

**AUGUST FIELDS SUBDIVISION – BROOK AVENUE
CONNECTION/NBU UTILITY RELOCATION
DEVELOPMENT AGREEMENT**

This Development Agreement (this “**Agreement**”) is made and entered into by and between the CITY OF NEW BRAUNFELS, TEXAS, a Texas municipal corporation (“**City**”), NEW BRAUNFELS UTILITIES (“**NBU**”) and AUGUST FIELDS, LP, a Texas limited partnership (“**Developer**”), effective as of the date City executes this Agreement after Developer first executes Agreement. (“Effective Date”).

WHEREAS, on October 22, 2015, Developer submitted a “Master Plan” and “Concept Plan” for the proposed development of the August Fields Subdivision, such Subdivision being more particularly described on the attached **Exhibit “A”** (the “Subdivision”); and

WHEREAS, The City, as part of the 2013 Bond Program, is currently in the construction phase of the Alves Lane Improvements Project which will provide drainage improvements as well as a 3-lane road section to Alves Lane from Highway 46 to Barbarosa Road (the “**Project**”).

WHEREAS, NBU as part of a joint bid with the City is currently relocating utilities as part of the Alves Lane Reconstruction Project.

WHEREAS, Developer has previously entered into a development agreement with the City for the connection of Brook Avenue to Alves Lane and relocation of certain drainage structures pertaining to that connection as part of the Alves Lane Reconstruction Project.

WHEREAS, Developer desires to work with the City and NBU to adjust necessary utilities as part of the Project, as shown on the attached **Exhibit “B”**, and has agreed to pay all the necessary design and construction costs;

NOW, THEREFORE, City and Developer agree as follows:

1. Survey and Engineering Design. Within thirty (30) days of the execution of this agreement, Developer shall deposit with NBU the sum of \$6,500 for the Engineering, Design and Survey costs associated with the requested utility modifications to the Project. Upon receipt of the funds, the City and NBU shall engage the services of M&S Engineering to perform the scope of work described on the attached **Exhibit “C”**.

2. Cost of Construction. Upon delivery of the Engineering, Design and Survey from M&S Engineering, the City and NBU shall notify the Developer of the costs associated with constructing the respective modifications. Upon receipt of the funds for the modifications, the City and NBU shall execute a change order with the construction contractor for the Project to add the approved modification(s). Furthermore, should any unforeseen costs arise during the construction of the modifications, Developer shall be solely responsible for said cost and shall deposit any necessary funds with City and/or NBU within 30 days of written notice. Should the modifications cost less than the amount deposited by the Developer, the City and/or NBU shall refund any difference to the Developer within 30 days of paying the invoice for the modification.

3. Right-of-Way Dedication. Upon delivery of Engineering, Design and Survey from M&S Engineering, the Developer shall convey the necessary right-of-way and utility

easements as necessary to accommodate the modification(s). The Developer will be responsible for preparing all metes and bounds descriptions and property exhibits necessary to convey the right-of-way and utility easement. The City shall prepare and deliver to the Developer a General Warranty Deed and NBU shall prepare and deliver to the Developer a Public Utility Easement which shall be executed by the Developer within 10 days of delivery. There shall be no compensation due to the Developer for the conveyance of the right-of-way or utility easement. The right-of-way and utility easement shall be conveyed regardless of Developer's intent to proceed with funding construction of the modification.

4. Subsequent Event. In the event, the Developer elects to not move forward and fund the construction of either or both of the modifications, the City and NBU, after all provisions in this Agreement are met, shall assign each and every right of ownership of the Engineering, Design and Survey from M&S Engineering as it pertains to the modifications to the Developer.

5. Default. It will be an "Event of Default" if any party fails to comply with any term, provision or covenant of this Agreement. A defaulting party shall have thirty (30) days after receiving written notice of an Event of Default from a non-defaulting party to cure the default, or such longer period as may be reasonably necessary if such default is not subject to cure within thirty (30) days so long as the defaulting party commences activities to cure such default within thirty (30) days and continues to diligently pursue such cure (such period of thirty (30) days or longer as may be applicable, the "Cure Period"). If the defaulting entity does not cure the default within the applicable Cure Period, and if a non-defaulting entity has not waived the default in writing, then after the expiration of the applicable Cure Period, the non-defaulting entity may, in its sole discretion, and without prejudice to any other right or remedy allowed under this Agreement, terminate this Agreement by written notice to the defaulting party or seek any other relief available at law or in equity, all of which are cumulative and are in addition to any other right or remedy given under this Agreement which may now or subsequently exist in law or in equity by statute or otherwise, and the exercise of any one remedy does not preclude the exercise of another. Notwithstanding any provision herein to the contrary, if notice of default has been given by one party to the other party, and the other party believes that it is not in default or there is a dispute as to whether the default has been cured, then the parties shall make a good faith effort to resolve the dispute before this Agreement is declared terminated or in default.

6. City Code of Ordinances/Enforcement. This Agreement is made subject to the existing provisions of the Charter of City, its rules and regulations, procedures, and ordinances, present and future, and all applicable laws of the State of Texas and the United States. The parties agree that this Agreement will be performable in New Braunfels, Texas, and that if legal action is necessary to enforce this Agreement, exclusive venue shall lie in Comal County, Texas.

7. Notice. Any notice, communication, request, demand, reply or advice (severally and collectively referred to as "Notice") in this Agreement required or permitted to be given, made or accepted must be in writing. Notice may, unless otherwise specifically provided herein, be given or served (a) by depositing the same in a receptacle regularly maintained and serviced by the United States Postal Service, postage pre-paid, registered or certified, and addressed to the party to be notified, with return receipt requested, (b) by delivering the same to such party, or an agent of such party, in person or by commercial courier or (c) by regular mail, facsimile

transmission, email or other commercially reasonable means addressed to the party to be notified. Notice sent by registered or certified mail in the manner hereinabove described shall be effective on the date of deposit as evidenced by the mail receipt stamped by the post office. Notice given in any other manner shall be effective only if and when received by the party to be notified. City's and Developer's respective legal counsel may give any notice on its client's behalf. For the purposes of Notice, the addresses of the parties shall, until changed as provided below, be as follows:

City: City Manager
City of New Braunfels
550 Landa Street
New Braunfels, Texas 78130

With a copy to: City Attorney
City of New Braunfels
550 Landa Street
New Braunfels, Texas 78130

NBU: _____
New Braunfels Utilities

New Braunfels, Texas 78130

With a copy to: _____
New Braunfels Utilities

New Braunfels, Texas 78130

Developer: August Fields, LP
501 Vale Street
Austin, Texas 78746
Attention: Barth Timmermann
Email: barhtimm@aol.com

With a copy to: Kimberly S. Beckham
Armbrust & Brown, PLLC
100 Congress, Suite 1300
Austin, Texas 78701
Telephone: (512) 435-2382
Facsimile: (512) 435-2360
Email: kbeckham@abaustin.com

The addresses and addressees, for the purpose of this Agreement, may be changed by City, NBU and Developer by giving notice of such change to the other party in the manner provided herein for giving notice. For the purpose of changing such

addresses or addressees only, unless and until such written notice is received, the last address and addressee stated herein will be deemed to continue in effect for all purposes.

8. Miscellaneous.

- a. This Agreement may be amended only by the written agreement of City, NBU and Developer.
- b. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.
- c. The findings and recitals in the recitals of this Agreement are hereby found to be true and correct and are hereby incorporated by reference as if set out in full.
- d. This Agreement shall be approved by the City Council of City by formal action, The New Braunfels Utilities Board by Formal Action and shall be effective upon the signature of all parties hereto. The City and NBU shall be the last Parties to execute this Agreement.
- e. Developer, City and NBU hereby covenant and agree that this Agreement cannot be assigned, transferred or conveyed, in whole or in part, to a third party without the prior written consent of the other party.

CITY:

CITY OF NEW BRAUNFELS, TEXAS

By: _____
Robert Camareno, City Manager

APPROVED AS TO FORM:

Valeria M. Acevedo, City Attorney

STATE OF TEXAS §

COUNTY OF COMAL §

This instrument was acknowledged before me on the ____ day of _____, 2018, by Robert Camareno, City Manager of the City of New Braunfels, Texas, a home-rule city, on behalf of the City.

(seal)

Notary Public Signature

NBU:

NEW BRAUNFELS UTILITIES

By: _____
Ian Taylor, CEO

APPROVED AS TO FORM:

Connie Lock, General Counsel

STATE OF TEXAS §

COUNTY OF COMAL §

This instrument was acknowledged before me on the ____ day of _____, 2018, by Ian Taylor, CEO of New Braunfels Utilities, on behalf of the Utility.

(seal)

Notary Public Signature

DEVELOPER:

AUGUST FIELDS, L.P.,
a Texas limited partnership

By: Greenview Development Corp., a
Texas corporation, General Partner

By: _____
Barth Timmermann, President

STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me the ____ day of _____, 2018, by Barth Timmermann, President of Greenview Development Corp., a Texas corporation, General Partner of August Fields, L.P., a Texas limited partnership, on behalf of said corporation and limited partnership.

(seal)

Notary Public Signature

EXHIBIT “A”

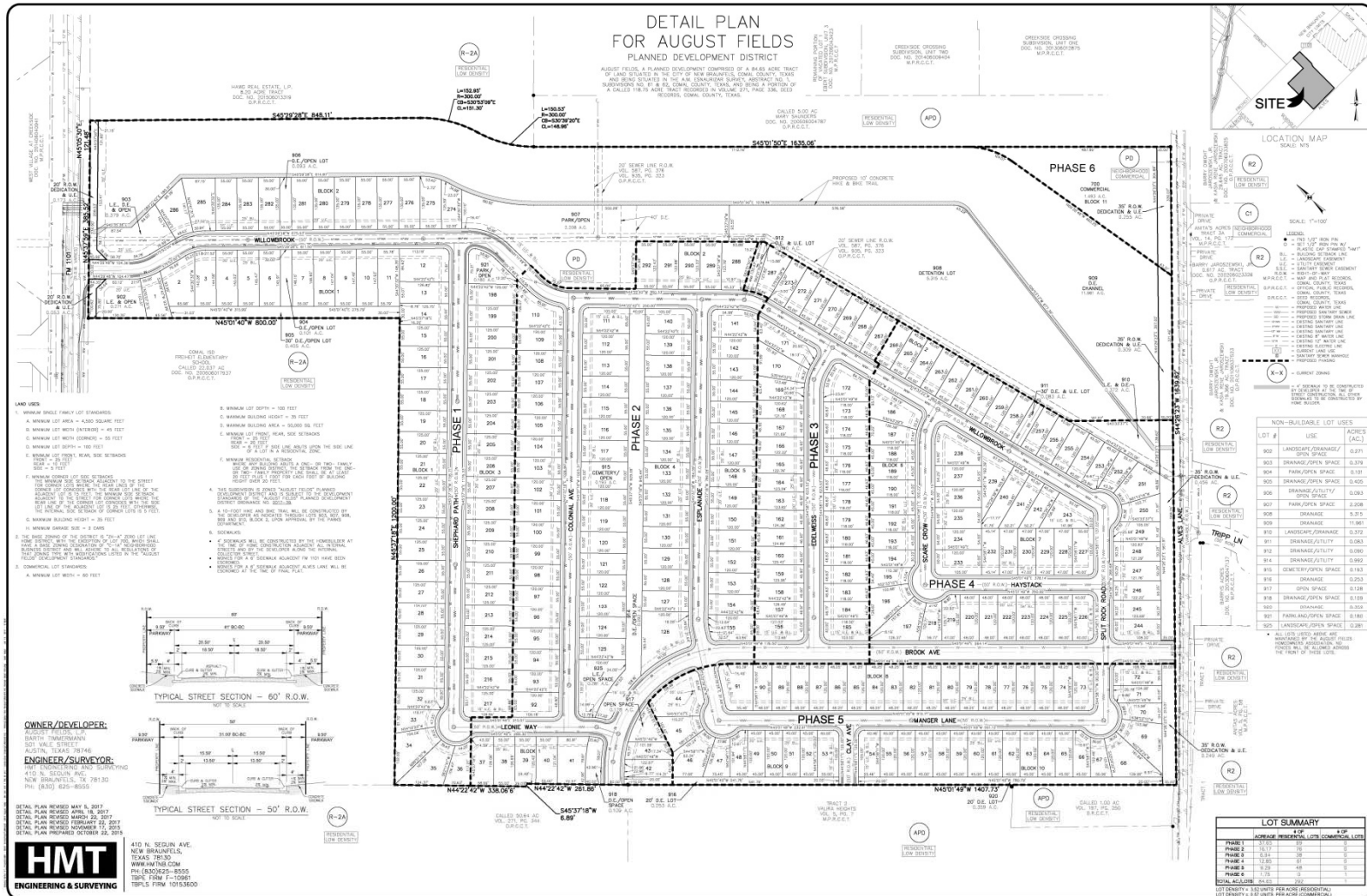




Exhibit "C"

Client: New Braunfels Utilities P.O. Box 310289 New Braunfels, Texas 78131-0289 Att: Ian Taylor, CEO	Project No.: 2-C14ALVES (Water) Phase/Task/Dept. No.: Date: December 5 th , 2018		
This Amendment No. 008 is provided in accordance with the terms and conditions outlined within the Agreement between M&S Engineering, LLC (Engineer) and New Braunfels Utilities (Owner) executed on July 9th, 2015.			
Project Description: Water Distribution System Improvements at Alves Lane within the City of New Braunfels, Texas.			
Description of Services: Engineering Design Services shall be provided in accordance with the scope of engineering design activities as referenced and described generally within the attached Exhibit No. 1 , an e-mail correspondence thread covering the period of time on this project from October 25 th , 2018 to October 30 th , 2018. The Engineer will be providing design services for the water main extension under the assumption (with concurrence by the Owner) that the pit required for placement and operation of the auger bore and pipe jacking equipment can be located within property designated for construction of the entrance roadway to provide access to the property development (August Fields Subdivision), and that the receiving pit can be located within the confines of the Alves Lane right-of-way corridor to allow for connection to the existing 8-inch water main pipeline located parallel to the southeast side of the roadway at approximate Station 55+27.			
Deliverables: Amended plan and profile drawing sheets with notes and technical specifications from the original Construction Drawing Set that display the auger bored and pipe jacked construction of an encased 8-inch water main extension from the existing 8-inch water main pipeline located near Roadway Station 55+27 to serve the proposed August Fields Subdivision from the entrance at Brook Avenue.			
Compensation shall be as follows: Compensation for the Engineering Design Services shall be on a lump sum basis as shown below.			
	<table border="1"><tr><td>Amount of this Authorization</td><td>\$6,500.00</td></tr></table>	Amount of this Authorization	\$6,500.00
Amount of this Authorization	\$6,500.00		
Schedule shall be as follows: Design deliverables shall be provided to NBU for review and approval on or before the twentieth calendar day after the Date of Notice to Proceed with Design is delivered to the Engineer by NBU.			

The above described services shall proceed upon return of this Agreement. Services will be billed as they are done. All other provisions, terms, and conditions of the agreement for services which are not expressly amended shall remain in full force and effect.

☐ This Authorization will serve as notice to proceed.

ENGINEER:

BY: Brady Kosub
Brady Kosub
Print or Type Name
TITLE: Utilities Division Manager
DATE: December 5, 2018

NEW BRAUNFELS UTILITIES (OWNER):

BY: _____

Print or Type Name
TITLE: _____
DATE: _____

Exhibit No. 1

From: Chris Weeks
To: "Bill Ball"
Cc: "Adam Willard"
Bcc: Brady Kosub; Gary Freeland (gfreeland@msengr.com); Jason Moseley (moseleycivil@msengr.com)
Subject: RE: Alves Lane Waterline Extension
Date: Tuesday, October 30, 2018 10:32:53 AM

Bill -

I will be providing a draft of the engineering design scope and fee proposal (as described within this e-mail conversation thread) to Adam Willard this afternoon during the semi-monthly Alves Lane Construction Progress Meeting at the jobsite.

Christopher Weeks, PE, CFM, RAS
M&S Engineering
Texas Professional Engineering Firm No. F-1394
376 Landa Street, New Braunfels, Texas 78130
Mobile (830) 312-1136 | Office (830) 629-2988 | Fax (830) 632-5412
www.msengr.com

-----Original Message-----

From: Bill Ball [<mailto:billb@hmtnb.com>]
Sent: Monday, October 29, 2018 2:31 PM
To: Adam Willard <awillard@nbutexas.com>
Cc: Chris Weeks <cweeks@msengr.com>
Subject: RE: Alves Lane Waterline Extension

Chris,
I spoke with Adam about the process. Just wanted to confirm you can get the scope and fee to NBU by Wednesday?
Thanks,

Bill Ball, P.E.
Project Manager
TEL: (830) 625-8555
Email: billb@hmtnb.com Website: www.hmtnb.com

-----Original Message-----

From: Adam Willard <awillard@nbutexas.com>
Sent: Thursday, October 25, 2018 5:01 PM
To: Bill Ball <billb@hmtnb.com>
Cc: Chris Weeks <cweeks@msengr.com> (cweeks@msengr.com) <cweeks@msengr.com>
Subject: Re: Alves Lane Waterline Extension

The CoNB's project will not be delayed. The developer will be required to reconstruct the roadway per the CoNB's request at that time.

Thanks,

Sent from my iPhone

<<http://www.nbutexas.com/>>[cid:NBULogo2018_V_RGB(121x68)_6b8cf3c0-dade-40a9-b452-82341911b96d.png]<<http://www.nbutexas.com/>>
<<http://www.nbutexas.com/>>

Adam Willard
Water/Sewer Engineer Temp Contractor
355 FM 306 | New Braunfels, Texas 78130
awillard@nbutexas.com

<<https://www.facebook.com/newbraunfelsutilities/>>[cid:Facebook16_aeb4c880-5d14-448d-a39c-a894410eb13c1.png]
<<https://www.facebook.com/newbraunfelsutilities/>> [cid:Twitter16_f5cd347a-c2d4-499b-8a28-578052ccfda21.png] <<https://twitter.com/nbutility>>
<<https://twitter.com/nbutility>> [cid:LinkedIn16_25de680f-7f5e-4f4b-8cf9-b617925698631.png] <<https://www.linkedin.com/company/new-braunfels-utilities/>>
<<https://www.linkedin.com/company/new-braunfels-utilities/>> [cid:YouTube16_6861eb0f-9301-4dfa-bd70-76019cca96301.png]
<<https://www.youtube.com/user/NBUTexas>> <<https://www.youtube.com/user/NBUTexas>>

On Oct 25, 2018, at 4:43 PM, Bill Ball <billb@hmtnb.com><<mailto:billb@hmtnb.com>>> wrote:

Adam,
How does this affect the construction schedule? Are they going to do a 2 course asphalt layer and excavate through the first course when this finally gets approved?
Thanks,

Bill Ball, P.E.

Project Manager

TEL: (830) 625-8555

Email: billb@hmtnb.com<<mailto:billb@hmtnb.com>> Website:<

From: Adam Willard <awillard@nbutexas.com<<mailto:awillard@nbutexas.com>>>

Sent: Thursday, October 25, 2018 4:39 PM

To: Bill Ball <billb@hmtnb.com<<mailto:billb@hmtnb.com>>>; Chris Weeks <cweeks@msengr.com<<mailto:cweeks@msengr.com>>>

(cweeks@msengr.com<<mailto:cweeks@msengr.com>>) <cweeks@msengr.com<<mailto:cweeks@msengr.com>>>

Subject: RE: Alves Lane Waterline Extension

Bill and Chris,

Per the meeting with NBU and CoNB this morning: CoNB, NBU, and the developer will be entering into a development agreement to accommodate this extension.

Engineering design will need to be done by the EOR for the project (i.e. M&S Engineering). I realize HMT has already done the design for this extension but this will need to be taken on by M&S to either take your design and incorporate it into their plans as an M&S Engineering design or design from scratch.

Per the coming agreement, NBU and the CoNB need a proposal from M&S Engineering to do the design for the August Fields waterline extension by the middle of next week. This cost will be incorporated into the developer agreement to go through the City's and NBU's review processes. The developer will pay for this design cost upfront if acceptable to them. Once the agreement has been approved by CoNB and NBU, the design will be presented to the contractor to give a change order proposal to do the work. The developer will have the option to accept this change order or decide not to move forward at no additional cost to them.

Thank you, I apologize for the inconvenience. The presence of these developer driven requests late in NBU/CoNB joint bid projects has required a formal process to be constructed.

<image002.png><[Adam Willard](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.nbutexas.com_&d=DwMFAg&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpnVfiiMM&r=Xe3C_mPfpsKbrxVBuGP_Nb4QVuJzUI_-kPwOLRs8Rps&m=dul_x1vFU-Nvay_8nRgpEvy8KliK8pi04yH4BClJsrk&s=xRq9St-5N9U7azxcXEeviMBiwuqX7DFx6iRHgHT-qw&e=></p></div><div data-bbox=)

Water/Sewer Engineer Temp Contractor

355 FM 306 | New Braunfels, Texas 78130

awillard@nbutexas.com<<mailto:awillard@nbutexas.com>>

<image003.png><

From: Bill Ball <billb@hmtnb.com<<mailto:billb@hmtnb.com>>>

Sent: Thursday, October 25, 2018 3:23 PM

To: Adam Willard <awillard@nbutexas.com<<mailto:awillard@nbutexas.com>>>; Adam Willard (adam.willard@freese.com<<mailto:adam.willard@freese.com>>)

<adam.willard@freese.com<<mailto:adam.willard@freese.com>>>

Subject: Alves Lane Waterline Extension

Adam,

What is the best number to reach you on the phone? I would like to get your take on the meeting this morning.

Thanks,

Bill Ball, P.E.

Project Manager

TEL: (830) 625-8555

Email: billb@hmtnb.com<<mailto:billb@hmtnb.com>> Website:<