

SECOND AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING

This **SECOND AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING** (“MOU”) is made and entered into on this the ____ day of _____, 2022, 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, NBU established the Headwaters at the Comal, a non-profit organization, in 2017, to work to inspire the lifelong practice of experiencing, enjoying, and stewarding the cultural, ecological, and community resources of the Comal River;

WHEREAS, the City and local project partners are implementing a Watershed Protection Plan for the Dry Comal Creek and Comal River (WPP);

WHEREAS, NBU has hired a part-time Watershed Educator at the Headwaters at the Comal to provide educational programming to the community regarding the WPP, watershed stewardship, and promote practices that help to minimize water pollution;

WHEREAS, the City entered into a contract with the Texas Commission on Environmental Quality (TCEQ) in September 2018 to receive grant funding under the Clean Water Act Section 319(h) grant program to cover the cost of implementation activities associated with the WPP that was to be disbursed by August 2021;

WHEREAS, the grant funding was intended to fund the part-time Watershed Educator for the Headwaters at the Comal, as well as other education and outreach materials;

WHEREAS, the Parties entered into a Memorandum of Understanding on August 10, 2020 (the “Original MOU”), concerning the TCEQ grant funding and duties of the Watershed Educator;

WHEREAS, the COVID-19 pandemic caused a temporary hold on education programs;

WHEREAS, the TCEQ agreed to extend the grant contract term in which grant funds could be disbursed to August 31, 2022;

WHEREAS, the Parties entered into an Amended and Restated Memorandum of Understanding on August 29, 2021 (the “Amended MOU”), to document the extension of the grant term for an additional year to August 31, 2022;

WHEREAS, the City has additional unallocated funds available from the TCEQ grant award in the amount of \$15,000.00 to continue funding the part-time Watershed Educator for the Headwaters at the Comal, education and outreach materials;

WHEREAS, the City wishes to continue reimbursing NBU for wages disbursed to the Watershed Educator, for the continuation of education programs, and for the cost of additional outreach materials in an additional amount of \$15,000.00;

WHEREAS, the total amount of reimbursement from the City to NBU will now be \$40,000.00 to be invoiced to the City and paid to NBU prior to the end of the grant contract term on August 31, 2022; and

WHEREAS, the Board of Trustees of NBU and the City Council of the City have both considered and approved this amended and restated agreement.

NOW, THEREFORE, in consideration of the representation, 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 Headwaters at the Comal will employ a part-time Watershed Educator to be paid by NBU.
2. The focus of the Watershed Educator will be to provide non-point source pollution and urban wildlife management educational programming to residents, community groups, and students. The Watershed Educator will develop educational materials and activities to support WPP education and outreach efforts.
3. The Watershed Educator shall submit to the City any educational materials or programs that have been developed for public consumption at least two weeks prior to presenting to the public. The City will review and submit the educational materials to the TCEQ Grant Project Manager for review and approval. The City will notify the Watershed Educator of any comments from TCEQ or the City needing to be addressed prior to presentation of the materials.
4. The Watershed Educator shall document work efforts and log time spent on individual work activities.
5. NBU shall submit to the City Watershed Program Manager on a monthly basis invoices for the cost of wages and educational material expenses associated with the Watershed Educator position for the prior month. The invoice shall be accompanied by a timesheet log indicating hours worked and a brief summary of work activities completed. The invoice and supporting documentation shall be submitted to the City by the 10th of the month for work completed the prior month. The invoice shall be sent to the following:

City of New Braunfels
Watershed Program Manager
Attn: Mark Enders
menders@nbtexas.org

6. The City will review the invoice and supporting documentation and remit payment to NBU for the amount included in the monthly invoice. The City will remit payment to NBU within 30 days of receipt of the invoice. The total amount of reimbursement from the City to NBU will be \$40,000.00 prior to the end of the grant contract term on August 31, 2022.
7. The City will include the invoice and supporting documentation in a quarterly invoice packet/ Financial Summary Report that is required to be submitted to TCEQ each quarter as a reimbursement request. The City will be reimbursed by TCEQ per the grant contract between the City and TCEQ for costs related to the Watershed Educator position.
8. 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.
9. 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.
10. In performing any activities reasonably related to this MOU, all parties shall comply with all applicable provisions of federal, state, and local laws, and regulations in effect at the time of such activities.
11. This MOU may only be terminated by mutual written agreement by both parties.
12. This MOU shall become effective upon execution of the MOU by both parties.
13. The Parties agree that this MOU cannot be assigned.
14. This MOU constitutes the entire agreement among the Parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and any prior understandings between the Parties, whether written or oral, including the Original MOU and the Amended MOU, which shall be deemed null and void, and of no further force or effect following the date hereof. 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.

IN WITNESS WHEREAS, 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, Chief Executive Officer

Robert Camareno, City Manager

Date

Date