

## MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING** (“MOU”) is entered into on this \_\_\_\_ day of \_\_\_\_\_, by and between the **CITY OF NEW BRAUNFELS** (the “City”), a home-rule city under the laws of the State of Texas, and **NEW BRAUNFELS UTILITIES** (“NBU”), a municipally-owned water, wastewater, and electric utility (individually referred to as “Party” or collectively referred to as the “Parties”).

### RECITALS

**WHEREAS**, the City is a partner on the Edwards Aquifer Habitat Conservation Plan (EAHCP) program that is intended to protect federally-listed endangered aquatic species within the Comal River system through spring flow and habitat protection measures; and

**WHEREAS**, as part of the EAHCP, the City is working to implement water quality protection measures to mitigate stormwater runoff from impervious surfaces and provide benefits to the Comal River system and endangered species by reducing sediment and pollutant loading to the Comal River system; and

**WHEREAS**, the City, in cooperation with NBU staff, has identified an opportunity to design and construct a stormwater treatment basin (the “Project”) in the NBU well yard area located within the Project area of Headwaters at the Comal, a 501(c)(3) nonprofit conservation project, and immediately adjacent to the upper portion of Landa Lake and the headwater springs of the Comal River; and

**WHEREAS**, the intent of the Project is to capture, collect, and filter stormwater runoff from the NBU well yard area prior to being discharged to the upper portion of the Landa Lake and the spring run; and

**WHEREAS**, the City has included the design and construction of the Project in the City of New Braunfels’ 2020 EAHCP Work Plan that has been approved by the EAHCP Implementing Committee through its duties, rights, and obligations as provided in the EAHCP Funding Management Agreement; and

**WHEREAS**, the EAHCP Implementing Committee and the Edwards Aquifer Authority Board of Directors have approved the City’s 2020 EAHCP Funding Application that guarantees funding reimbursements to the City for the design and construction in the NBU well yard and to minimize stormwater run-off into the Project at the Headwaters at the Comal; and

**WHEREAS**, the City has contracted with an engineering firm to perform engineering design for the Project. The City has coordinated the design effort with NBU staff, and has provided them with 60 and 100 percent design plans for review and comment.

**WHEREAS**, the Board of Trustees of NBU and the City Council of the City of New Braunfels have both considered and approved this agreement.

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

### **AGREEMENT**

1. The Parties enter into this MOU to define the terms and conditions of the solicitation, construction, and administration of the Project.
2. The City will use the Joint Competitive Sealed Proposal documents, approved by the City and NBU, as the instruments for solicitation and procurement for the Project. The Parties will mutually agree as to the final terms of the Competitive Sealed Proposal.
3. The Project will be bid in accordance with state law and awarded solely pursuant to the provisions set forth in the Competitive Sealed Proposal.
4. The Watershed Program Manager will act on behalf of the City as its designated representative for the Project. The NBU Water Treatment and Compliance Manager will act on behalf of NBU as its designated representative for the Project.
5. The Watershed Program Manager will coordinate and collaborate with the NBU Water Treatment and Compliance Manager to evaluate and rank respondents to the solicitation. However, the City will have primary responsibility for the Project solicitation and procurement in accordance with Texas Government Code, Chapter 2269.
6. The Project procurement and delivery timeline will begin with the finalization of the Project Contract Documents.
7. The City will assume all contract compensation amounts for the Project.
8. The City shall acquire all applicable permits prior to construction of the Project.
9. NBU will allow appropriate access to the Project area for the designated construction contractor.
10. The City will use its Project Contract Documents as the construction contracts for the Project. The Project Contract Documents will be provided to NBU.
11. The City and NBU will approve any changes to the Project Contract Documents jointly.
12. The City will provide timely inspections of completed work by the contractor awarded a contract to ensure the Project is being constructed according to the final approved plan set and so as not to cause unnecessary Project delays. Upon request, the Parties shall make available to each other all Project-related communications, including, but not limited to, correspondence, submittals, requests for information, vouchers, payment requests and processing, amendments, change orders, engineering/design documents, construction

documents, and other administrative communication activities as appropriate.

13. Both parties agree to negotiate in good faith to reach a solution when there are any design conflicts.
14. This MOU shall remain in effect during the final completion and acceptance of the Project in accordance with the Project Contract Documents.
15. Upon final completion of the Project, NBU will assume responsibility for maintenance of the stormwater treatment basin, as agreed upon in the signed 100 percent plan set, to ensure continued functionality.
16. In the event a dispute arises between the parties involving the provision or interpretation of any term or condition of this MOU, the Parties shall first attempt to resolve disputes informally by a face-to-face meeting to take place within thirty (30) days of notice from one Party that a dispute has arisen. If the Parties are unable to resolve such dispute within thirty (30) days following such notice then the Parties must first submit the dispute in good faith to a mutually agreeable mediator. If the Parties are unable to resolve such dispute through mediation, within thirty (30) days following mediation then either Party may submit the dispute to arbitration in accordance with the Rules for the Conduct of Arbitration of the American Arbitration Association in effect at the date of commencement of such arbitration, by one (1) arbitrator who will be appointed by the American Arbitration Association.
17. If any clause or provision of this MOU is held invalid, illegal or unenforceable under present or future federal, state or local laws including, but not limited to, the City Charter, City Code or ordinances of the City, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this MOU shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this MOU that is invalid, illegal or unenforceable, there be added as a part of this MOU a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.
18. This MOU shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action brought hereunder will be exclusively in Comal County, Texas.
19. The Parties agree that this MOU cannot be terminated unless by written mutual agreement approved by the respective governing bodies.
20. This MOU constitutes the entire agreement among the Parties hereto with respect to the subject matter hereof, and supersedes any prior understandings written or oral agreements between the Parties. No amendment, modification or alteration of the terms of the

Agreement will be binding on any Party unless the same is in writing, dated subsequent to the date hereof, and is approved by the governing bodies and duly executed by the Parties.

21. This MOU shall become effective upon full execution of the MOU by both Parties.

**IN WITNESS WHEREOF**, the City and NBU mutually consent to enter into this MOU on the date set forth above.

**NEW BRAUNFELS UTILITIES**

**CITY OF NEW BRAUNFELS**

\_\_\_\_\_  
Ian Taylor, CEO

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date