

INTERLOCAL COOPERATION AGREEMENT CONCERNING THE ALLOCATION OF
SALES AND USE TAX COLLECTION REVENUE AND USE OF CAPITAL
IMPROVEMENTS FOR FIRE AND EMERGENCY SERVICES

This Agreement (the "Agreement") is made and entered into on the __ day of _____, 2024, (the "Effective Date") by and between the City of New Braunfels, Texas (the "City") and Comal County Water Improvement District No. 3 (the "District"). The City and the District may be referred to singularly as a "Party" or collectively as the "Parties".

RECITALS

WHEREAS, the City has been created, established, organized, and exists as a home-rule municipality under the laws of the State of Texas;

WHEREAS, the District (i) is a water control and improvement district and municipal utility district under Section 59, Article XVI, Texas Constitution, Section 52, Article III, Texas Constitution, and Chapters 49 and 51, Texas Water Code (ii) is authorized by House Bill 3941, 83rd Texas Legislature Regular Session, codified in Chapter 8489, Texas Special District Local Laws Code, as amended, effective June 14, 2013 (the "Creation Statute"), and (iii) and was created by a confirmation election on May 7, 2022;

WHEREAS, the District and the City desire that the effective, efficient, and responsible local government be provided to the citizens of the District and the City before, during, and after the City annexes the District for full purposes; and the District and the City also desire to avoid unnecessary duplication of services and taxes, and to provide for the orderly and seamless succession of the District;

WHEREAS, this Agreement provides benefits to the City and the District, including revenue, services, and regulatory benefits which are reasonable and equitable to both the District and the City;

WHEREAS, pursuant to the requirement under Section 8489.004 of the Creation Statute, the City and Southstar at Mayfair, LLC, a Texas limited liability company (the "Owner") entered into a Development Agreement for Proposed Mixed Use Development on February 09, 2022, as amended (the "Development Agreement" as further described in Section 1.02 below);

WHEREAS, consideration for the Development Agreement included certain economic incentives for the Owner and the District, including a Strategic Partnership Agreement under Section 43.0751, Texas Local Government Code (the "SPA Act") to be entered into by the City and the District (the "Strategic Partnership Agreement");

WHEREAS, the Strategic Partnership Agreement obligates the City to annex the commercial areas and mixed commercial and residential areas (“Commercial Areas”) for the limited purpose of imposing a sales and use tax (the “Sales Tax”) on all eligible commercial activities within the Commercial Areas within ninety (90) days following the recording of a final plat containing the Commercial Areas;

WHEREAS, the Strategic Partnership Agreement obligates the City pay to the District an agreed-upon percentage of the City’s Sales Tax collection revenues generated from the Commercial Areas (the “Sales Tax Payment”);

WHEREAS, Comal County Emergency Services District No. 7 (the “ESD”) is an emergency services district, created under Chapter 775 of the Texas Health & Safety Code and, while its fire services are exclusively provided by the City’s Fire Department, has the power to impose an ad valorem tax on all real and personal property within its boundaries and adopt a sales and use tax on commercial activities within its boundaries;

WHEREAS, after the District’s approval of the Strategic Partnership Agreement but before the City’s limited annexation of the Commercial Areas, the ESD adopted a sales and use tax of one and one-half percent (1.5)% on commercial activity within the ESD’s boundaries;

WHEREAS, the District is situated within the ESD’s boundaries and is subject to the ESD’s ad valorem tax and the ESD’s sales and use tax;

WHEREAS, the Interlocal Cooperation Act, Chapter 791, Texas Government Code, as amended, authorizes political subdivisions of the State of Texas to enter into interlocal contracts to provide and compensate for a governmental function or service that each party to the contract is authorized to perform individually;

WHEREAS, the Creation Statute requires the District a Development Agreement with the City addressing, among other items, the provision of emergency services;

WHEREAS, the City has, among its powers, the power to undertake improvement projects separately or jointly with other persons or entities, to pay all or part of the costs of capital improvement projects, including capital improvement projects that improve, enhance, or support, among other matters, road construction, public infrastructure, water supply and distribution, and all such other projects that may directly and indirectly enhance public safety and security, fire protection, or emergency medical services;

WHEREAS, the District has, among its powers, the power to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend water, sewer, drainage, and road facilities within and benefitting the District and the public;

WHEREAS, the District with the Owner has designed and constructed public infrastructure improvements within and/or benefitting the District and the public, including, without limitation, a system of water supply and distribution for fire-fighting purposes, a fire suppression system, and public road facilities for use by fire and emergency services;

WHEREAS, in exchange for the District's provision of the water distribution system, fire suppression system, and public road facilities for use by fire and emergency services, the City, acting by and through its City Council has agreed to provide to the District the Sales Tax Payment remitted to the City from the ESD, by and through that certain interlocal agreement between the City and the ESD, dated August 28, 2023, (the "Interlocal Agreement"), which reflects the agreed-upon percentage of sales and use tax collection revenue generated by the District's Commercial Areas (the "ESD Payment"); and

WHEREAS, the City and the District agree that all funds used under this Agreement shall be from current revenues available to the City;

NOW, THEREFORE, for and in consideration as hereinafter expressed and the mutual condition set out herein, it is agreed by and between the City and the District as follows:

ARTICLE I **PURPOSE**

Section 1.01. Capital Improvements for Emergency Services. The Parties acknowledge that the District has constructed and financed and is currently constructing and financing the public infrastructure and utilities serving the master planned community known as Mayfair within the boundaries of the District. Such improvements include a water supply and distribution system; a fire suppression system, including newly installed and maintained fire hydrants; and public road facilities necessary for fire and emergency vehicles to travel on and utilize for the provision of fire and emergency services to the public. Furthering this purpose, the District has agreed to set aside an area of otherwise developable land within their boundaries for a site upon which a future fire station may be constructed and operated, which accrues to the benefit of the City and the ESD.

Section 1.02. Emergency Services Agreements. The City has previously entered into or will enter into certain agreements governing the District's development and provision of public infrastructure and utilities, including that certain Development Agreement; and, after notice and hearing, the City will approve the Strategic Partnership Agreement. Section 18 of the Development Agreement requires certain service agreements

for the District to provide for Fire and EMS Services. The Parties hereby waive the date requirements in the Development Agreement for the Strategic Partnership Agreement.

The Parties agree that fire and emergency services shall be provided to the District by the ESD pursuant to the same terms and conditions set forth in that certain Service Provider Contract by and between the City and the ESD (the "Fire Contract"), as such contract may be amended from time to time. Pursuant to the Fire Contract, the City provides all fire and EMS services throughout the ESD, in which the District is located, in return for payment from the ESD. The City and the District further agree that the fire and EMS services shall include all services provided by the City pursuant to the Fire Contract including fire protection and suppression, hazardous materials control, emergency rescue, emergency medical services, and other emergency assistance as described in Section 1.01 of the Fire Contract. Payment for fire and EMS services in the District shall be included in the ad valorem and sales tax revenues collected by the ESD in the District and paid directly by the ESD to the City.

Section 1.03. Sales Tax Payment. In consideration of the District's performance of all the public infrastructure obligations, including fire and emergency improvements listed in Section 1.01 of this Agreement, and further including the expenditure of substantial capital for the purposes of construction of such improvements in reliance on the Sales Tax Payment allocation to the District by the City under the Strategic Partnership Agreement, the City agrees to remit the Sales Tax Payment required under the Strategic Partnership Agreement.

ARTICLE II **TERM**

Section 2.01. Term. This Agreement shall be effective as of the Effective Date and shall continue until termination by mutual consent of the parties.

Section 2.02. Survival. Notwithstanding the foregoing, the Sales Tax Payment and the City's obligation to remit the Sales Tax Payment to the District under the terms set forth in this Agreement shall survive this Agreement or any other agreement terms governing the Sales Tax Payment, unless and until the City annexes the District for full purposes.

ARTICLE III **CITY OBLIGATIONS**

Section 3.01. Limited Purpose Annexation. Subject to the terms of the Strategic Partnership Agreement and this Agreement, the District and the City agree that the City, from time to time, shall annex the District's Commercial Areas for the limited purpose of collecting Sales Tax revenues generated by the District's Commercial Areas. City agrees

that upon receipt of a platted Commercial Area, it shall undertake the limited purpose annexation process but in no event shall fail to fully effect such limited purpose annexation of a received platted Commercial Area within ninety (90) days of such receipt.

Chapter 321, Texas Tax Code provides that when a municipality annexes for any purpose territory contained within an emergency services district that had theretofore imposed a local Sales Tax and where the local Sales Tax in the limited purpose annexed area is at the two percent (2%) maximum rate for local Sales Tax, the local Sales Tax imposed by the county and the emergency services district remains allocated to the county and emergency services district and is not allocated by the Texas Comptroller to the municipality.

Section 3.02. Remittance of Sales Tax Payment. For the purposes and consideration herein stated and contemplated, the City shall remit to the District the Sales Tax Payment within thirty (30) calendar days of receipt of ESD Payment in the amount equal to the sales and use tax revenue allocation set forth between the Parties in Section 5.2 of the Strategic Partnership Agreement (the "Sales Tax Payment Provision").

- (a) Sales Tax Payment During Initial Period. For the purposes of this Agreement, the City shall pay to the District during the five (5) years (the "Initial Period") following the issuance of the certificate of occupancy for the initial sales tax producing commercial property within any portion of the Limited Purpose Tract on the applicable Sector Plan, an amount equal to forty percent (40%) of the reported Sales and Use Tax Revenues (as that term is defined in the Strategic Partnership Agreement) for the Commercial Areas, less the adjustment for District Type B Revenues.
- (b) Sales Tax Payment After Initial Period. After the Initial Period, the City shall pay to the District an amount equal to fifty percent (50%) of the reported Sales and Use Tax Revenues for the Commercial Areas, less the adjustment for District Type B Revenues.
- (c) Type B Revenues Earmarked to District. The adjustment for Type B Revenues means any portion of such sales and use tax as would have otherwise been levied by the City dedicated to the purposes described in Chapters 501-505 of the Texas Local Government Code. District Type B Revenues shall be a designated percentage of the Type B Revenues, twenty-five percent (25%), which are earmarked exclusively for authorized uses within and benefitting the District.
- (d) Calculation of Sales Tax Payment. For the purposes of clarity, during the Initial Period, the City shall remit to the District from current revenues in its General Fund an amount equal to forty percent (40%) of eligible Sales and Use Tax Revenue that would have otherwise been collected by the City in the

Commercial Areas (1.5 cents), less twenty-five percent (25%) in District Type B Revenues. After the Initial Period, the City shall remit to the District fifty percent (50%) of the eligible sales and use tax revenue that would have otherwise been levied and collected by the City in the Commercial Areas, less the twenty-five percent (25%) in District Type B Revenues, until the City annexes the District for full purposes. Of the District Type B Revenues, the City commits to set aside forty percent (40%) of the District Type B Revenues in the Initial Period, and fifty percent (50%) of the District Type B Revenues following the Initial Period until full purpose annexation, for eligible expenditures benefitting the District.

- (e) Other Revenue. Neither the Strategic Partnership Agreement nor subsections 3.02(a)-(d) of this Agreement, above, shall in any event be interpreted to limit or otherwise constrain the City or the City's Economic Development Corporation from allocating or contributing additional revenues that may be used to benefit the District.

Section 3.03. ESD Payment. The City's obligation to remit the Sales Tax Payment to the District is conditioned upon the receipt of the ESD Payment. The City's receipt of such payment is an express condition of the Sales Tax Payment to the District. The City shall take all steps within its chartered powers to timely impose, collect, or receive from the ESD the ESD Payment prior to remittance to the District of the Sales Tax Payment. If the City fails to timely receive the ESD Payment, the City shall take measures included in Section 3.04 below and all other such audit, inspection, and enforcement rights the City may have under the Interlocal Agreement.

Section 3.04. Covenant to Enforce. The City shall take all steps reasonable and necessary to enforce its contractual rights against the ESD under such applicable agreement(s), including the Interlocal Agreement, governing the terms of the remittance and collection of the ESD Payment. The City shall ensure that such applicable agreement(s) contain a term and survival provision relating to the Sales Tax Payment consistent with this Agreement.

Section 3.05. City Agreements to Benefit the District. In the event that the City and the District agree that the City can benefit the District by entering into an incentive agreement with a third party, the District may agree to waive some portion of its Sales Tax Payment (the "Waived Amount") on terms agreed to by the City and the District. In the event that the District agrees to the Waived Amount, the City, on its own or through its Economic Development Corporation, may agree to remit a third-party payment based on the Waived Amount and the ESD Payment.

ARTICLE IV

DISTRICT OBLIGATIONS

Section 4.01. **Sales Tax Payment.** The District shall use the Sales Tax Payment remitted and received under this Agreement for any lawful purpose.

Section 4.02. **Internal Allocation of District Sales Tax Payment.** If the District is divided into two (2) or more Districts, the District shall determine, based on reasonably available data on commercial activity in the Commercial Areas, which District shall receive the Sales Tax Payment or any proportionate share thereof, from the City, and the then Districts shall notify the City prior to the City's remittance of the Sales Tax Payment as to which District the City shall remit the Sales Tax Payment or any proportionate share thereof.

Section 4.03. **Limited Purpose Annexation.** The District shall notify the City within a reasonable time after the District's Commercial Areas are platted and ready to be annexed by the City for such limited purpose as stated herein and in the Strategic Partnership Agreement and cooperate with the City as reasonably necessary to ensure such annexation takes place.

ARTICLE V

ADMINISTRATIVE PROVISIONS

Section 5.01. **Inspection.** All records concerning the assessment and collection of the ESD Payment, and the City's remittance of the Sales Tax Payment shall be kept and maintained by the City and a designated representative of the District, including the District's auditor, is authorized to examine the records maintained by the City at such reasonable time and interval as the District deems necessary.

Section 5.02. **Recordkeeping.** All such books and records as necessary to determine the assessment and collection of the ESD Payment and the Sales Tax Payment will be kept in the offices of the City.

ARTICLE VI

LIABILITY

Section 6.01. **No Personal Liability.** Nothing in the Agreement is construed as creating any personal liability on the part of any officer, director, employee, or agent of any public body that may be a party to the Agreement, and the Parties expressly agree that the execution of the Agreement does not create any personal liability on the part of any officer, director, employee, or agent of the City or the District. The Parties agree that no provision of this Agreement extends the City's or the District's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.

Section 6.02. Waiver of Sovereign Immunity; Chapter 271, Texas Local Government Code. The Parties hereby agree that this Agreement constitutes an agreement for providing goods and/or services to the District, which is subject to the provisions of Subchapter I, Chapter 271, Texas Local Government Code, and any successor statutes. In accordance with Sections 271.152-.153, Texas Local Government Code, the District and the City hereby waive, to the maximum extent allowed by law, any constitutional, statutory, or common law right to sovereign immunity from liability or suit and expressly consent to be sued and held liable with respect to their performance and/or failure to fully and timely perform each and every obligation under this Agreement but only to the extent such liability or suit arises from or relates to this Agreement or a claim brought under this Agreement.

ARTICLE VII **MISCELLANEOUS**

Section 7.01. Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue shall be in Comal County, Texas.

Section 7.02. Assignability. No assignment of this Agreement or of any right accrued hereunder shall be made in whole or in part by either Party without the prior written consent of the other Party. Any Division of the District as described in Section 4.02 is permissible and does not constitute an assignment under this Section 7.02.

Section 7.03. Corporate Authorization. The undersigned officer or agent of the Parties hereto are the properly authorized officials of the Party presented and have the necessary authority to execute this Agreement on behalf of the Parties hereto and each Party hereby certifies to the other that any necessary approvals have been duly passed and approved and are not in full force and effect.

Section 7.04. No Third-Party Beneficiaries. The Parties to this Agreement do not intend by this Agreement that any specific third party may obtain a right by virtue of the execution of performance of this Agreement.

Section 7.05. Severability. In the event that any one or more terms, provisions, or conditions 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 the other terms, provisions, or conditions; and the Agreement shall be construed as if such invalid, illegal, or unenforceable term, provision, or condition had never been contained in it.

Section 7.06. Modification. The Parties may not modify, amend or waive this Agreement, except by written agreement executed by both Parties.

Section 7.07. Merger. This executed instrument is understood and intended to be the final expression of the Parties' agreement and is a complete and exclusive statement of the terms and conditions with respect thereto, superseding all prior agreements or representations, oral or written, and all other communication between the parties relating to the subject matter of this agreement. Any oral representations or modifications concerning this instrument shall be of no force or effect unless the modification is in writing and signed by all the parties hereto.

Section 7.08. Counterparts. This Agreement may be executed in several counterparts. Each counterpart is deemed an original and all counterparts together constitute one and the same instrument. In addition, each Party warrants that the undersigned is a duly authorized representative with the power to execute the Agreement.

Section 7.09. Recitals. The Recitals set forth in this Agreement are, by this reference, incorporated into and deemed a part of this Agreement.

ARTICLE VIII **NOTICES**

Section 8.01. Notice. Any notice required to be given under the provisions of this Agreement shall be in writing and shall be delivered via certified mail, return receipt requested, to the City or the District at the following addresses:

If to the City:	City of New Braunfels Attn: City Manager 550 Landa Street New Braunfels, Texas 78130
If to the District:	Comal County Water Improvement District No. 3 c/o: Bracewell LLP Attn: Clark Lord 919 Congress Avenue, Suite 1500 Austin, Texas 78701
	With a copy to the Owner: SouthStar at Mayfair, LLC Attn: Chip Mills, Senior Vice President 2055 Central Plaza, Ste. 110, Box 195 New Braunfels, Texas 78130

Section 8.02. Change of Notice Address. Either Party may designate a different address by giving the other Party ten (10) days written notice thereof.

[SIGNATURE PAGES FOLLOW]

CITY:

CITY OF NEW BRAUNFELS, TEXAS

By: _____

Name: ROBERT CAMARENO

Title: City Manager

THE STATE OF TEXAS

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COUNTY OF COMAL

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This instrument was acknowledged before me on _____, 2024,
by ROBERT CAMARENO, City Manager, on behalf of the City of New Braunfels, Texas,
a municipal corporation.

Notary Public in and for the State of Texas

DISTRICT:

**COMAL COUNTY WATER IMPROVEMENT
DISTRICT NO. 3**

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS §

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COUNTY OF COMAL §

 This instrument was acknowledged before me on _____, 2024,
by _____, _____, on behalf of the Comal County Water
Improvement District No. 3, a Texas political subdivision.

Notary Public in and for the State of Texas