

1 **DEVELOPMENT AGREEMENT BETWEEN**
2 **THE CITY OF NEW BRAUNFELS, TEXAS,**
3 **AND**
4 **HIGHLANDER NB ONE, LLC**
5

6 This DEVELOPMENT AGREEMENT (the "Agreement") is entered into between
7 Highlander NB One, LLC, their successors or assigns (the "Developer"), and the City of New
8 Braunfels, Texas (the "City"), a home-rule municipal corporation in Comal and Guadalupe
9 Counties, Texas, acting by and through its governing body, the City Council of New Braunfels,
10 Texas (Developer and City herein referred to as individually a "Party" and collectively, the
11 "Parties") to be effective on the date of _____ (the "Effective Date").
12

13 **RECITALS**
14

15 **WHEREAS**, the Developer owns approximately 299.78 acres of land (defined herein as the
16 "Tract") in Guadalupe County, Texas and currently within the extra-territorial jurisdiction of the
17 City, and a copy of the metes and bounds description and survey of the Tract are attached as Exhibit
18 A; and,
19

20 **WHEREAS**, the City of New Braunfels has adopted a Comprehensive Plan, Envision New
21 Braunfels, that includes policies encouraging balanced and fiscally responsible land use patterns,
22 utilizing public/private partnerships to guide growth and investment within the City's
23 jurisdictional and extraterritorial limits, balancing available resources in an equitable manner that
24 does not lead to disinvestment in existing development, assuring the long-term fiscal health of
25 New Braunfels and preventing undue fiscal burdens on the City and others, and ensuring that
26 decisions result in outcomes that aid in achieving Envision New Braunfels; and
27

28 **WHEREAS**, The Tract lies within the Dunlap Sub-Area, which bridges together many
29 communities east of IH 35 and includes the scenic landscape along both banks of the Guadalupe
30 River between Highway 46 and FM 725, and is identified for balancing future growth with
31 protection of the landscape; and
32

33 **WHEREAS**, the City has consented to the inclusion of the Tract within a municipal utility district
34 to be named Guadalupe County Municipal Utility District No. 5 (the "District") to be developed
35 for residential and commercial use; and
36

37 **WHEREAS**, the Developer and the City wish to enter into this Agreement to provide certainty of
38 regulatory requirements throughout the term of this Agreement and encourage the creation of high-
39 quality development for the benefit of the ~~District-Developer~~ and the City; and
40

41 **WHEREAS**, it is the intent of this Agreement to establish certain restrictions and commitments
42 imposed and made in connection with the development of the Tract; and
43

44 **WHEREAS**, the authority for this Agreement exists under Chapter 212, Subchapter G, Texas
45 Local Government Code; Chapter 42, Texas Local Government Code; Chapter 245, Texas Local

Government Code; and Section 212.172 of the Texas Local Government Code and Chapter 54 of the Texas Water Code; and

WHEREAS, the City has provided the owner of the Tract a written disclosure as required by Texas Local Government Code Section 212.172(b-1);

NOW THEREFORE, in consideration of the mutual promises, obligations, and benefits contained herein as well as other good and valuable consideration, the sufficiency of which is acknowledged by the Parties, the City and Developer agree as follows:

ARTICLE I
DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. Unless the context indicates others, the following words as used in this Agreement shall have the following meanings:

“City” means the City of New Braunfels, Texas, a home rule municipal corporation situated in Comal and Guadalupe Counties, Texas, acting by and through its governing body, the City Council of New Braunfels, Texas.

“City Code” means the New Braunfels City Code and other ordinances and regulations adopted by the City of New Braunfels, as such ordinances may be amended, changed, supplemented, or repealed from time to time.

“Developer” means Highlander NB One, LLC and their successor and assigns.

“Development Regulations” means those Chapters of the City of New Braunfels Code of Ordinances related to the Development of the Tract and listed in the attached Exhibit ~~CB~~, as it exists as of the Effective Date and not including any future amendments or changes, unless otherwise approved by Developer in writing.

“District” means Guadalupe County Municipal Utility District No. 5 or other named municipal utility district created ~~pursuant to the petition attached here as Exhibit B.~~

“General Plan” means the plan for development of the Tract, a copy of which is attached as Exhibit C, as it may be revised from time to time in accordance with Article II.

“GBRA” means Guadalupe-Blanco River Authority.

“GVSUD” means Green Valley Special Utility District.

“Tract” means the approximately 299.78 acres of land to be developed by Developer, as described in Exhibit A.

“TCEQ” means the Texas Commission on Environmental Quality or its successor agency.

Section 1.2. Exhibits. The following Exhibits attached to this Agreement are a part of the Agreement as though fully incorporated herein:

- Exhibit A ~~Metes and Bounds Description and Survey of the District~~ Tract
- ~~Exhibit B — Petition for Consent to the Creation of a Municipal Utility District~~
- Exhibit ~~CB~~ Development Regulations
- ~~Exhibit C — General Plan~~
- ~~Exhibit D — Mandatory Disclosure~~
- Exhibit ~~DE~~ Regional Transportation and Hike and Bike Trails Plans

ARTICLE II

GENERAL PLAN; LAND USE AND VESTED RIGHTS

The City and Developer acknowledge that the attached General Plan is the preliminary concept plan for the development of the Tract. The City and Developer acknowledge and agree that the General Plan will be revised and refined by the Developer as the Developer continues its investigation of and planning for the Tract. The General Plan complies with applicable City ordinances, the City's comprehensive plan, the City's Regional Transportation Plan and Hike and Bike Trail Plan, and the City hereby approves the General Plan. Developer hereby agrees that the Tract will be developed for residential and commercial use only. As consideration for the City's obligations under this Agreement, the Developer intends to proceed to develop the Tract as expeditiously as possible as determined by real estate and financial market and legal conditions. This Article does not require and shall not be construed as requiring the Developer to develop the Tract on any particular schedule or timetable.

Developer's rights established under Chapter 245, Texas Local Government Code, are effective as of the Effective Date of this Agreement and rights which may have existed or accrued prior to the Effective Date of this Agreement are hereby null and void.

ARTICLE III

DEVELOPER'S DEVELOPMENT OBLIGATIONS

Section 3.1. Development of Tract.

- a. Development of the Tract shall comply with the Development Regulations, except where modified or otherwise specified herein.
- b. Package wastewater treatment plants are prohibited within the District, unless the proposed package wastewater treatment plant meets the minimum design and construction specifications of GBRA, the utility provider, with a long-term maintenance plan approved by GBRA.
- c. Private water distribution systems are specifically prohibited within the District, unless the proposed water distribution system meets the minimum design and construction specifications of GVSUD, the utility provider, with a long-term maintenance plan approved by GVSUD.

- e. The General Plan Development of the Tract shall comply-complies with the City's Regional Transportation and Hike and Bike Trails Plan attached hereto as Exhibit E. So long as Developer develops hike and bike trails within the Tract in substantial compliance with the General Plan, the Developer shall be found to be in compliance with the City's Regional Transportation and Hike and Bike Trail Plan, whether now in effect or to be adopted in the future, regarding a developer's provision hike and bike trails or monetary payments related to hike and bike trails. Developer shall not be required to dedicate any additional hike and bike trails, or pay any fees.
- f. Internal mid-block trail connections may count as block breaks for the maximum block length requirement as outlined in the City of New Braunfels Subdivision Platting Ordinance for development within the Tract; however, development within the Tract shall comply with a minimum street connectivity ratio of 1.20.
- h. Parks and trails that are required by the Development Regulations may be dispersed throughout the Tract, as approved by the City, rather than concentrated in one location, such approval by the City to be based on locally adopted policies and not to be unreasonably withheld.
- i. ~~Outdoor/external lighting within the District shall comply with City of New Braunfels lighting standards in place at the time of development.~~
- j. Pedestrian lighting is required within the ~~District-Tract~~ for trail connections between neighborhoods and parks and commercial development. Lighting fixtures shall be fully shielded and be designed, arranged and screened so that the point light source shall not be visible from adjoining lots or streets; however, lighting fixtures are allowed with no additional "house side" shielding in accordance with the following formula: Height (H) < 3 + (D/3); where D equals the distance in feet from the light source to the nearest residential lot line (extended vertically).
- k. Residential housing diversity shall be required within the ~~District-Tract~~ with a mixture of ~~at least three~~ different lot sizes and ~~three~~ different house sizes/floorplans.
- l. Street trees shall be required on one side of collector classification and above streets (minimum of one ~~31.5~~-inch caliper tree every ~~40-100~~ feet maximum) internal to the ~~District-Tract~~ and shall be maintained in good health/condition. ~~Tree replacement shall be required in conformance with this subsection should any required street tree die during the life of the MUD.~~
- m. ~~Tree preservation that exceeds City standards shall be required within the District (applicant may propose standards).~~
- n. ~~Tree planting and landscaping requirements for all uses within the District shall exceed City standards (applicant may propose standards).~~
- o. The Developer must cause to be identified any archeological or historical resources within the District and establish methods for proposed protection/remediation of such resources, as required by law.
- p. ~~To enhance public safety and ensure quality of development for future residents, builders shall obtain and pay corresponding fees for City building permits and inspections. All structures built on individual lots shall be required to comply with the applicable Development Regulations identified in Exhibit C in effect at the time of permitting.~~
- q. ~~Riparian Buffers shall be required as follows:~~

STREAM

MINIMUM BUFFER

Identified streams draining 640 acres or greater	300 ft. from the centerline
Identified streams draining 320-639 acres	200 ft. from the centerline
Identified streams draining 128-319 acres	100 ft. from the centerline
Identified streams draining 64-128 acres	50 ft. from the centerline
Identified streams draining less than 64 acres	No buffer requirement

~~Roads, facilities, structures and improvements such as paths, trails, utilities, stormwater management facilities and water quality measures are permitted within buffer areas.~~

~~Where stream buffers are located within parks, or are subject to a public easement, the buffer shall count towards overall park acreage.~~

Section 3.2. Utilities

- a. Water. Developer shall commence negotiations with GVSUD, ~~within 120 days of the effective date of this Agreement~~ to come to an agreement on the provision of water services. If an agreement with GVSUD is not reached and water is provided to the Tract or individual lots by a source other than GVSUD, then Developer agrees:
 - i. That the design, construction and installation of any internal water distribution system shall be built in accordance with GVSUD standards.
 - ii. That the Developer shall submit to GVSUD and the City their plan for long term maintenance of the water distribution infrastructure.

Section 3.3. ~~Associations.~~ The Developer will create a homeowners association for the residential development (the "Association"). The District and/or the Association shall maintain all common areas, park, trail, and recreational facilities.

Section 3.4. ~~Park and Recreational Facilities.~~ The ~~Developer will~~ General Plan ~~comply~~ complies with the City's parkland dedication ordinance as set forth in the City Code, ~~with approval of the City.~~ So long as Developer develops park and recreational facilities within the Tract in substantial compliance with the General Plan, the Developer shall be found to be in compliance with the City Code regarding parkland dedication and any other City ordinances, whether now in effect or to be adopted in the future, regarding a developer's provision of park and recreational facilities, parkland dedication, or monetary payments related to parkland. Developer shall not be required to dedicate any additional park land or open space, or pay any fees.

Section 3.5. Waiver of Actions Under Private Real Property Rights Preservation Act. The Developer hereby waives its right, if any, to assert any causes of action against the City accruing under the Private Real Property Rights Preservation Act, Chapter 2007, Texas Government Code (the "Act"), that the City's execution or performance of this Agreement or any authorized amendment or supplements thereto may constitute, either now or in the future, a

“Taking” of Developer’s, Developer’s grantee’s, or a grantee’s successor’s “Private Real Property,” as such terms are defined in the Act. Provided, however, that this waiver does not apply to, and the Developer and Developer’s grantees and successors do not waive their rights under the Act to assert, a claim under the Act for any action taken by the City beyond the scope of this Agreement which otherwise may give rise to a cause of action under the Act.

Section 3.6. Temporary Housing. City agrees that manufactured housing, or other forms of temporary housing, may be placed on the Tract for the District’s creation and confirmation process. Such temporary housing may be located on any site within the Tract for such purposes regardless of whether the land has been subdivided.

ARTICLE IV DEFAULT AND TERMINATION

Section 4.1. Material Breach of Agreement. It is the intention of the Parties to this Agreement that the Tract be developed in accordance with the terms of this Agreement. In the event that a party to this Agreement believes that another party has, by act or omission, committed a material breach of this Agreement, the provisions of this Article V shall provide the remedies for such default.

- (a) The Parties acknowledge and agree that any substantial deviation by the Developer from the material terms of this Agreement would frustrate the intent of this Agreement, and, therefore, would be a material breach of this Agreement. A material breach of this Agreement by the Developer shall be deemed to have occurred in the event of failure of the Developer to comply with a provision of this Agreement.
- (b) The Parties acknowledge and agree that any substantial deviation by the City from the material terms of this Agreement would frustrate the intent of this Agreement and, therefore, would be a material breach of this Agreement. A material breach of this Agreement by the City shall be deemed to have occurred in the event of failure of the City to comply with a provision of this Agreement.

Section 4.2. Notice of Developer’s Default.

- (a) The City shall notify Developer in writing of an alleged failure by the Developer to comply with a provision of this Agreement, describing the alleged failure with reasonable particularity. Developer shall, within thirty (30) days after receipt of the notice or a longer period of time as the City may specify in the notice, either cure the alleged failure or, in a written response to the City, either present facts and arguments in refutation or excuse of the alleged failure or state that the alleged failure will be cured and set forth the method and time schedule for accomplishing the cure.
- (b) The City shall determine: (i) whether a failure to comply with a provision has occurred; (ii) whether the failure is excusable; and (iii) whether the failure has been

cured or will be cured by Developer. The Developer shall make available to the City, if requested, any records, documents, or other information reasonably necessary, and existing, to make the determination, except to the extent that such information is protected by attorney/client privilege.

- (c) If the City determines that the failure has not occurred, or that the failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the City, or that the failure is excusable, the determination shall conclude the investigation.
- (d) If the City determines that a failure to comply with a provision has occurred and that the failure is not excusable and has not been or will not be cured by Developer in a manner and in accordance with a schedule reasonably satisfactory to the City, then the City shall notify the Developer and may pursue any and all remedies it has at law or equity.

Section 4.3. Notice of City's Default.

- (a) Developer shall notify the City Manager in writing specifying any alleged failure by the City to comply with a provision of this Agreement, describing the alleged failure with reasonable particularity. The City shall, within thirty (30) days after receipt of the notice or the longer period of time as Developer may specify in the notice, either cure the alleged failure or, in a written response to Developer, either present facts and arguments in refutation or excuse of the alleged failure or state that the alleged failure will be cured and set forth the method and time schedule for accomplishing the cure.
- (b) Developer shall determine: (i) whether a failure to comply with a provision has occurred; (ii) whether the failure is excusable; and (iii) whether the failure has been cured or will be cured by the City. The City shall make available to the Developer, if requested, any records, documents, or other information necessary to make the determination that are subject to the Public Information Act, Chapter 552, Texas Government Code.
- (c) If Developer determines that the failure has not occurred, or that the failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to Developer, or that the failure is excusable, the determination shall conclude the investigation.
- (d) If Developer determines a failure to comply with a provision has occurred and that the failure is not excusable and has not been or will not be cured by the City in a manner and in accordance with a schedule reasonably satisfactory to Developer, then Developer shall notify the City and may pursue any and all remedies it has at law or equity.

313 Section 4.4. Remedies. In addition to all the rights and remedies provided under the laws
314 of the State of Texas, because of the peculiar damage each party hereto might suffer by virtue of a
315 default by another party, each party shall be entitled to the equitable remedy of specific
316 performance or mandamus, as well as all other legal and equitable remedies available.

317
318 Section 4.5. Termination. This Agreement may be terminated by mutual agreement of
319 the City and the Developer.

320
321 ARTICLE V
322 ANNEXATION

323
324 Section 5.1. The City agrees not to annex or attempt to annex, in whole or in part, or to
325 dissolve the District encompassing all or any part of the Tract until (i) the Developer has fully
326 developed ninety percent (90%) of the acreage within the District and the remaining ten percent
327 (10%) undeveloped acreage has had District water, sanitary sewer, drainage and road facilities
328 necessary to serve the area installed, and (ii) the Developer, and its successors and assigns, have
329 been fully reimbursed by the District to the maximum extent permitted by the rules if the TCEQ
330 or other applicable law, for all eligible development and construction costs, all as certified in
331 writing by the Developer to the City. In order to allow such annexation without the need for a
332 confirming election, the Developer and the City agree that the City and the MUD will enter into a
333 strategic partnership agreement pursuant to Texas Local Government Code Section 43.0751. The
334 strategic partnership agreement shall provide the terms and conditions for the City to (i) have the
335 option to annex the District when the conditions of this Section 5.1 have been satisfied and (ii) to
336 annex for limited purposes any areas within the MUD that are developed for commercial purposes
337 for the sole purpose of allowing the City to impose its sales and use tax within the commercial
338 property. The Parties acknowledge that Developer is voluntarily requesting annexation of the Tract
339 to occur upon the dissolution of the District and that this Agreement satisfies the requirements for
340 a service agreement as required by Texas Local Government Code Section 43.0672.

341
342 Section 5.2. The City Council may after dissolution of the District and after a public
343 hearing on the matter annex the Tract by adoption of an ordinance. Upon annexation of the Tract
344 into the City, the City shall provide those municipal services to the annexed lands in the same
345 manner as those services are provided to other areas of the City with similar characteristics of
346 topography, land, use, and population density.

347
348 Section 5.3. The Parties acknowledge that the foregoing annexation provisions have
349 been agreed upon pursuant to the authority set forth in Section 212.172 of the Texas Local
350 Government Code, which authorizes the governing body of a municipality to make a written
351 contract with an owner of land that is located in the extraterritorial jurisdiction of the municipality
352 to provide for the annexation of the land as a whole or in parts and to provide for the terms of
353 annexation, if annexation is agreed to by the parties, and further provides for the parties to such
354 agreement to specify the uses and development of the land before and after annexation, if
355 annexation is agreed to by the parties. The Parties acknowledge a written disclosure regarding
356 annexation, as established in the attached Exhibit D, was provided to the Developer pursuant to
357 Section 212.172(b-1) of the Texas Local Government Code.

359 ~~Section 5.4. The voluntary request for annexation of the Tract shall survive the~~
360 ~~termination and term of this Agreement.~~

361
362 ~~Section 5.5. Section 43.0751, Texas Local Government Code (the "Act"), provides for the~~
363 ~~negotiation and implementation of "strategic partnership agreements" between cities and~~
364 ~~municipal utility districts. Upon assumption hereof and creation of the District, the developer~~
365 ~~agrees to use good faith efforts to cause the District to enter into a strategic partnership agreement~~
366 ~~with the City containing terms approved by both parties that are consistent with terms of this~~
367 ~~Agreement.~~

368
369 ARTICLE VI
370 MISCELLANEOUS
371

372 Section 6.1. Sale of Tract; Assignability. Any Agreement by Developer to sell the
373 entirety or any portion of the Tract to a person intending to develop the tract or such portion thereof
374 (a "Successor Developer," whether one or more) and any instrument of conveyance for the entirety
375 or any portion of the Tract to such Successor Developer shall recite and incorporate this Agreement
376 and provide that this Agreement be binding on such Successor Developer. This Agreement is not
377 intended to be, and shall not be, binding on the ultimate purchasers of fully developed residential
378 lots or fully developed residential parcels out of the Tract. This Agreement is assignable upon
379 written notice to the City; such notice of assignment shall be given within 30 days of an assignment
380 and such notice shall include evidence that the assignee has assumed the obligations under this
381 Agreement.
382

383 Section 6.2. Force Majeure. In the event a party is rendered unable, wholly or in part, by
384 force majeure, to carry out any of its obligations under this Agreement, it is agreed that on such
385 party's giving notice and full particulars of such force majeure in writing to the other party as soon
386 as possible after the occurrence of the cause relied upon, then the obligations of the party giving
387 such notice, to the extent it is affected by force majeure and to the extent that due diligence is being
388 used to resume performance at the earliest practicable time, shall be suspended during the
389 continuance of any inability so caused to the extent provided, but for no longer period. Such cause
390 shall as far as possible be remedied with all reasonable dispatch.
391

392 The term "force majeure" as used herein shall include, but not be limited to, acts of God,
393 strikes, lockouts or other industrial disturbances, acts of the public enemy or of terrorism, war,
394 blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods,
395 washouts, droughts, tornadoes, hurricanes, arrests and restraints of governments and people,
396 suspension of issuance of permits by environmental agencies outside the control of any party,
397 explosions, breakage or damage to machinery or pipelines and any other incapacities of any party
398 similar to those enumerated and not within the control of the party claiming such inability.
399

400 Section 6.3. Law Governing. This Agreement shall be governed by the laws of the State
401 of Texas, and no lawsuit shall be prosecuted on this Agreement except in a federal or state court
402 of competent jurisdiction. Any disputes or proceedings arising out of this Agreement shall be
403 subject to the exclusive jurisdiction of the Texas State courts in Guadalupe County, Texas.
404

~~Section 6.4. — Non-Waiver of Immunity. Notwithstanding any other provision of this Agreement, the City, on behalf of itself, its officers, employees, and agents, does not waive or relinquish any immunity from liability, limitation of liability, or defense provided by the Constitution and the laws of the State of Texas as a result of its execution of this Agreement and the performance of the covenants contained herein.~~

Section 6.45. No Additional Waiver Implied. No waiver or waivers of any breach or default (or any breaches or defaults) by any party hereto of any term, covenant, condition, or liability hereunder, or the performance by any party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.

Section 6.56. Addresses and Notice. Unless otherwise provided in this Agreement, any notice, communication, request, reply, or advise (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made, or accepted by any party to another (except bills), must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the expiration of three (3) days after it is deposited. Notice given in any such other manner shall be effective when received by the party to be notified. For the purpose of notice, addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the City, to:
City of New Braunfels
Attn: City Manager
550 Landa Street
New Braunfels, TX 78130

With a copy to the City Attorney:
City of New Braunfels
Attn: City Attorney
550 Landa Street
New Braunfels, TX 78130

If to the Developer, to:

With a copy to:

451
452
453
454 The Parties shall have the right from time to time and at any time to change their respective
455 addresses and each shall have the right to specify any other address by at least fifteen (15) days'
456 written notice to the other parties.
457

458 Section 6.67. Merger and Modification. This Agreement, including the exhibits that are
459 attached hereto and incorporated herein for all purposes, and, except as otherwise provided in this
460 Agreement, embodies the entire Agreement between the Parties relative to the subject hereof. This
461 Agreement shall be subject to change or modification only with the mutual written consent of both
462 Parties.
463

464 Section 6.78. Severability. The provisions of this Agreement are severable, and if any part
465 of this Agreement or the application thereof to any person or circumstances shall ever be held by
466 any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder
467 of this Agreement and the application of part of this Agreement to other persons or circumstances
468 shall not be affected thereby.
469

470 Section 6.89. Benefits of Agreement. This Agreement is for the benefit of the City and
471 Developer and shall not be construed to confer any benefit on any other person except as expressly
472 provided for herein.
473

474 Section 6.910. Recordation. The City shall record a memorandum of this Agreement and
475 ~~any amendments thereof~~ in the deed records of Comal-Guadalupe County. In addition, any
476 assignments of this Agreement shall be recorded in the deed records of ComalGuadalupe County.
477 This Agreement, ~~when re-recorded,~~ shall be a covenant running with the land and binding upon the
478 Tract, the parties and their assignees during the term of this Agreement. However, this Agreement
479 shall not be binding upon and shall not constitute any encumbrance to title as to any purchaser of
480 a tract or lot within the Tract who does not intend to resell, subdivide, or develop the tract or lot in
481 the ordinary course of business.
482

483 Section 6.1011. Term. This Agreement shall be in force and effect from the Effective
484 Date and continue for a term of forty-five (45) years unless otherwise previously terminated
485 pursuant to some term or condition of this Agreement or by express written agreement by the City
486 and Developer.
487

488 Section 6.1112. Cooperation. The City and Developer each agree to cooperate with
489 each other as may be reasonably necessary to carry out the intent of this Agreement, including but
490 not limited to, the execution of such further documents as maybe reasonably necessary.
491

492 Section 6.1213. Authority for Execution. The City hereby certifies, represents and
493 warrants that the execution of this Agreement is duly authorized and adopted in conformity with
494 the City Charter and City Code. The Developer hereby certifies, represents and warrants that the
495 execution of this Agreement is duly authorized and adopted in conformity with the articles of
496 incorporation and bylaws or partnership agreement of such entity.

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503

Section 6.1344. Incorporation of Exhibits and Other Documents by Reference. All Exhibits and other documents attached to or referred to in this Agreement are incorporated herein by reference for the purposes set forth in this Agreement, except as otherwise provided.

(Signature Pages to Follow)

DRAFT

504 Executed by the Developer and the City to be effective on the Effective Date.
505

506 DEVELOPER
507 By: _____
508
509
510 By: _____
511
512 Name: _____
513
514 Title: _____
515

516
517 STATE OF TEXAS §
518 §
519 COUNTY OF _____ §
520

521 This instrument was acknowledged before me this _____ day of _____, 2022,
522 by _____.

523
524
525
526 _____
527 Notary Public, State of Texas

528 (NOTARY SEAL)
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CITY OF NEW BRAUNFELS, TEXAS

ATTEST:

_____, City Secretary

APPROVED AS TO FORM:

_____, City Attorney

STATE OF TEXAS

§

COUNTY OF COMAL

§

§

This instrument was acknowledged before me this ____ day of _____, 2022, by
_____, Mayor, City of New Braunfels, on behalf of said City.

Notary Public, State of Texas

(NOTARY SEAL)

[illegible]

EXHIBIT B

PETITION FOR CONSENT TO THE CREATION
OF A MUNICIPAL UTILITY DISTRICT

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

HIGHLANDER NB ONE, LLC, a Texas limited liability company (the "Petitioner"), acting pursuant to the provisions of Chapters 49 and 54, Texas Water Code, respectfully petitions the City Council of the City of New Braunfels, Texas, for its written consent to the creation of a municipal utility district and would show the following:

I.

The name of the proposed District shall be GUADALUPE COUNTY MUNICIPAL UTILITY DISTRICT NO. 5 (the "District").

II.

The District shall be created and organized under the terms and provisions of Article XVI, Section 59 of the Constitution of Texas and Chapters 49 and 54, Texas Water Code, together with all amendments and additions thereto.

III.

The District shall contain an area of 299.778 acres of land, more or less, situated in Guadalupe County, Texas as described by metes and bounds in Exhibit A (the "Land"). The Land to be included in the District is within the extraterritorial jurisdiction of the City of New Braunfels, Texas (the "City"). All of the Land proposed to be included may properly be included in the District.

IV.

The Petitioner holds fee simple title to the Land. The Petitioner hereby represents that it owns a majority in value of the Land which is proposed to be included in the District, as indicated by the certificate of ownership provided by the Guadalupe Appraisal District.

V.

The Petitioner represents that there are no lienholders on the Land, except First Financial Bank, N.A., and that there are no residents on the Land.

VI.

The general nature of the work proposed to be done by the District at the present time is the purchase, design, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of a waterworks and sanitary sewer system for residential and commercial purposes, and the construction, acquisition, improvement, extension, maintenance and operation of works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District, and to control, abate and amend local storm waters or other harmful excesses of waters, and such other purchase, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of such additional facilities, including roads, systems, and enterprises as shall be consistent with all of the purposes for which the District is created.

VII.

There is, for the following reasons, a necessity for the above-described work. The area proposed to be within the District is urban in nature, is within the growing environs of the City, and is in close proximity to populous and developed sections of Guadalupe County, Texas. There is not now available within the area, which will be developed for residential and commercial uses, an adequate waterworks system, sanitary sewer system, or drainage and storm sewer system, or roads. The health and welfare of the present and future inhabitants of the area and of the territories adjacent thereto require the purchase, design, construction, acquisition, ownership, operation, repair, improvement and extension of an adequate waterworks system, sanitary sewer system, and drainage and storm sewer system, or roads. A public necessity, therefore, exists for the creation of the District, to provide for the purchase, design, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of such waterworks system, sanitary sewer system, and drainage and storm sewer system, and roads to promote the purity and sanitary condition of the State's waters and the public health and welfare of the community.

VIII.

The Petitioner, by submission of this Petition, requests the City's consent to the creation of the District containing the Land under the same conditions as set forth in Exhibit "B," which is attached hereto and incorporated herein for all purposes. The Petitioner hereby covenants that if the requested consent to the creation of the District is given, the Petitioner will adopt and abide by said conditions.

IX.

A preliminary investigation has been made to determine the cost of the proposed District's waterworks system, sanitary sewer system, and drainage and storm sewer

system projects, and it is now estimated by the Petitioner, from such information as it has at this time, that such cost will be approximately \$54,310,000.

X.

A preliminary investigation has been made to determine the cost of the proposed District's road projects, and it is now estimated by the Petitioner, from such information as it has at this time, that such cost will be approximately \$22,850,000.

XI.

The total cost of the proposed District's projects is estimated by the Petitioner to be approximately \$77,160,000.

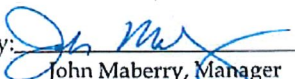
WHEREFORE, the Petitioner prays that this petition be heard and that the City Council duly pass and approve an ordinance or resolution granting the consent to the creation of the District and authorizing the inclusion of the Land within the District.

[EXECUTION PAGE FOLLOWS]

RESPECTFULLY SUBMITTED this 28th day of March, 2022.

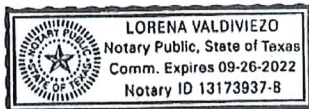
HIGHLANDER NB ONE, LLC
a Texas limited liability company

By: Highlander Real Estate Partners, LLC
a Delaware limited liability company
its Sole Manager

By: 
John Maberry, Manager

THE STATE OF TEXAS §
 §
COUNTY OF Travis §

This instrument was acknowledged before me on this 25th day of March, 2022, by John Maberry as Manager of Highlander Real Estate Partners, LLC, a Delaware limited liability company, Sole Manager of **HIGHLANDER NB ONE, LLC**, a Texas limited liability company, on behalf of said Texas limited liability company and Delaware limited liability company



(NOTARY SEAL)


Notary Public, State of Texas

EXHIBIT A

Mullins M.U.D.
299.778 acresMETES & BOUNDS DESCRIPTION

FIELD NOTES FOR A 299.778 ACRE TRACT OF LAND IN THE GREENBERRY PATE SURVEY NUMBER 46, ABSTRACT NO. 260, AND THE WILLIAM BRACKEN SURVEY, ABSTRACT NO. 52, GUADALUPE COUNTY, TEXAS; BEING A PORTION OF THE REMAINDER OF A CALLED 80 ACRE TRACT OF LAND AS DEVISED TO RENO DAMMANN UNDER THE LAST WILL AND TESTAMENT DATED JANUARY 27, 1931, AND RECORDED IN VOLUME 4, PAGE 387 OF THE PROBATE MINUTES OF GUADALUPE COUNTY, TEXAS, ALL OF A CALLED 65 ACRE TRACT OF LAND AS CONVEYED UNTO JACQUELINE E. SINGSAAS IN VOLUME 1770, PAGE 992 OF THE OFFICIAL PUBLIC RECORDS OF GUADALUPE COUNTY, TEXAS, AND ALL OF A CALLED 234.152 ACRE TRACT OF LAND AS CONVEYED UNTO JAMES D. MULLINS AND RANDY L. MULLINS IN DOCUMENT NUMBER 2014018594 OF THE OFFICIAL PUBLIC RECORDS OF GUADALUPE COUNTY, TEXAS; SAID 299.778 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2-inch iron rod with a cap stamped "MATKIN-HOOVER" found on the original easterly right-of-way line of Farm to Market (F.M.) Road 725 as shown on the Texas Department of Transportation (TxDOT) right-of-way map dated June 1948, at the northwest corner of said 234.152 acre tract, the westerly corner of said remainder of the 80 acre tract, for a point on line and **POINT OF BEGINNING** of the herein described tract;

THENCE, N 13° 59' 56" W, coincident with the common line of the remainder of the 80 acre tract and said original right-of-way line, a distance of 52.99 feet to a 1/2-inch iron rod with a cap stamped "BGE INC" set for an angle point of the herein described tract;

THENCE, N 38° 24' 34" W, continuing coincident with said common line, a distance of 573.76 feet to a 1/2-inch iron rod with a cap stamped "BGE INC" set at the common corner of the remainder of the 80 acre tract and a called 10.808 acre tract of land as conveyed unto SCH Development, LLC in Document Number 202199006162 of the Official Public Records of Guadalupe County, Texas, for the northwesterly corner of the herein described tract;

THENCE, N 47° 36' 02" E, departing said original right-of-way line, coincident with the common line of the remainder of the 80 acre tract and said 10.808 acre tract, a distance of 17.92 feet to a 1/2-inch iron rod with a cap stamped "BGE INC" set at the common corner of the remainder of the 80 acre tract and the aforementioned 65 acre tract, for an angle point of the herein described tract;

THENCE, N 44° 15' 08" E, coincident with the common line of said 65 acre tract and the 10.808 acre tract, a distance of 735.62 feet to a 1/2-inch iron rod with a cap stamped "B&A" found for an angle point of the herein described tract;

THENCE, N 44° 10' 03" E, continuing coincident with said common line, passing at a distance of 1,430.32 feet a 1/2-inch iron rod found at the common corner of the 10.808 acre tract and a remainder of a called 50.536 acre tract of land as conveyed unto Southern Central Holdings, LLC in Volume 2678, Page 165 of the Official Public Records of Guadalupe County, Texas, and continuing coincident with the common line of the 65 acre tract and said remainder of the 50.536 acre tract, a total distance of 2,848.19 feet to a 1/2-inch iron rod with a cap stamped "BGE INC" set for an angle point of the herein described tract;

THENCE, N 44° 06' 05" E, continuing coincident with said common line, a distance of 726.58 feet to a 1/2-inch iron rod with a cap stamped "B&A" found at the common corner of the remainder of the 50.536 acre tract and a called 11.453 acre tract of land as conveyed unto Michael D. Kriewaldt in Volume 3119, Page 778 of the Official Public Records of Guadalupe County, Texas, for an angle point of the herein described tract;

THENCE, N 43° 53' 53" E, coincident with the common line of the 65 acre tract and said 11.453 acre tract, a distance of 850.30 feet to a 1/2-inch iron rod with a cap stamped "BGE INC" set on the apparent high bank of the Guadalupe River, for the most northerly corner of the herein described tract;

THENCE, along the apparent high bank of the Guadalupe River the following fifteen (15) courses:

- 1) S 07° 29' 32" W, a distance of 37.51 feet to a 1/2-inch iron rod with a cap stamped "BGE INC" set for an angle point of the herein described tract;
- 2) S 02° 43' 43" E, a distance of 70.21 feet to a 1/2-inch iron rod with a cap stamped "BGE INC" set for an angle point of the herein described tract;
- 3) S 01° 30' 40" E, a distance of 64.50 feet to a 1/2-inch iron rod with a cap stamped "BGE INC" set for an angle point of the herein described tract;
- 4) S 10° 50' 35" W, a distance of 97.22 feet to a 1/2-inch iron rod with a cap stamped "BGE INC" set for an angle point of the herein described tract;
- 5) S 22° 02' 48" W, a distance of 121.32 feet to a 1/2-inch iron rod with a cap stamped "BGE INC" set for an angle point of the herein described tract;
- 6) S 05° 50' 22" W, a distance of 52.21 feet to a 1/2-inch iron rod with a cap stamped "BGE INC" set for an angle point of the herein described tract;
- 7) S 18° 45' 56" W, a distance of 80.90 feet to a 1/2-inch iron rod with a cap stamped "BGE INC" set for an angle point of the herein described tract;
- 8) S 00° 05' 04" W, a distance of 42.82 feet to a 1/2-inch iron rod with a cap stamped "BGE INC" set for an angle point of the herein described tract;
- 9) S 05° 33' 40" W, a distance of 93.75 feet to a 1/2-inch iron rod with a cap stamped "BGE INC" set for an angle point of the herein described tract;
- 10) S 08° 34' 55" W, a distance of 74.18 feet to a 1/2-inch iron rod with a cap stamped "BGE INC" set for an angle point of the herein described tract;

- 11) S 13° 30' 17" W, a distance of 90.56 feet to a 1/2-inch iron rod with a cap stamped "BGE INC" set for an angle point of the herein described tract;
- 12) S 10° 57' 27" W, a distance of 53.24 feet to a 1/2-inch iron rod with a cap stamped "BGE INC" set for an angle point of the herein described tract;
- 13) S 08° 42' 17" W, a distance of 33.23 feet to a 1/2-inch iron rod with a cap stamped "BGE INC" set for an angle point of the herein described tract;
- 14) S 39° 56' 38" E, a distance of 28.02 feet to a 1/2-inch iron rod with a cap stamped "BGE INC" set for an angle point of the herein described tract;
- 15) S 04° 56' 42" E, a distance of 61.00 feet to a 1/2-inch iron rod found on the northwest line of the aforementioned 234.152 acre tract, at an apparent corner of the aforementioned 65 acre tract, for a re-entrant corner of the herein described tract;

THENCE, N 43° 46' 38" E, departing said apparent high bank, coincident with the common line of said 234.15 acre tract and the west line of the Guadalupe River, a distance of 67.21 feet to a calculated point at the northwest corner of the 234.152 acre tract, for a corner of the herein described tract;

THENCE, continuing coincident with the common line of the 234.152 acre tract and the Guadalupe River the following fourteen (14) courses:

- 1) S 17° 30' 18" E, a distance of 70.84 feet to a calculated point for an angle point of the herein described tract;
- 2) S 24° 51' 17" E, a distance of 272.78 feet to a calculated point for an angle point of the herein described tract;
- 3) S 35° 22' 59" E, a distance of 300.10 feet to a calculated point for an angle point of the herein described tract;
- 4) S 60° 42' 36" E, a distance of 160.17 feet to a calculated point for an angle point of the herein described tract;
- 5) N 81° 52' 28" E, a distance of 51.70 feet to a calculated point for an angle point of the herein described tract;
- 6) S 88° 52' 21" E, a distance of 225.72 feet to a calculated point for an angle point of the herein described tract;
- 7) S 82° 58' 18" E, a distance of 202.91 feet to a calculated point for an angle point of the herein described tract;
- 8) S 86° 57' 23" E, a distance of 265.58 feet to a calculated point for an angle point of the herein described tract;
- 9) N 87° 03' 22" E, a distance of 287.79 feet to a calculated point for an angle point of the herein described tract;

- 10) N 81° 03' 47" E, a distance of 621.83 feet to a calculated point for an angle point of the herein described tract;
- 11) N 54° 59' 02" E, a distance of 46.46 feet to a calculated point for an angle point of the herein described tract;
- 12) N 77° 53' 32" E, a distance of 76.28 feet to a calculated point for an angle point of the herein described tract;
- 13) S 78° 13' 33" E, a distance of 31.97 feet to a calculated point for an angle point of the herein described tract;
- 14) S 20° 33' 23" E, a distance of 43.87 feet to a calculated point on the northwesterly line of the remainder of a called 259.065 acre tract of land as conveyed unto Golf Association, LTD in Volume 1202, Page 428 of the Official Public Records of Guadalupe County, Texas, at the northeasterly corner of the 234.152 acre tract for the northeasterly corner of the herein described tract;

THENCE, S 43° 57' 01" W, coincident with the common line of the 234.152 acre tract and said remainder of the 259.065 acre tract, passing at a distance of 138.70 feet a 1/2-inch iron rod with a cap stamped "MATKIN-HOOVER" found on the apparent top of bank, and continuing coincident with said common line, passing at a distance of 268.26 feet the common corner of the remainder of the 259.065 acre tract and a called 94.053 acre tract of land as conveyed unto Foresight Golf Partners 2001, LTD in Volume 1576, Page 412 of the Official Public Records of Guadalupe County, Texas, and continuing coincident with the common line of the 234.152 acre tract and said 94.053 acre tract, a total distance of 5,949.63 feet to a 3-inch iron fence post filled with concrete found at the common corner of the 234.152 acre tract and a called 14.866 acre tract of land as conveyed unto Curtis Koehler in Document Number 201999022951 of the Official Public Records of Guadalupe County, Texas, for a southerly corner of the 234.152 acre tract and the herein described tract;

THENCE, N 22° 06' 44" W, coincident with the common line of the 234.152 acre tract and said 14.866 acre tract, a distance of 840.68 feet (Deed= N 22° 53' 56" W, 834.51 feet) to a 1/2-inch iron rod found at the common corner of the 234.152 acre tract and the 14.866 acre tract, for a re-entrant corner of the herein described tract;

THENCE, S 43° 46' 01" W, continuing coincident with said common line, a distance of 838.36 feet (Deed = S 43° 50' 17" W, 825.34 feet) to a 1/2-inch iron rod with a cap stamped "BGE INC" set on the current easterly right-of-way line of F.M. 725 as shown on the TxDOT right-of-way map dated August 1967, and November 2004, at the common corner of the 234.152 acre tract and the 14.866 acre tract for a southerly corner of the herein described tract;

THENCE, coincident with the common line of the 234.152 acre tract and said current right-of-way the following five (5) courses:

- 1) N 19° 30' 28" W, a distance of 476.63 feet to a 1/2-inch iron rod with a cap stamped "BGE INC" set for an angle point of the herein described tract;
- 2) N 16° 43' 28" W, a distance of 585.00 feet to a 1/2-inch iron rod with a cap stamped "BGE INC" set for an angle point of the herein described tract;

- 3) N 11° 56' 24" W, a distance of 201.93 feet to a 1/2-inch iron rod with a cap stamped "BGE INC" set for an angle point of the herein described tract;
- 4) N 03° 51' 15" E, a distance of 95.23 feet to a 1/2-inch iron rod with a cap stamped "BGE INC" set for an angle point of the herein described tract;
- 5) N 13° 59' 56" W, a distance of 85.28 feet to the **POINT OF BEGINNING** and containing 299.778 acres of land, more or less.

This document was prepared under 22 Texas administrative Code § 138.95 and does reflect the results of an on the ground survey and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

The Basis of Bearing recited herein is the Texas State Plane Coordinate System, South Central Zone, NAD 83. A plat of survey accompanies this description.

Dion P. Albertson

Dion P. Albertson RPLS Number 4963
BGE, Inc.
7330 San Pedro Ave, Suite 202
San Antonio TX 78216
Telephone: 210-581-3600
TBPELS Licensed Surveying Firm Number 10194490



1/4/2022

Date

Date: January 4, 2022
Job No: 9396-00

The District may issue bonds for any purpose authorized by law. Such bonds will expressly provide that the District reserves the right to redeem the bonds not later than any date subsequent to the fifteenth (15th) anniversary of the date of issuance without premium and (with the exception of refunding bonds) will be sold only after the taking of public bids therefor, and none of such bonds, other than refunding bonds, will be sold for less than 95% of par, provided that the net effective interest rate on bonds so sold, taking into account any discount or premium as well as the interest rate borne by such bonds, will not exceed two percent (2%) above the highest average interest rate reported by the Daily Bond Buyer in its weekly "20 Bond Index" during the one-month period next preceding the date notice of the sale of such bonds is given, and that bids for the bonds will be received not more than forty-five (45) days after notice of sale of the bonds is given.

EXHIBIT ~~BC~~

DEVELOPMENT REGULATIONS

~~a. Chapter 14 Buildings and Building Regulations of the City of New Braunfels Code of Ordinances;~~

Commented [RH2]:

~~b. a.~~ Chapter 118 Subdivision Platting of the City of New Braunfels Code of Ordinances

612
613
614

EXHIBIT C
GENERAL PLAN

DRAFT

615 **EXHIBIT D**

616
617 **LOCAL GOVERNMENT CODE CHAPTER 212.172 MANDATORY DISCLOSURE**

618
619 ~~A. — At the time a municipality makes an offer to a landowner to enter into a development~~
620 ~~agreement pursuant to Chapter 212.172, the municipality must provide the landowner with a~~
621 ~~written disclosure that includes~~

- 622 (1) ~~a statement that the landowner is not required to enter into the agreement;~~
623 (2) ~~the authority under which the municipality may annex the land with references to~~
624 ~~relevant law;~~
625 (3) ~~a plain language description of the annexation procedures applicable to the land;~~
626 (4) ~~whether the procedures require the landowner's consent; and~~
627 (5) ~~a statement regarding the municipality's waiver of immunity to suit.~~

628
629 ~~B. — You, the landowner, are not required to enter into this Agreement. The consent provided~~
630 ~~by the City of New Braunfels for creation of the District was, however, predicated upon the District~~
631 ~~and those who develop within the District abiding by certain conditions included within the~~
632 ~~consent Resolution. One such condition was entering into a development agreement with the City~~
633 ~~of New Braunfels.~~

634
635 ~~C. — But for the Agreement or a strategic partnership agreement with the District, the City of~~
636 ~~New Braunfels may only annex your property as provided by Local Government Code Chapter 43~~
637 ~~Subchapter C-3, Annexation of Area on Request of Owners; Subchapter C-4, Annexation of Areas~~
638 ~~with Population of Less Than 200 by Petition; or, Subchapter C-5, Annexation of Areas with~~
639 ~~Population of At Least 200 by Election.~~

640
641 ~~D. — Annexation Procedures, Generally~~

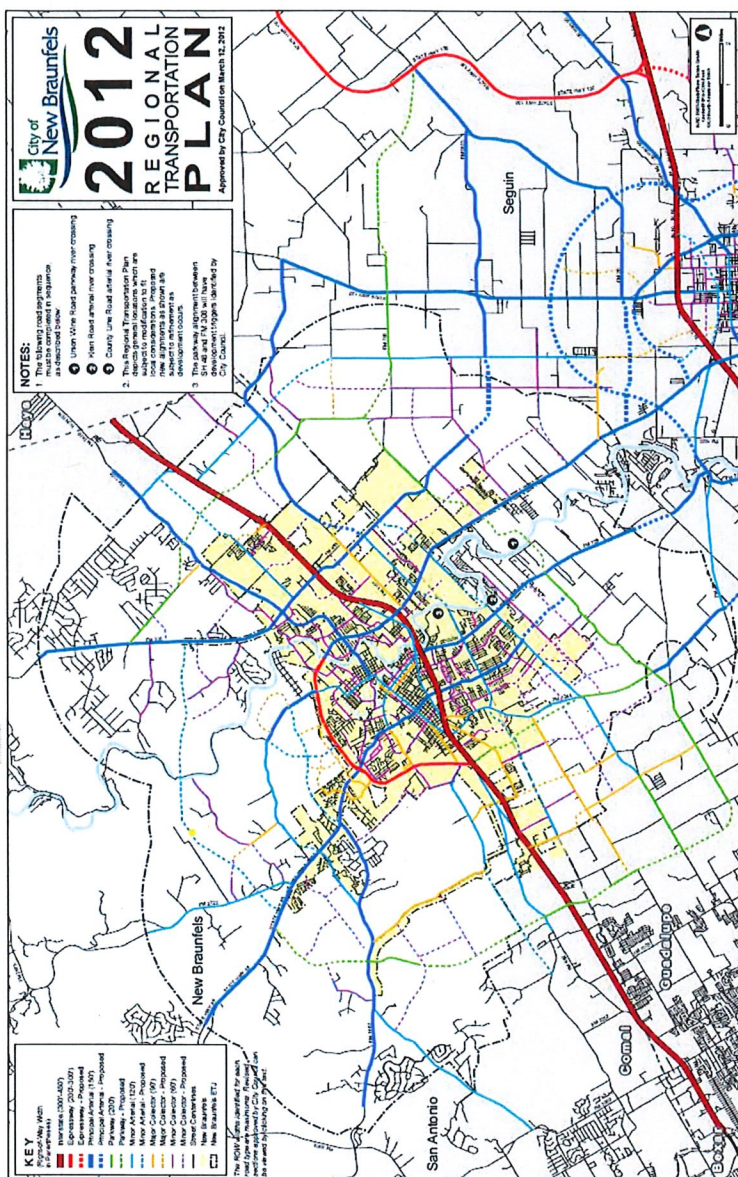
642
643 ~~Local Government Code Chapter 43 Subchapter C-3, Annexation of Area on Request of Owners~~
644 ~~requires that each owner of land in the area requests the annexation. Before adopting an ordinance~~
645 ~~to complete an annexation under Subchapter C-3, the City would first negotiate with the~~
646 ~~landowners for the provision of services to the area and hold one public hearing where persons~~
647 ~~from within the area could be heard.~~

648
649 ~~Subchapter C-4, Annexation of Areas with Population of Less Than 200 by Petition requires that,~~
650 ~~before annexing an area with a population of less than 200, the City must first receive a petition~~

651 consenting to the annexation signed by more than 50% of the registered voters of the area or more
652 than 50% of the owners of land in the area. The City must then pass a resolution detailing services
653 to be provided within the area after annexation, mail notice of the proposed annexation along with
654 the services to be provided, date of the public hearing to be held, and an explanation of the 180
655 day petition period.

656
657 Subchapter C-5, Annexation of Areas with Population of At Least 200 by Election requires that
658 the municipality holds an election in the area proposed to be annexed at which the qualified voters
659 of the area may vote on the question of the annexation and a majority of the votes received at the
660 election approve the annexation; and if the registered voters of the area do not own more than 50
661 percent of the land in the area, the municipality obtains consent to annex the area through a petition
662 signed by more than 50 percent of the owners of land in the area.

663
664 E. — A municipality that enters a contract waives immunity from suit for the purpose of
665 adjudicating a claim for breach of the contract. A development agreement entered into pursuant to
666 Local Government Code Chapter 212.172 is a contract and constitutes a permit under Local
667 Government Code Chapter 245.





DISCLAIMER: This map and information contained in it were developed exclusively for use by the City of New Brighton. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of New Brighton, its officers or employees for any discrepancies, errors, or omissions which may exist.