company for operation and maintenance of the IWWTF, the Developer is deemed to be in default of any agreement with such operating company;
- (k) the Developer or a Landowner breaches any other monetary term, condition, or obligation under this Agreement;
- (l) any representation or warranty under this Agreement is or becomes false or misleading; or
- (m) the Developer or a Landowner breaches any other non-monetary term, condition, or obligation under this Agreement and such breach is not cured within forty-five (45) calendar days after written notice thereof, or, if such breach is not susceptible to cure through the exercise of commercially reasonable efforts within forty-five (45) calendar days, such period of time thereafter as the Developer, or the Landowner, as applicable, diligently pursues the cure thereof, but in any event if such breach is not cured within a cumulative sixty (60) calendar days after written notice thereof (after the passage of such applicable time if the breach has not been cured, it shall be considered an Event of Default under this Agreement).

9.2 **Termination.** Subject to Section 11.14, this Agreement shall terminate upon the occurrence of any one or more of the following:

- (a) the Expiration Date;
- (b) the execution by all Parties of a written agreement terminating this Agreement;
- (c) at the option of NBU, an Event of Default by the Developer or any Landowner occurs under this Agreement and is not timely cured pursuant to this Agreement according to the cure periods, if any, set forth in this Agreement; or
- (d) if any subsequent federal or state legislation or any decision by a court of competent jurisdiction declares or renders this Agreement invalid, illegal, or unenforceable; provided, however, if the Developer receives notice of such legislation or court decision and provides notice to NBU within ten (10) days of such notice that it will pursue a remedy or determination such as a declaratory judgment establishing that the conditions of the preceding clause have not been met, this Agreement may not be terminated for the reason set forth in this Section during any period that the Developer is diligently pursuing such remedy or determination until a final, non-appealable determination establishes that the conditions of the preceding clause

have been met, instead during the pendency of such pursuit of a final, non-appealable determination, NBU may place the Agreement with respect to such Party's respective obligations into a standstill period during which NBU shall not be required to take further actions under the Agreement (including without limitation, the payment of any sums of money to the Developer) until the final, non-appealable determination has been rendered.

9.3 **Repayment of Expenses.** If this Agreement is terminated prior to the Expiration Date for a reason other than a material default by NBU, or, at NBU's option if an Event of Default occurs and this Agreement is not terminated, then (i) the Developer shall immediately upon demand pay to NBU an amount equal to all costs and expenses that have been incurred by NBU in any way related to this Agreement and that will be incurred by NBU to complete the New Infrastructure in accordance with this Agreement, including without limitation costs and expenses related to design construction, repair, replacement and remediation of any portion of the New Infrastructure and reasonable attorneys' fees for in house and external counsel, for all periods preceding the date of such termination, plus interest at the lesser of ten percent (10%) per annum or the maximum rate permitted by applicable law (the "**Default Rate**"), from the date of demand until the date that the demand is fully repaid to NBU; and (ii) in addition to NBU's other rights to make claims against any Bond or Developer Fiscal Security, as applicable, pursuant to this Agreement, NBU shall have the right to make a claim against any Bond or Developer Fiscal Security as applicable, to pay for the completion of the Bonded Items or Developer Fiscal Security Items, as applicable. This remedy shall not be exclusive of the other rights and remedies of NBU under this Agreement.

9.4 **Other Remedies.** If an Event of Default by the Developer or a Landowner occurs under this Agreement, NBU shall have the right to exercise any and all rights and remedies available to it at law, in equity, or by statute.

9.5 **Non-Waiver of Rights and Remedies.** No right or remedy herein conferred upon or reserved to NBU is intended to be exclusive of any other available rights or remedies, but each and every such right and remedy shall be cumulative and shall be in addition to every other right or remedy given under this Agreement or now or hereafter existing at law, in equity, or by statute.

9.6 **Event of Default by NBU.** NBU will be in default under this Agreement if NBU fails to reimburse the Developer or credit the Developer as required by this Agreement if, and only if, the Developer has satisfied all of its obligations under this Agreement (an "**NBU Event of Default**"). NBU shall have thirty (30) calendar days from the date NBU receives written notice from the Developer of an NBU Event of Default to cure such NBU Event of Default. If NBU fails to cure an NBU Event of Default within such thirty (30) days, the Developer shall be entitled to seek an injunction and/or a writ of mandamus from a court of competent jurisdiction compelling and requiring NBU to cure the NBU Event of Default. NBU shall not be liable to the Developer for monetary damages. NBU shall have no liability to the Developer except as expressly set forth in this Agreement.

9.7 **Conflict Resolution.** If a dispute related to this Agreement arises, either Party may provide the other Party with written notice of such dispute (such notice, a "**Dispute Notice**"). Within fifteen (15) business days of receipt of such Dispute Notice, the Parties agree to meet and

discuss a potential resolution to such dispute. Such meeting shall include, at a minimum, the Chief Operations Officer of NBU and the equivalent position of the Developer. If the Parties are unable to resolve the dispute at such meeting, either Party may provide the other Party with written notice requiring a second meeting to attempt to resolve the dispute (such notice, the “**Escalating Notice**”). Within fifteen (15) business days of receipt of such Escalating Notice, the Parties agree to meet and discuss a potential resolution to such dispute. Such meeting shall include, at a minimum, the Chief Executive Officer of NBU and the equivalent position of the Developer. In the event of an emergency situation or if NBU believes it will be negatively impacted by following the conflicts resolution process in this Section 9.7, NBU shall have the right to pursue any rights and remedies available to NBU under this Agreement in lieu of following this conflicts resolution process.

ARTICLE X

INDEMNIFICATION, ATTORNEYS’ FEES, AND OTHER REMEDIES

10.1 **Developer’s and Landowners’ Indemnification.** THE DEVELOPER AND LANDOWNERS COVENANT AND AGREE TO FULLY INDEMNIFY AND HOLD HARMLESS THE NBU PARTIES AND THE CITY PARTIES (COLLECTIVELY, THE “**INDEMNIFIED PARTIES**”), INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST (COLLECTIVELY THE FOLLOWING ARE REFERRED TO AS THE “**DESCRIBED CLAIMS**”) ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITIES, AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE INDEMNIFIED PARTIES, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO THE DEVELOPER’S OR ANY LANDOWNER’S ACTIVITIES UNDER THIS AGREEMENT (INCLUDING WITHOUT LIMITATION, ANY DEFECT, DEFICIENCY, OR NEGLIGENCE IN THE PLANS AND SPECIFICATIONS OF THE DEVELOPER NEW INFRASTRUCTURE, ANY DEFECT, DEFICIENCY, OR NEGLIGENCE IN THE DESIGN OF THE DEVELOPER NEW INFRASTRUCTURE, OR ANY ISSUES WHATSOEVER RELATED TO THE CONSTRUCTION OF THE DEVELOPER NEW INFRASTRUCTURE), INCLUDING ANY ACTS OR OMISSIONS OF THE DEVELOPER OR ANY LANDOWNER, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT, CONTRACTOR, OR SUBCONTRACTOR OF THE DEVELOPER OR ANY LANDOWNER, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS, AND REPRESENTATIVES, WHILE IN THE EXERCISE OR PERFORMANCE OF THEIR RIGHTS OR DUTIES UNDER THIS AGREEMENT, BUT EXCLUDING CLAIMS RELATED TO NBU’S AUTHORITY TO ENTER INTO THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO NBU UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE INDEMNIFIED PARTIES AND NOT INTENDED TO CREATE OR

GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. THE DEVELOPER AND LANDOWNERS SHALL PROMPTLY ADVISE NBU IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE INDEMNIFIED PARTIES OR THE DEVELOPER OR A LANDOWNER AND RELATED TO OR ARISING OUT OF THE DEVELOPER'S OR A LANDOWNER'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE DEVELOPER'S COST. THE INDEMNIFIED PARTIES SHALL HAVE THE RIGHT, AT THEIR OPTION AND AT THEIR OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE DEVELOPER OR LANDOWNERS OF ANY OF THEIR OBLIGATIONS UNDER THIS PARAGRAPH. THE DEVELOPER AND LANDOWNERS FURTHER AGREE TO DEFEND, AT THEIR OWN EXPENSE AND ON BEHALF OF THE INDEMNIFIED PARTIES AND IN THE NAME OF THE APPLICABLE INDEMNIFIED PARTY, ANY CLAIM OR LITIGATION BROUGHT AGAINST THE INDEMNIFIED PARTIES IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE. THE DEVELOPER'S AND LANDOWNERS' OBLIGATIONS UNDER THIS SUBSECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

10.2 **The Developer's and the Landowners' Release.** FURTHER, THE DEVELOPER AND EACH LANDOWNER FULLY AND COMPLETELY RELEASE, WAIVE AND FOREVER DISCHARGE THE INDEMNIFIED PARTIES FROM ANY AND ALL EXISTING DESCRIBED CLAIMS.

10.3 **Independent Operator.** It is expressly understood and agreed that the Developer and each Landowner is and shall be deemed to be an independent operator responsible to NBU for its own respective acts or omissions and that NBU shall in no way be responsible therefore.

10.4 **Attorneys' Fees and Expenses.** Should litigation against any Party be required to enforce the terms of this Agreement, the prevailing Party will be entitled to recover from the opposing Party its costs and expenses and reasonable attorneys' fees.

10.5 **Waiver of Consequential Damages.** The Developer and each Landowner waive all present and future claims for consequential, incidental, or special losses or damages against any NBU Party or any City Party, including but not limited to, loss of profits or revenue, loss of opportunity or use, loss of business or business reputation, or like items of loss or damage, and such waiver shall survive any termination of this Agreement.

10.6 **No Waiver of Municipality Defenses or Immunities.** Nothing in this Agreement will waive the defenses or immunities under Section 101.001 *et seq.* of the Texas Civil Practice & Remedies Code or any other applicable statutory or common law defense or immunity available to municipalities.

ARTICLE XI

MISCELLANEOUS

11.1 **Cost Reimbursement.** As described in the Reimbursement Agreement, the Developer will pay NBU to compensate NBU for attorneys' fees, consultant fees and other costs incurred or to be incurred in connection with this Agreement.

11.2 **Binding Agreement; Assignment.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties hereto. This Agreement may not be assigned by the Developer or any Landowner, in whole or in part, without the prior written consent of NBU. Any assignment shall not relieve the Developer or any Landowner of its obligations to NBU under this Agreement, unless the NBU governing body approves the assignment in writing and executes a written release of the Developer or the respective Landowner from the obligations imposed by this Agreement. NBU may assign its rights and obligations under this Agreement and shall give written notice of any such assignment to the Developer, provided that failure to provide such notice shall not invalidate the effectiveness of such an assignment.

11.3 **District Obligations.** In a signed written document acceptable in form and substance to NBU, the District must acknowledge and agree to the terms of this Agreement and any District obligations hereunder within sixty (60) days of the District's creation. Such acknowledgement must include an acknowledgement by the District that nothing in this Agreement creates any right for the District to pursue any remedies against NBU and that the District's sole remedies with respect to this Agreement shall be solely against the Developer.

11.4 **Texas Public Information Act.** If NBU receives a Texas Public Information Act request from a third party requesting information that has been submitted to NBU by the Developer in connection with this Agreement, NBU shall timely provide a copy of such request to the Developer in accordance with the provisions of the Texas Public Information Act so that the Developer may take such actions, if any, as the Developer deems necessary to object to the release of such information in accordance with the provisions of the Texas Public Information Act.

11.5 **Limitation on Liability.** It is understood and agreed among the Parties that each of the Parties in satisfying the conditions of this Agreement has acted independently and assumes no responsibilities or liabilities to third parties in connection with these actions.

11.6 **No Joint Venture.** It is acknowledged and agreed by the Parties that the terms hereof are not intended to, and shall not be deemed to, create a partnership or joint venture among the Parties.

11.7 **Notices.** Any notice required or permitted to be delivered hereunder shall be deemed received (i) three (3) business days after deposit into the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below; (ii) on the next business day if sent on a business day by a nationally recognized overnight courier; or (iii) on the day actually received if sent by courier or otherwise hand delivered. Either Party may change its address(es) for notice to another address(es) within the continental United States by providing ten (10) business days advance written notice thereof to the other Party.

The Developer, MNB Real Estate
Investments, Southstar at Mayfair Developer,
or Beaverhead:

Southstar at Mayfair, LLC
1118 Vintage Way
New Braunfels, TX 78132
Attn: Thad Rutherford, President

With a copy to:

Bracewell LLP
300 Convent, Suite 2700
San Antonio, Texas 78205
Attn: Blakely L. Fernandez

NBU:

New Braunfels Utilities
263 Main Plaza
New Braunfels, Texas 78130
Attn: Chief Operations Officer

With a copy to:

New Braunfels Utilities
263 Main Plaza
New Braunfels, Texas 78130
Attn: General Counsel

and to:

The Chapman Firm, PLLC
3410 Far West Blvd, Ste 210
Austin, TX 78731
Attn: Erik G. Moskowitz

11.8 **Conflict**. If there is any conflict between this Agreement and another document, the terms of this Agreement shall control.

11.9 **Governing Law**. This Agreement shall be governed by the laws of the State, and venue for any action concerning this Agreement shall be exclusively in the State District Court of Comal County, Texas. The Parties agree to submit to the jurisdiction of said court.

11.10 **Force Majeure**. Notwithstanding anything in this Agreement which is or may appear to be to the contrary, if the performance by any Party of any covenant or obligation hereunder is delayed as a result of Force Majeure, the time for such performance may be extended as provided below by the amount of time of such delay. The Party claiming delay of performance as a result of a Force Majeure event shall deliver written notice of the commencement of such delay not later than fourteen (14) calendar days after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the affected Party or Parties of delay caused by a

Force Majeure event, the claiming Party shall not be entitled to extend the time for performance as provided herein until such notice has been provided.

11.11 **Amendment.** This Agreement may only be amended by a written agreement executed by the Parties and approved by the NBU Board of Trustees. Any amendment to the Master Framework Plan or related engineering studies must be reviewed and approved by NBU in its sole discretion and shall only be effective upon the full execution, notarization, and recordation of an amendment to this Agreement incorporating the same.

11.12 **Legal Construction.** Nothing in this Agreement will be construed to limit, restrict, modify, or abrogate NBU's authority under Applicable Laws or any Applicable Laws to which NBU, the Developer, or any Landowner is bound. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid, and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable to the extent that it does not deprive the Parties of the benefit of the bargain and only to the extent permissible by law.

11.13 **Captions.** All descriptive headings and captions herein are inserted for convenience only and shall not be considered in interpreting or construing this Agreement.

11.14 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination of this Agreement.

11.15 **Recitals; Exhibits.** Any recitals in this Agreement are represented by the Parties hereto to be accurate, constitute a part of the Parties' substantive agreement, and are fully incorporated herein as matters of contract and not mere recitals. Further, any exhibits to this Agreement are incorporated herein as matters of contract and not mere exhibits.

11.16 **Time.** Time is of the essence. Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public federal or Texas state holiday, the date for performance will be the next following regular business day.

11.17 **No Implied Waiver.** The failure of a Party hereto to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition by the other Parties hereto, but the obligation of such other Parties with respect to such future performance shall continue in full force and effect.

11.18 **Right to Audit.** NBU shall have the right, at any time during the Term of this Agreement, upon advance written notice to the Developer to audit the records of the Developer and each Landowner related to the Developer's and each Landowner's performance and obligations under this Agreement and related to the information submitted to NBU on the annual

reports required by Section 3.2(a) and the quarterly reports required by Section 5.6(b). The Developer and each Landowner shall cooperate fully with NBU in connection with any such audit and shall promptly make all relevant documentation available to NBU, at no cost or expense to NBU.

11.19 **Governmental Immunity**. NBU does not waive or relinquish any immunity or defense on behalf of itself or any NBU Party or City Party as a result of the execution of this Agreement and the performance of the covenants and actions contained herein.

11.20 **Counterparts**. This Agreement may be executed in multiple counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

11.21 **Recording**. This Agreement shall be recorded, at the Developer's sole cost and expense, in the real property records of Comal County, Texas.

11.22 **Entire Agreement**. This Agreement constitutes the entire agreement among the Parties and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter hereof. There have been and are no agreements, covenants, representations, or warranties among the Parties as to the subject matter hereof other than those expressly stated or provided for herein. Each Party has had the opportunity to be represented by counsel of its choice in the negotiation of this Agreement.

11.23 **Exhibits**. The following exhibits are attached hereto and incorporated herein for all purposes.

Exhibit "A" Legal Description of the Property

Exhibit "A-1" Legal Description of the Excluded Property

Exhibit "B" Master Framework Plan

Exhibit "C" Land Use

Exhibit "D" Certification Affidavit

Exhibit "E" Project Schedule

Exhibit "F" Projected LUEs Schedule

Exhibit "G" Oversizing Specifications

Exhibit "H" Developer New Infrastructure

Exhibit "I" Water & Wastewater Engineering Design Report and the Mayfair Master Planned Community Temporary Wastewater Treatment Plan

Exhibit "J" Form of Special Warranty Deed

<u>Exhibit “K”</u>	Form of Easement Agreement
<u>Exhibit “L”</u>	Rebate-Eligible Infrastructure
<u>Exhibit “M”</u>	Easement Estates
<u>Exhibit “N”</u>	Conservation Restrictions
<u>Exhibit “O”</u>	FM 306 Pump Station and Discharge Line
<u>Exhibit “P”</u>	FM 1101 Pump Station and Discharge Line
<u>Exhibit “Q”</u>	Goodwin Lane Water Line
<u>Exhibit “R”</u>	Conrads (Goodwin Lane) EST
<u>Exhibit “S”</u>	NBU McKenzie Interceptor Main
<u>Exhibit “T”</u>	McKenzie WWTP Expansion
<u>Exhibit “U”</u>	Form of Disclosure
<u>Exhibit “V”</u>	Sequencing Schedule

[Signatures and acknowledgments on the following pages]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates of the acknowledgments to be effective as of the Amended Effective Date.

NBU:

NEW BRAUNFELS UTILITIES

By: _____

Name: Ryan Kelso

Title: Chief Executive Officer

THE STATE OF TEXAS §

§

COUNTY OF COMAL §

This instrument was acknowledged before me on the ____ day of _____ 2024, by Ryan Kelso, the Chief Executive Officer of New Braunfels Utilities on behalf of said entity.

[Seal]

Notary Public in and for the State of Texas

[Signatures and acknowledgments continue on the following pages]

The Developer:

SOUTHSTAR AT MAYFAIR, LLC,
a Texas limited liability company

By: _____
Name: Thad Rutherford
Title: President

THE STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2024, by _____, the _____ of Southstar at Mayfair, LLC, a Texas limited liability company, on behalf of said limited liability company.

[Seal]

Public in and for the State of _____

Notary

MNB REAL ESTATE INVESTMENTS, LLC

MNB REAL ESTATE INVESTMENTS, LLC,
a Texas limited liability company

By: _____
Name:
Title:

THE STATE OF _____ §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2024, by _____, the _____ of MNB Real Estate Investments, LLC, a Texas limited liability company, on behalf of said limited liability company.

[Seal]

Notary Public in and for the State of _____

BEAVERHEAD

BEAVERHEAD NB, LLC,
a Texas limited liability company

By: _____

Name:

Title:

THE STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2024, by
_____, the _____ of Beaverhead NB,
LLC, a Texas limited liability company, on behalf of said limited liability company.

[Seal]

Notary Public in and for the State of _____

Southstar at Mayfair Investments West joins hereby joins in the execution of this Agreement for the sole purpose of making the representations regarding the Excluded Property contained in the recitals.

**SOUTHSTAR AT MAYFAIR INVESTMENTS
WEST**

**SOUTHSTAR AT MAYFAIR INVESTMENTS
WEST, LLC,**
a Texas limited liability company

By: _____

Name:

Title:

THE STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2024, by _____, the _____ of Southstar at Mayfair Investments West, LLC, a Texas limited liability company, on behalf of said limited liability company.

[Seal]

Notary Public in and for the State of _____

Exhibit "A"

Legal Description of the Property

[see attached]

Exhibit "A-1"

Legal Description of the Excluded Property

[see attached]

Exhibit “B”

Master Framework Plan

[see attached]

Exhibit "C"

Land Use Summary

MAYFAIR LAND USE SCHEDULE	
LAND USE	ACREAGE
Residential	
Mixed Density Residential	882.26 Ac.
Mixed Use	123.42 Ac.
Non-Residential	
Neighborhood Commercial	16.68 Ac.
Flex Commercial	53.19 Ac.
Light Industrial	160.40 Ac.
Civic / Parkland	
Middle / High School	117.27 Ac.
Elementary School	36.00 Ac.
Recreation Center	12.52 Ac.
Fire Station	2.52 Ac.
Transformer Station	9.20 Ac.
Temporary WWTP	2.80 Ac.
Community Parks	120.49 Ac.
Greenbelt/Conservation Parks /Trails	135.49 Ac.
Natural Area/Easement	76.91 Ac.
Major ROW	138.85 Ac.
TOTAL	1888.00 Ac

Exhibit “D”

Form of Certification Affidavit

**CERTIFICATION AFFIDAVIT
REGARDING ANNUAL REPORT**

This CERTIFICATION AFFIDAVIT REGARDING ANNUAL REPORT (the “**Affidavit**”) is made as of the date of the acknowledgment below by _____ (the “**Affiant**”), in his or her role as the _____ of Southstar at Mayfair, LLC, a Texas limited liability company (the “**Developer**”), for reliance upon by New Braunfels Utilities (“**NBU**”), charged with exclusive management and control of the water system of the City of New Braunfels, Texas, in connection with the Utility Construction Cost Sharing Agreement dated effective as of _____, 202__ by and between the Developer and NBU (the “**Agreement**”), and the expenditure of public funds for providing certain utility services as contemplated in the Agreement. Capitalized terms used but not defined herein have the meanings ascribed to them in the Agreement. Affiant hereby swears under oath, for the benefit of NBU as to the following:

1. Affiant has personal knowledge of the matters set forth in this Affidavit, and the facts stated herein are true and correct.
2. Affiant certifies that the summary of the progress of the development and construction of the Project and of the Developer New Infrastructure attached hereto as Exhibit “A” and incorporated herein for all purposes, is true, accurate, and complete.
3. Affiant certifies that there are no liens or Claims affecting Work with respect to the Developer New Infrastructure or the Developer New Infrastructure [Note: If any, describe and include a plan for remediation of the same].
4. Affiant certifies that a summary of the progress of the Developer New Infrastructure as it relates to the projected schedule of LUEs for the phases of construction set forth on Exhibit “F” of the Agreement, and the Developer’s current projections of the portions of the Project expected to be connected to the NBU water or wastewater systems, and the associated estimated number of LUEs related thereto, within the 20[___] Calendar Year, are set forth on Exhibit “B” attached hereto and incorporated herein for all purposes.
5. Affiant certifies that the representations and warranties of the Developer contained within the Agreement remain true and correct as of the date of this Affidavit, and Affiant remakes those representations and warranties on behalf of the Developer as of the date hereof.
6. Affiant understands that this Affidavit is being relied upon by NBU in connection with the Agreement, the expenditure of public funds, and providing certain utility services.
7. Affiant has the authority to sign this Affidavit on behalf of the Developer.

[remainder of page intentionally left blank]

In Witness Whereof, this Certification Affidavit Regarding Annual Report has been executed as of the date of the acknowledgement below.

Affiant:

_____, the _____
of Southstar at Mayfair, LLC, a Texas limited liability
company

THE STATE OF _____ §
§
COUNTY OF _____ §

Sworn to and subscribed before me, the undersigned Notary Public, on this _____ day of _____, 20____, by _____, the _____ of Southstar at Mayfair, LLC, a Texas limited liability company, on behalf of said limited partnership.

[SEAL]

NOTARY PUBLIC, STATE OF _____

PRINTED/TYPED NAME OF NOTARY
MY COMMISSION EXPIRES: _____

List of Exhibits:

Exhibit "A" Annual Progress Report for the Period from _____, 20____ to _____, 20____ (See Section 3.3(a) of the Agreement.)

Exhibit "B" Projections Related to LUEs

Exhibit “E”*

Project Schedule

[see attached page]

* Total LUEs will be released as described in Exhibit “F”

Exhibit “F”

Projected LUEs Schedule

[see attached]

Exhibit “G”

Oversizing Specifications

[see attached]

Exhibit “H”

Developer New Infrastructure

[*see attached*]

Exhibit "I"

Engineer's Report

[*see attached*]

Exhibit “J”

Form of Special Warranty Deed

[see attached]

After Recording, Please Return to:
New Braunfels Utilities
263 E. Main Plaza
New Braunfels, Texas 78130
Attn: General Counsel

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.

SPECIAL WARRANTY DEED

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

THIS SPECIAL WARRANTY DEED ("**Deed**") is made to be effective as of the ___ day of _____, 20[___] (the "**Effective Date**") by [_____, a _____] ("**Grantor**"), whose mailing address is 1118 Vintage Way New Braunfels, TX 78132, to New Braunfels Utilities ("**Grantee**"), whose mailing address is 263 E. Main Plaza, New Braunfels, Texas 78130.

For and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, paid to Grantor by Grantee, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

Grantor has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does hereby GRANT, BARGAIN, SELL and CONVEY unto Grantee, subject to the Permitted Exceptions (as defined hereinafter), (i) that certain tract of land (the "**Land**") located and situated in the County of Comal, Texas, more particularly described in Exhibit A attached hereto and incorporated herein by reference for all purposes; (ii) any and all improvements, structures and fixtures located thereon, [**including, but not limited to, the _____ located thereon,**] and all other structures, systems, parking lots, fixtures, and utilities associated with, and utilized in, the ownership and operation thereof; (iii) all water and mineral rights owned by or leased to Grantor with respect to the Land; (iv) all rights and appurtenances appertaining thereto; and (v) any and all of Grantor's right, title and interest in and to any easements, rights of way, alleys, drainage facilities, utility facilities, licenses, interests and rights appertaining to the aforementioned Land, and any land lying in any adjacent roads, streets and alleys adjoining or abutting the aforesaid tract, if any, (collectively, the "**Property**").

TO HAVE AND TO HOLD the Property, subject to the Permitted Exceptions, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, its successors and assigns, forever; and Grantor does hereby bind itself and its successors and assigns, to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee, its

successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Grantor, but not otherwise.

This Deed is made and given by Grantor, and is accepted by Grantee, subject to the matters set forth in Exhibit B attached hereto and incorporated herein by reference for all purposes (the “**Permitted Exceptions**”), but only to the extent that such Permitted Exceptions or any of them is still in effect relating to the Property.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Grantor has duly executed this Deed as of the date of the acknowledgement below to be effective for all purposes as of the Effective Date.

[Signature Block]

STATE OF _____ §

COUNTY OF _____ §

The foregoing instrument was acknowledged before me on _____, 20[___] by _____, the _____ of _____, a _____ on behalf of said _____.

Name: _____
Notary Public, State of _____
My commission expires: _____

Exhibit A
to
Special Warranty Deed

Legal Description of the Land

Exhibit B
to
Special Warranty Deed

Permitted Exceptions¹

1. All taxes and assessments for the year 20[___], and subsequent years.

¹ The list of permitted exceptions will only include the items approved by NBU pursuant to Section 7.1(d) of the Agreement.

Exhibit “K”

Form of Easement Agreement

[see attached]

Easement #: _____

Exhibit “K,” Page 1

After Recording, Please Return To:

New Braunfels Utilities

Attention: Easements & ROW

263 Main Plaza

New Braunfels, Texas 78130

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 _____

§

**NEW BRAUNFELS UTILITIES
UTILITY EASEMENT**

Effective Date: _____, 20____

Grantor: _____

Grantee: NEW BRAUNFELS UTILITIES
An Agency of the City of New Braunfels
Attention: CEO
263 Main Plaza
New Braunfels, Texas 78130

Easement Property: Those properties described in *Exhibit "A"* and depicted on *Exhibit "B"* 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 lines, 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,

Easement #: _____

improvements, structures and appurtenances ancillary or related thereto (collectively, the “Facilities”). Grantor acknowledges that the Easement Purpose may be carried out by Grantee or its representatives, agents, contractors, and subcontractors, in Grantee’s sole discretion.

Consideration: Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is acknowledged.

Grant: Grantor, for the Consideration 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, rights and property interests 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 surface of the Easement Property for all purposes that do not interfere with or interrupt the use or enjoyment of the easement by Grantee and its heirs, successors, and assigns for the Easement Purpose. Such reserved use specifically includes the right to construct surface materials over the Easement Property, provided that Grantor only uses asphalt, caliche or base material. If Grantor proposes to (i) use surfacing materials other than asphalt, caliche, or base material for parking and/or driveways or walkways over and across the Easement Property, (ii) change the level or grading of the surface of the Easement Property, (iii) plant trees on the Easement Property, and/or (iv) make any other improvements to the Easement Property, Grantor must obtain Grantee’s approval in the form of a signed written easement encroachment agreement prior to making such improvements.

Terms: The following terms apply to this easement:

1. *Character of Easement.* Subject to the reservation from conveyance, the easement is exclusive. No other utility provider may use the Easement Property without the prior written consent of Grantee or, as applicable, its heirs, successors, or assigns. Grantee, and its heirs, successors, and assigns, will also have rights of ingress and egress to and from said Easement Property, together with reasonable working space (if available) on, over, and across Grantor’s property adjacent to the Easement Property for the Easement Purpose. 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 sole opinion of Grantee or its heirs, successors, or assigns, endanger or may interfere with the efficient, safe or proper operation, use and maintenance of the Facilities or any other use of the Easement Property for the Easement Purpose. Additionally, Grantee shall have the right to remove from the land immediately adjoining the Easement Property any bushes, trees and parts thereof, and vegetation that Grantee reasonably believes will interfere with the Easement Property and/or Grantee’s use thereof.
2. *Duration.* The duration of the easement is perpetual and irrevocable.

Easement #: _____

3. *Easement Facilities and Improvements.* All matters concerning the design, construction, installation, maintenance, replacement and removal of the Facilities are at the sole discretion of Grantee, or, as applicable, its heirs, successors, or assigns, subject to performance of its obligations under this Easement. All Facilities or other Grantee improvements constructed within, on or under the Easement Property will be and remain the property of Grantee or, as applicable, its heirs, successors, or assigns. In the event Grantor places surfacing materials or other permitted improvements over and across the Easement Property or portions thereof (the “Grantor Improvements”), Grantee or, as applicable, its heirs, successors, or assigns will use ordinary care to minimize damage to the Grantor Improvements in the event repair, replacement or maintenance of the Facilities is required. However, Grantee and/or its heirs, successors, or assigns will not be obligated to restore the Grantor Improvements to their condition prior to the time Grantee commenced work except to the extent the negligent acts or omissions of Grantee and/or its heirs, successors, or assigns caused the damage to the Grantor Improvements.
4. Grantee shall have the right, without the need for any consent by Grantor, or its heirs, successors, or assigns to transfer, convey and/or assign this Easement and its rights hereunder, in whole or in part.

[Signature and acknowledgment appear on the following pages]

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

GRANTOR:

By: _____
Name: _____
Title: _____

[Signature Page to New Braunfels Utilities Easement]

Easement #: _____

[acknowledgment for individual Grantor]

THE STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on _____, 20____, by
_____ [name of individual].

[SEAL]

Notary Public, State of _____
My Commission Expires _____

[acknowledgment for Grantor signing on behalf of company/entity]

THE STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on _____, 20____, by
_____ [name of individual],
_____ [title or position held by individual],
of _____ [name of company/entity], on
behalf of same and in the capacity herein stated.

[SEAL]

Notary Public, State of _____
My Commission Expires _____

[Acknowledgment to New Braunfels Utilities Easement]

Easement #: _____

Exhibit A

Legal Description of Easement Property

Exhibit A

Easement #: _____

Exhibit B

Depiction of Easement Property

Exhibit “L”

Rebate-Eligible Infrastructure

[see attached]

Exhibit "M"

Easement Estates

[see attached]

Exhibit "N"

Conservation Restrictions

[see attached]

Exhibit "O"

FM 306 Pump Station and Discharge Line

[see attached]

Exhibit “P”

FM 1101 Pump Station and Discharge Line

[see attached]

Exhibit “Q”

Goodwin Lane Water Line

[see attached]

Exhibit "R"

Conrads (Goodwin Lane) EST

[see attached]

Exhibit "S"

NBU McKenzie Interceptor Main

[see attached]

Exhibit “T”

McKenzie WWTP Expansion

[see attached]

Exhibit “U”

Form of Disclosure

[see attached]

Exhibit “V”

Sequencing Schedule

[see attached]