

**MORNINGSIDE HILLS SUBDIVISION  
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, a Texas municipal owned utility (“**NBU**”), and MOSIAC LAND DEVELOPMENT, LLC, a Texas limited liability company (“**Developer**”), effective as of the date City executes this Agreement after Developer first executes Agreement. (“Effective Date”).

WHEREAS, on August 1, 2018, Developer submitted a “Master Plan” for the proposed development of the Morningside Hills Subdivision, such Subdivision being more particularly described on the attached **Exhibit “A”** (the “Subdivision”);

WHEREAS, the City, as part of the 2013 Bond Program, is currently in the construction phase of the Solms Road/Morningside Drive/Rueckle Road Reconstruction Project which will provide drainage improvements as well as a typical 3-lane road section along Rueckle Road, Morningside Drive, and Solms Road (the “**Project**”);

WHEREAS, NBU as part of a joint bid with the City is currently relocating utilities as part of the Project; and

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

NOW, THEREFORE, City, NBU, 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 \$14,840.00 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 Moeller & Associates to perform the scope of work described on the attached **Exhibit “B”**.

2. Cost of Construction. Upon delivery of the Engineering, Design and Survey from Moeller & Associates, 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 Moeller & Associates, 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 not to 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 Moeller & Associates as it pertains to the modifications to the Developer. In the event, the City and NBU, elect not to move forward with the Project, the sole remedy available to Developer is entitlement to the refund of the cost of the modifications Developer has paid.

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. The foregoing provisions of this paragraph are subject to the limitations set forth in Paragraph 4.

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

With a copy to: Chief Engineer of Water Systems  
New Braunfels Utilities  
355 FM 306  
New Braunfels, Texas 78130

Developer: Mosiac Land Development, LLC  
6812 West Avenue, Suite 100  
San Antonio, TX 78213  
Attention: Blake Yantis  
Email: [blake@mosiaclanddevelopment.com](mailto:blake@mosiaclanddevelopment.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, New Braunfels Utilities Board of Trustees 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:**

MOSIAC LAND DEVELOPMENT, L.L.C.,  
a Texas limited liability company

By: \_\_\_\_\_  
Blake Yantis, President

STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me the \_\_\_\_ day of \_\_\_\_\_, 2018, by Blake Yantis, President of Mosiac Land Development, L.L.C., a Texas limited liability company, on behalf of said limited liability company.

(seal)

\_\_\_\_\_  
Notary Public Signature

EXHIBIT "A"  
SUBDIVISION MASTER PLAN

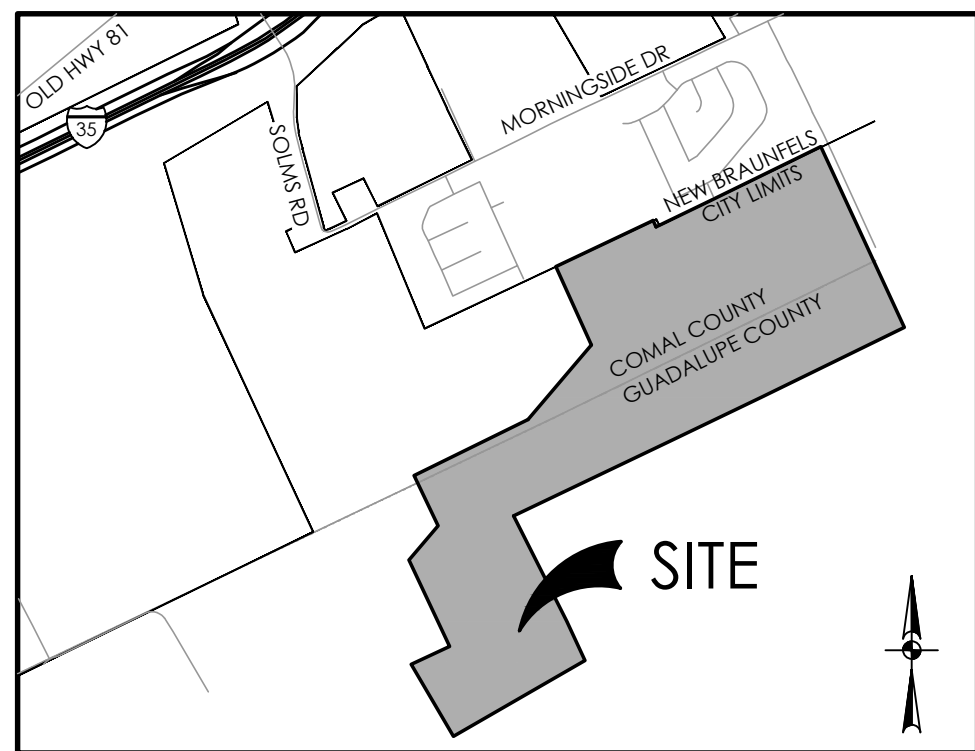
EXHIBIT “B”

PROPOSED UTILITY MODIFICATIONS AND SCOPE OF WORK



Date: Nov 21, 2018, 8:14am User ID: shawazali  
File: P:\114\51\20\Design\City\Map\Master Plan\M09-1145120.dwg

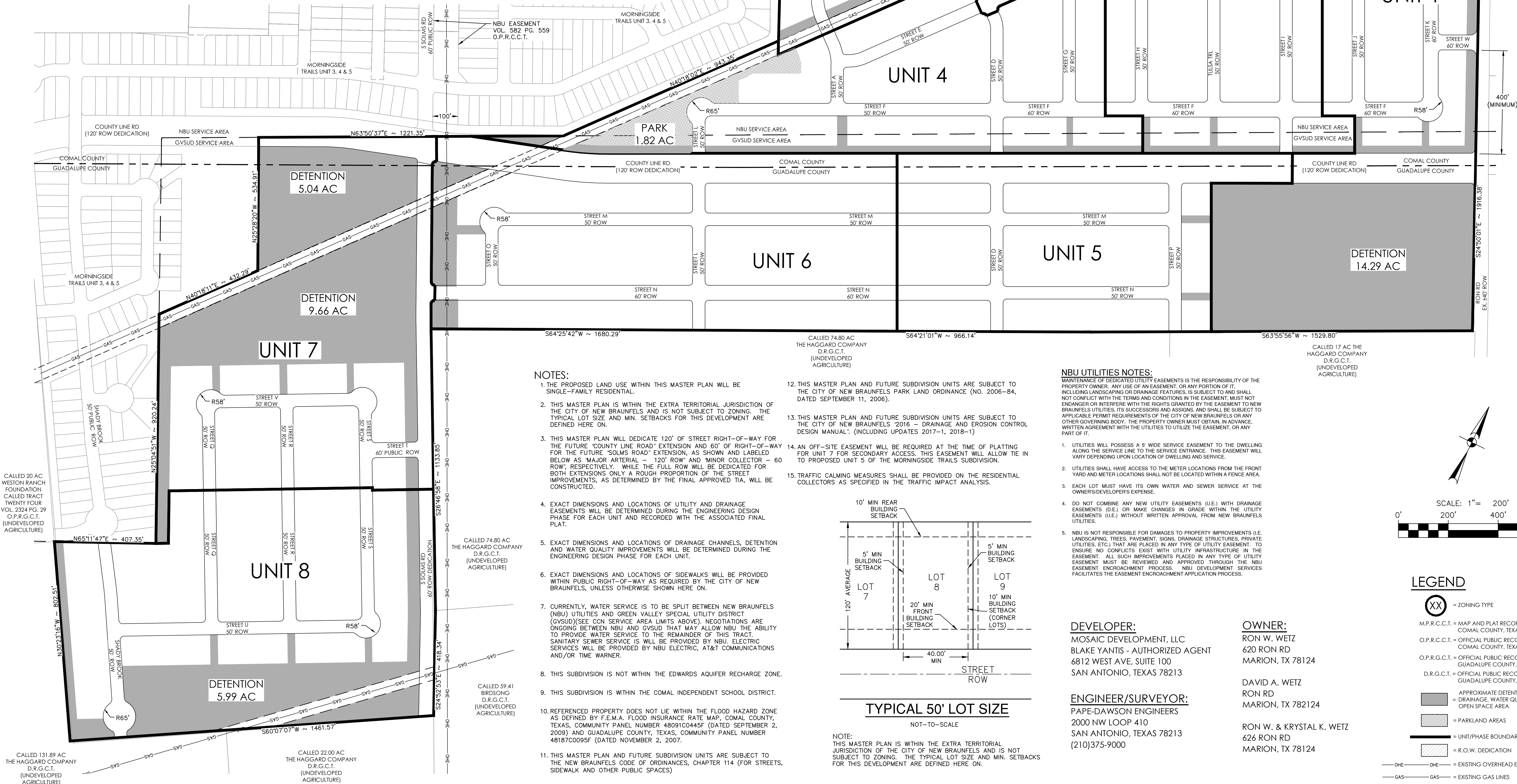
THIS DOCUMENT HAS BEEN PRODUCED FROM MATERIAL THAT WAS STORED AND/OR TRANSMITTED ELECTRONICALLY AND MAY HAVE BEEN INADVERTENTLY ALTERED. RELY ONLY ON FINAL HARDCOPY MATERIALS BEARING THE CONSULTANTS ORIGINAL SIGNATURE AND SEAL. AERIAL IMAGERY PROVIDED BY GOOGLE/UNLESS OTHERWISE NOTED. Imagery © 2018, CAPOCO, Digital Globe, Texas Orthometry Program, USDA Farm Service Agency.



LOCATION MAP  
NOT-TO-SCALE

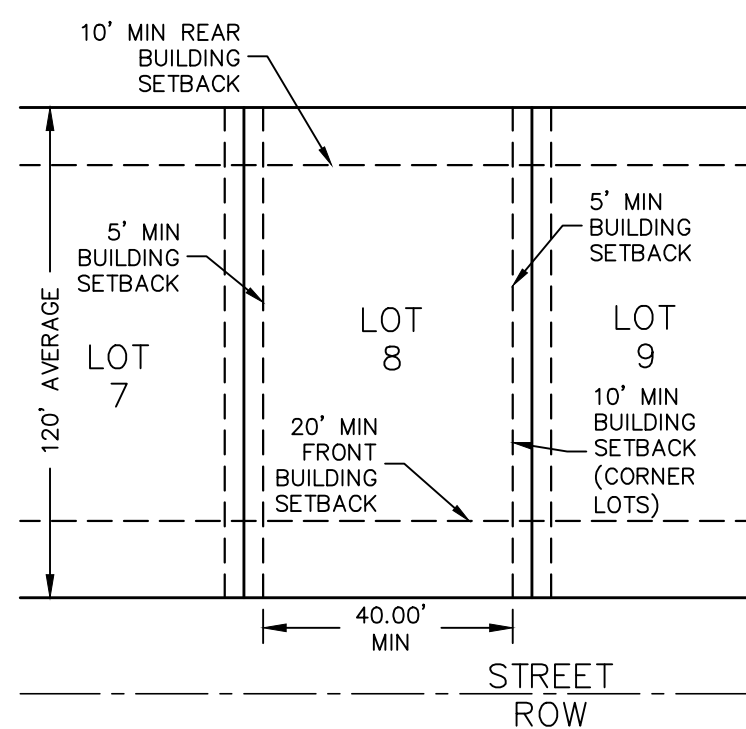
# MORNINGSIDE HILLS SUBDIVISION - MASTER PLAN

LOT SUMMARY			
SUBDIVISION	ACREAGE	LAND USE	# OF RESIDENTIAL LOTS
UNIT 1	35.97	SINGLE FAMILY	112
UNIT 2	20.14	SINGLE FAMILY	150
UNIT 3	20.53	SINGLE FAMILY	88
UNIT 4	24.09	SINGLE FAMILY	125
UNIT 5	21.60	SINGLE FAMILY	116
UNIT 6	30.92	SINGLE FAMILY	164
UNIT 7	30.22	SINGLE FAMILY	127
UNIT 8	30.79	SINGLE FAMILY	148
TOTAL AC./LOTS	214.26		1030
LOT DENSITY = 4.80 UNITS PER ACRES (RESIDENTIAL)			



## NOTES:

1. THE PROPOSED LAND USE WITHIN THIS MASTER PLAN WILL BE SINGLE-FAMILY RESIDENTIAL.
2. THIS MASTER PLAN IS WITHIN THE EXTRA TERRITORIAL JURISDICTION OF THE CITY OF NEW BRAUNFELS AND IS NOT SUBJECT TO ZONING. THE TYPICAL LOT SIZE AND MIN. SETBACKS FOR THIS DEVELOPMENT ARE DEFINED HERE ON.
3. THIS MASTER PLAN WILL DEDICATE 120' OF STREET RIGHT-OF-WAY FOR THE FUTURE 'COUNTY LINE ROAD' EXTENSION AND 60' OF RIGHT-OF-WAY FOR THE FUTURE 'SOLIS ROAD' EXTENSION, AS SHOWN AND LABELED BELOW AS 'MAJOR ARTERIAL - 120' ROW' AND 'MINOR COLLECTOR - 60 ROW', RESPECTIVELY. WHILE THE FULL ROW WILL BE DEDICATED FOR BOTH EXTENSIONS ONLY A ROUGH PROPORTION OF THE STREET IMPROVEMENTS, AS DETERMINED BY THE FINAL APPROVED TIA, WILL BE CONSTRUCTED.
4. EXACT DIMENSIONS AND LOCATIONS OF UTILITY AND DRAINAGE EASEMENTS WILL BE DETERMINED DURING THE ENGINEERING DESIGN PHASE FOR EACH UNIT AND RECORDED WITH THE ASSOCIATED FINAL PLAT.
5. EXACT DIMENSIONS AND LOCATIONS OF DRAINAGE CHANNELS, DETENTION AND WATER QUALITY IMPROVEMENTS WILL BE DETERMINED DURING THE ENGINEERING DESIGN PHASE FOR EACH UNIT.
6. EXACT DIMENSIONS AND LOCATIONS OF SIDEWALKS WILL BE PROVIDED WITHIN PUBLIC RIGHT-OF-WAY AS REQUIRED BY THE CITY OF NEW BRAUNFELS, UNLESS OTHERWISE SHOWN HERE ON.
7. CURRENTLY, WATER SERVICE IS TO BE SPLIT BETWEEN NEW BRAUNFELS (NBU) UTILITIES AND GREEN VALLEY SPECIAL UTILITY DISTRICT (GVUSD)(SEE CON SERVICE AREA LIMITS ABOVE). NEGOTIATIONS ARE ONGOING BETWEEN NBU AND GVUSD THAT MAY ALLOW NBU THE ABILITY TO PROVIDE WATER SERVICE TO THE REMAINDER OF THIS TRACT. SANITARY SEWER SERVICE IS WILL BE PROVIDED BY NBU. ELECTRIC SERVICES WILL BE PROVIDED BY NBU ELECTRIC, AT&T COMMUNICATIONS AND/OR TIME WARNER.
8. THIS SUBDIVISION IS NOT WITHIN THE EDWARDS AQUIFER RECHARGE ZONE.
9. THIS SUBDIVISION IS WITHIN THE COMAL INDEPENDENT SCHOOL DISTRICT.
10. REFERENCED PROPERTY DOES NOT LIE WITHIN THE FLOOD HAZARD ZONE AS DEFINED BY F.E.M.A. FLOOD INSURANCE RATE MAP, COMAL COUNTY, TEXAS, COMMUNITY PANEL NUMBER 48091C0445F (DATED SEPTEMBER 2, 2009) AND GUADALUPE COUNTY, TEXAS, COMMUNITY PANEL NUMBER 48187C0095F (DATED NOVEMBER 2, 2007).
11. THIS MASTER PLAN AND FUTURE SUBDIVISION UNITS ARE SUBJECT TO THE NEW BRAUNFELS CODE OF ORDINANCES, CHAPTER 114 (FOR STREETS, SIDEWALK AND OTHER PUBLIC SPACES)
12. THIS MASTER PLAN AND FUTURE SUBDIVISION UNITS ARE SUBJECT TO THE CITY OF NEW BRAUNFELS PARK LAND ORDINANCE (NO. 2006-84, DATED SEPTEMBER 11, 2006).
13. THIS MASTER PLAN AND FUTURE SUBDIVISION UNITS ARE SUBJECT TO THE CITY OF NEW BRAUNFELS 2016 - DRAINAGE AND EROSION CONTROL DESIGN MANUAL: (INCLUDING UPDATES 2017-1, 2018-1)
14. AN OFF-SITE EASEMENT WILL BE REQUIRED AT THE TIME OF PLATTING FOR UNIT 7 FOR SECONDARY ACCESS. THIS EASEMENT WILL ALLOW THE IN TO PROPOSED UNIT 5 OF THE MORNINGSIDE TRAILS SUBDIVISION.
15. TRAFFIC CALMING MEASURES SHALL BE PROVIDED ON THE RESIDENTIAL COLLECTORS AS SPECIFIED IN THE TRAFFIC IMPACT ANALYSIS.



TYPICAL 50' LOT SIZE  
NOT-TO-SCALE

NOTE:  
THIS MASTER PLAN IS WITHIN THE EXTRA TERRITORIAL JURISDICTION OF THE CITY OF NEW BRAUNFELS AND IS NOT SUBJECT TO ZONING. THE TYPICAL LOT SIZE AND MIN. SETBACKS FOR THIS DEVELOPMENT ARE DEFINED HERE ON.

## NBU UTILITIES NOTES:

- MAINTENANCE OF DEDICATED UTILITY EASEMENTS IS THE RESPONSIBILITY OF THE PROPERTY OWNER. ANY USE OF AN EASEMENT, OR ANY PORTION OF IT, INCLUDING LANDSCAPING OR DRAINAGE FEATURES, IS SUBJECT TO AND SHALL NOT CONFLICT WITH THE TERMS AND CONDITIONS IN THE EASEMENT. MUST NOT ENDANGER OR INTERFERE WITH THE RIGHTS GRANTED BY THE EASEMENT TO NEW BRAUNFELS UTILITIES, ITS SUCCESSORS AND ASSIGNS, AND SHALL BE SUBJECT TO APPLICABLE PERMIT REQUIREMENTS OF THE CITY OF NEW BRAUNFELS OR ANY OTHER GOVERNING BODY. THE PROPERTY OWNER MUST OBTAIN, IN ADVANCE, WRITTEN AGREEMENT WITH THE UTILITIES TO UTILIZE THE EASEMENT, OR ANY PART OF IT.
1. UTILITIES WILL POSSESS A 5' WIDE SERVICE EASEMENT TO THE DWELLING ALONG THE SERVICE LINE TO THE SERVICE ENTRANCE. THIS EASEMENT WILL VARY DEPENDING UPON LOCATION OF DWELLING AND SERVICE.
  2. UTILITIES SHALL HAVE ACCESS TO THE METER LOCATIONS FROM THE FRONT YARD AND METER LOCATIONS SHALL NOT BE LOCATED WITHIN A FENCE AREA.
  3. EACH LOT MUST HAVE ITS OWN WATER AND SEWER SERVICE AT THE OWNERS/DEVELOPERS EXPENSE.
  4. DO NOT COMBINE ANY NEW UTILITY EASEMENTS (I.E.) WITH DRAINAGE EASEMENTS (D.E.) OR MAKE CHANGES IN GRADE WITHIN THE UTILITY EASEMENTS (I.E.) WITHOUT WRITTEN APPROVAL FROM NEW BRAUNFELS UTILITIES.
  5. NBU IS NOT RESPONSIBLE FOR DAMAGES TO PROPERTY IMPROVEMENTS (I.E. LANDSCAPING, TREES, PAVEMENT, SIGNS, DRAINAGE STRUCTURES, PRIVATE UTILITIES, ETC.) THAT ARE PLACED IN ANY TYPE OF UTILITY EASEMENT. TO ENSURE NO CONFLICTS EXIST WITH UTILITY INFRASTRUCTURE IN THE EASEMENT, ALL SUCH IMPROVEMENTS PLACED IN ANY TYPE OF UTILITY EASEMENT MUST BE REVIEWED AND APPROVED THROUGH THE NBU EASEMENT ENCROACHMENT PROCESS. NBU DEVELOPMENT SERVICES FACILITATES THE EASEMENT ENCROACHMENT APPLICATION PROCESS.

## DEVELOPER:

MOSAIC DEVELOPMENT, LLC  
BLAKE YANTIS - AUTHORIZED AGENT  
6812 WEST AVE, SUITE 100  
SAN ANTONIO, TEXAS 78213

## ENGINEER/SURVEYOR:

PAPE-DAWSON ENGINEERS  
2000 NW LOOP 410  
SAN ANTONIO, TEXAS 78213  
(210)375-9000

## OWNER:

RON W. WETZ  
620 RON RD  
MARION, TX 78124

DAVID A. WETZ  
RON RD  
MARION, TX 782124

RON W. & KRISTAL K. WETZ  
626 RON RD  
MARION, TX 78124

## LEGEND

- (XX) = ZONING TYPE
- M.P.R.C.C.T. = MAP AND PLAT RECORDS, COMAL COUNTY, TEXAS
- O.P.R.C.C.T. = OFFICIAL PUBLIC RECORDS, COMAL COUNTY, TEXAS
- O.P.R.G.C.T. = OFFICIAL PUBLIC RECORDS, GUADALUPE COUNTY, TEXAS
- D.R.G.C.T. = OFFICIAL PUBLIC RECORDS, GUADALUPE COUNTY, TEXAS
- APPROXIMATE DETENTION POND/  
= DRAINAGE, WATER QUALITY AND OPEN SPACE AREA
- = PARKLAND AREAS
- = UNIT/PHASE BOUNDARY
- = R.O.W. DEDICATION
- OHE — OHE — = EXISTING OVERHEAD ELECTRIC LINES
- GAS — GAS — = EXISTING GAS LINES

**PAPE-DAWSON**  
**ENGINEERS**

SAN ANTONIO | AUSTIN | HOUSTON | FORT WORTH | DALLAS  
2000 NW LOOP 410 | SAN ANTONIO, TX 78213 | 210.375.9000  
TYPE FIRM REGISTRATION #170 | TBPUS FIRM REGISTRATION #1028890

**MORNINGSIDE HILLS**  
**NEW BRAUNFELS, TEXAS**

MASTER PLAN

PLAT NO. -  
JOB NO. 11451-20  
DATE SEPTEMBER 2018  
DESIGNER WB  
CHECKED AH DRAWN WB  
SHEET EX. 1

DATE	
NO.	
REVISION	

"THIS DOCUMENT IS  
RELEASED FOR REVIEW  
PURPOSES" UNDER THE  
AUTHORIZATION OF  
JON ADAME,  
P.E. #82567.



November 7, 2018

Mr. Michael Short, P.E.  
New Braunfels Utilities  
P.O. Box 310289  
New Braunfels, Texas 78131

RE: Contract Amendment #5 - Morningside/Solms/Rueckle (MSR) Reconstruction Project

Mr. Short:

This Amendment is intended to address revisions to two sewer mains to accommodate a new development proposed just east of Morningside and Solms Road and to evaluate groundwater concerns along Solms Rd:

- Sewer Adjustments along Solms Road (Sewer Line A and A1) per NBU's request:
  - Meet with NBU, City and Developer's engineer to determine required modifications.
  - Lower sewer profile to accommodate the new development.
  - Change sewer pipe diameter to 12-inch with a minimum slope of 0.70%.
  - Revise groundwater interceptor pipe to address deeper sewer profile.
  - Revise six sewer plan and profile sheets (Sheets 4 to 7 and AS-1, AS-2).
  - Adjust quantities to account for design revisions (includes groundwater items).
  - Review/adjust other proposed project improvements if needed.
  - Send necessary information to the City and NBU for review/comment/approval.
  - Prepare the necessary information for a Change Order.
  - Assist the City and NBU with the review of the Change Order after it's received from the Contractor.

**The following assumptions are made with respect to this scope of work:**

- All work will be designed per NBU specifications.
- This scope assumes NBU will pay any permitting fees, if required.
- This scope assumes the development's engineer will design a system to handle the groundwater encountered on the developments property and will not allow it to enter into the City's project area.

We proposed to perform this work on a lump sum basis for a fee of \$14,840.00. A detail of the fees is shown below. This Amendment only modifies the scope and fee of the original Agreement signed by NBU on October 19, 2015 and the Provisions of that Agreement remain in effect. No other modifications are intended with this Amendment.

MSR (12-inch Sewer Revisions)	Hours		Total
	PM	EIT	
Evaluate impacts to the proposed sewer change	2	8	\$1,180.00
Sewer P&P Revisions (6 sheets) (12")	12	48	\$7,080.00
Coordination/Meetings (NBU, City, Developer)	4	2	\$820.00
Groundwater System Design Revisions	12	36	\$5,760.00
<b>Total</b>	<b>30</b>	<b>94</b>	<b>\$14,840.00</b>

We appreciate the opportunity to continue to assist NBU with this project. If you have any questions, please do not hesitate to give me a call.

Sincerely,



Jeff Moeller, P.E.

Attachments

CC: Mr. Adam Willard, P.E.  
Mr. Herb Shadrock