

## DEVELOPMENT AGREEMENT

This Development Agreement (the “Agreement”) is made and entered into by and between the CITY OF NEW BRAUNFELS, TEXAS, a Texas municipal corporation (the “City”), and AUGUST FIELDS, LP, a Texas limited partnership (“Developer”), effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018 (“Effective Date”).

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

WHEREAS, the City asked Developer to redesign the Subdivision so that Brook Ave (the “Roadway”) would be constructed to minor collector roadway specifications pursuant to the City Code of Ordinances, Section 118-46-Streets;

WHEREAS, Developer redesigned the Subdivision plans to accommodate the Roadway to minor collector roadway specifications and the revised Master Plan and Detail Plan were approved by the City Planning Commission on May 2, 2017, and the City Council approved the Amended Concept Plan on June 12, 2017;

WHEREAS, the City has adopted a roadway impact fees program, which requirements are codified as Chapter 100, City Code of Ordinances, as amended (the “Ordinance”);

WHEREAS, the Ordinance currently requires the payment of roadway impact fees adopted for Service Area No. 6 in the amount of \$1,875 per dwelling unit (“Roadway Impact Fees”) upon the issuance of a building permit for construction of dwelling units on the lots within Phase 1 of the Subdivision;

WHEREAS, all other phases of development within the Subdivision will be assessed the then current amount of Roadway Impact Fees when such phases are platted;

WHEREAS, the Ordinance provides that an owner/developer of a tract of land can petition the City Council for offsets for the costs of capital improvements that provide additional capacity to the City’s thoroughfare system against the Roadway Impact Fees to be charged to the Subdivision development;

WHEREAS, the Ordinance authorizes the City to enter into an agreement with an owner / developer of a tract of land for the construction and/or financing of such capital improvements that provide additional capacity for the City’s thoroughfare system;

WHEREAS, although the Roadway was not included on the City’s thoroughfare plan, the City has determined that upgrading such Roadway to become a minor collector roadway will meet the need for greater roadway improvements generated by the Subdivision and is eligible for impact fees expenditure ;

WHEREAS, the excess cost of constructing the Roadway to minor collector roadway specifications over the costs of constructing a local street section is approximately \$388,080.00, as more precisely set forth in **Exhibit “B”** attached hereto and incorporated herein by reference

(the “Excess Costs”);

WHEREAS, Developer has petitioned the City Council for approval for offsets against Roadway Impact Fees due the City for the Excess Costs of the Roadway;

WHEREAS, the expected total amount of Roadway Impact Fees due by the builders of lots subject to the Subdivision is \$547,500.00, as shown on the Roadway Impact Fee Calculation Worksheet attached hereto as **Exhibit “C”**;

WHEREAS, the City desires to offset the Excess Costs against Roadway Impact Fees due upon the construction, dedication to the City and acceptance by the City of the Roadway;

WHEREAS, the City has adopted certain park land dedication and park development fee assessments pursuant to Section 118 of the City Code of Ordinances, as amended (collectively, the “Park Land Dedication and Park Land Fee Ordinance”) pertaining to development of real property; and

WHEREAS, the City desires to accept a combination of park improvements and park land for full satisfaction of all park land dedication and park development fee requirements under the Park Land Dedication and Park Land Fee Ordinance for the Subdivision.

NOW, THEREFORE, the City and Developer agree as follows:

1. Construction of the Roadway. Developer shall construct the Roadway to the City’s minor collector specifications, and shall offer, in writing, to dedicate such Roadway to the City (the “Dedication Offer”).

2. Reimbursement of Excess Costs. A credit pool will be established for the Roadway Impact Fees collected when the residential building permits are issued. Once Developer has constructed the entire Roadway to the City’s specification and issued the Dedication Offer, subject to Paragraph 3 below, the Excess Costs will be refunded to Developer within 90 days of the date of the Dedication Offer to the extent of all Roadway Impact Fees collected by the City for the Subdivision as of the date of the Dedication Offer. If the total amount of Roadway Impact Fees collected by the City as of the date of the Dedication Offer notice is less than the Excess Costs, then the City shall credit the Developer the amount of any future collected Roadway Impact Fees until Developer has received the total Excess Costs. In the event, the entire Roadway is not completed, dedicated and accepted by the City within 10 years of the Effective Date of this Agreement, then the City’s obligation to reimburse the Developer for the Excess Costs will be fully extinguished.

3. Conveyance of Alves Lane Right-of-Way. The City and Developer agree that Developer will convey the Alves Lane Right-of-Way to the City for \$63,000. The City will pay such consideration to Developer within 90 days of execution of this Agreement. In the event the City has funded the \$63,000 set forth in this paragraph prior to the payment of the Excess Costs, the Excess Costs due Developer will be reduced by \$63,000.

4. Park Land Dedication and Park Development Fees. The Developer and City have worked together to create a “Concept Plan” for proposed improvements to park land areas within the Subdivision, such park land improvements being conceptually shown on the attached

**Exhibit “D”** (“*Park Concept Plan*”). Developer and City hereby agree that Developer will make park improvements and dedicate park land in accordance with the following:

- a. Developer will dedicate to the City after the expenditure of at least \$250,000 in park improvements, in fee simple: (i) that certain two acre tract, more or less, described as “Lot 907R” on the attached **Exhibit “A”** (the “*Two Acre Park*”), for use as a public linear trail park to be named by the City at a later date; and (ii) that certain channel lot (referred to as Lot 909 on **Exhibit “A”**) (the “*Hike and Bike Trail Tract*”) to be used in part for a 10’ wide concrete hike and bike trail (“*Hike and Bike Trail Improvements*”) from FM 1101 to the trail park at Alves Lane, as generally shown on the attached **Exhibit “A”**. The Hike and Bike Trail Improvements will be constructed in accordance with the City’s Greenway Trail Standards that were in effect as of February 6, 2017. Further, in connection with the Hike and Bike Trail Tract, Developer will execute an open space easement for the benefit of the City covering an eight foot strip of land along the rear boundaries of Lots 275-286 in Phase 1, which will provide a safety buffer for the said trail (the “*Open Space Easement*”). The Open Space Easement will be in a form reasonably acceptable to Developer and City and will provide that the owners of Lots 275-286 will not be permitted to construct any fences or place obstructions within the easement tract. The Open Space Easement will be filed in the Comal County Public Records prior to the sale of any of the referenced lots to a third party homeowner, but in no event later than the acceptance of the infrastructure in Phase 1.
- b. In lieu of additional park development fees that would be due for development of the Subdivision, the Developer will: (i) construct and install \$250,000 of the “Phase 1 Park Improvements,” on the Two Acre Park, such Developer constructed Phase 1 Park Improvements being selected by Developer from the park improvements more particularly described on the attached **Exhibit “E”** (the “*Developer Installed Park Improvements*”); and (ii) construct the Hike and Bike Trail Improvements, at its sole cost and expense, over and across the Hike and Bike Trail Tract. Notwithstanding anything contained in this Agreement to the contrary, Developer is under no obligation to spend more than \$250,000 for the construction of the Developer Installed Park Improvements unless the Subdivision exceeds 309 residential lots. Further, Developer shall complete the Developer Installed Park Improvements and Hike and Bike Trail Improvements on or before the earlier to occur of: (a) 18 months after the acceptance of the public infrastructure in Phase 1 of the Subdivision; or (b) the date that the utility and public infrastructure improvement construction in Phase 2 or any other phase of the Subdivision is substantially complete. If Developer fails to achieve the foregoing, the City will not issue any further building permits in the Subdivision until such time as the Developer Installed Park Improvements and Hike and Bike Trail Improvements are completed.

- c. Upon completion and City approval of the Developer Installed Park Improvements, the Developer will receive reimbursement of the park fees Developer previously paid for the Unit 1 development in the amount of \$35,400.
- d. Upon completion, approval, and acceptance of the Hike and Bike Trail Improvements, the City will reimburse Developer \$85,000 for a portion of the costs of the Hike and Bike Trail Improvements incurred by the Developer.
- e. All Developer reimbursements and payments under this Section 4 will require proof of payment (i.e., copies of checks and related invoices) and an affidavit from the Developer for the benefit of the City that indicates the amount spent on the Developer Installed Park Improvements and the Hike and Bike Trail Improvements.
- f. Within one year after the Phase I Park Improvements have been completed and accepted, the City Parks and Recreation Department will request the use of City park development fees to fund additional park improvements for the Two Acre Park and/or the Hike and Bike Trail, as generally shown on the Park Concept Plan. City and Developer acknowledge and agree that any proposed park improvements using park development funds are dependent on available funds and City Council approval.

Provided Developer complies with this Section 4, no additional park fees will be charged to Developer related to the construction and development of the Subdivision unless the Developer exceeds 309 residential lots in the Subdivision.

5. Ownership and Maintenance of the Two Acre Park and the Hike and Bike Trail Improvements. The City will own the Two Acre Park and Hike and Bike Trail Tract and will be solely responsible for all required capital improvements to such facilities that are not expressly obligations of Developer under this Agreement. The Developer and City have generally agreed upon the maintenance obligations regarding the Phase 1 Park Improvement, such maintenance obligations being described on the attached **Exhibit "F"**. The City plans to enter into a license agreement with the local homeowners' association for operations and maintenance of certain aspects of the Two Acre Park, the Hike and Bike Trail Tract and the land covered by the Open Space Easement, such homeowner's maintenance responsibilities being set forth on **Exhibit "F"**. Maintenance standards for the Two Acre Park and Hike and Bike Trail Improvements will conform to the City's best standards and practices for park maintenance and will apply when the applicable improvements have been accepted by the City Park's Department.

6. Construction Standards. The Developer Installed Park Improvements and the Hike and Bike Trail Improvements must meet the minimum requirements set forth in the New Braunfels Parks, Recreation and Strategic Master Plan, as amended. All development plans and specifications for the construction of the Developer Installed Park Improvements and the Hike and Bike Trail Improvements must meet the minimum design and construction standards as provided by the City Parks and Recreation Department, be sealed by a landscape architect

registered in the State of Texas and be reviewed and approved by the Parks Director prior to construction.

7. Construction Inspections. The Developer Installed Park Improvements and the Hike and Bike Trail Improvements shall be inspected by the City while construction is in progress. Once the Developer Installed Park Improvements and the Hike and Bike Trail Improvements are constructed, and after the Park Director has accepted such improvements, the Developer will deed the Two Acre Park tract to the City, by special warranty deed, in a form reasonably acceptable to Developer and the City and convey the Developer Installed Park Improvements and the Hike and Bike Trail Improvements, AS IS, WHERE IS, AND WITH ALL FAULTS, by bill of sale, with such conveyances to the City to be free and clear of any liens on such conveyed property. Within 15 days after acceptance by the City, the Developer will provide and obtain a one-year warranty for workmanship for the benefit of the City and provide the City a one year transferable warranty from all manufacturers for the warrantable equipment in the Developer Installed Park Improvements and the Hike and Bike Trail Improvements.

8. Default. It will be an “Event of Default” if either party fails to comply with any term, provision or covenant of this Agreement. A defaulting party shall have 30 days after receiving written notice of an Event of Default from the 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 30 days so long as the defaulting party commences activities to cure such default within 30 days and continues to diligently pursue such cure (such period of 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 the Agreement is declared terminated or in default.

9. City Code of Ordinances/Enforcement. This Agreement is made subject to the existing provisions of the Charter of the City of New Braunfels, 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.

10. 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. Seller's and Purchaser'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 Engineer  
City of New Braunfels  
P.O. Box 311747  
New Braunfels, Texas 78131-1747

With a copy to: City Attorney  
City of New Braunfels  
P.O. Box 311747  
New Braunfels, Texas 78131-1747

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

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

11. Miscellaneous.

- a. This Agreement may be amended only by the written agreement of the City 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.



STATE OF TEXAS §

COUNTY OF COMAL §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2018, by Valeria M. Acevedo, City Attorney of the City of New Braunfels, Texas, a home-rule city, on behalf of the City.

(seal)

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

**DEVELOPER:**

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

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

By: \_\_\_\_\_  
Barth Timmermann, President

STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

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

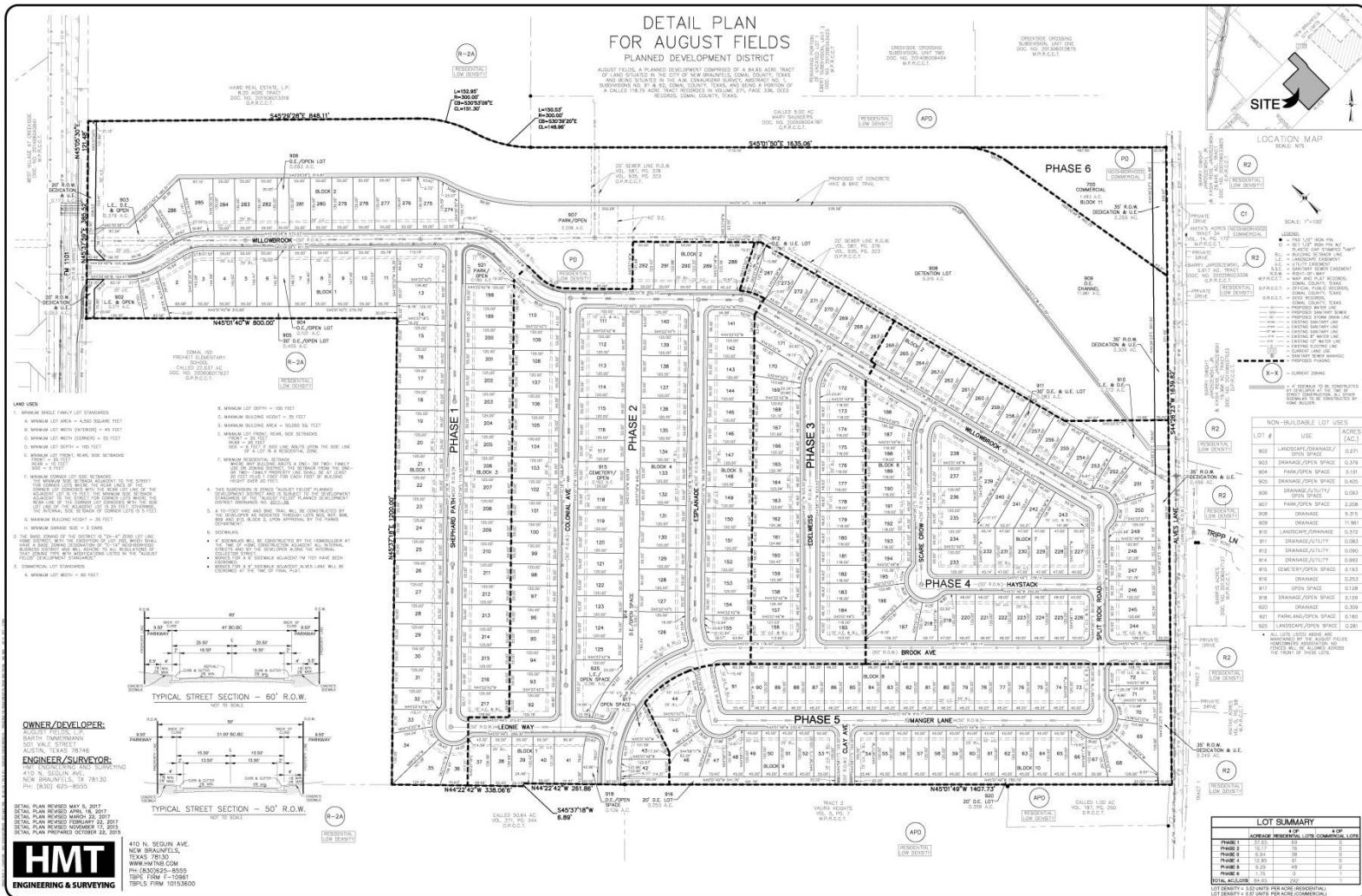
(seal)

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



**EXHIBIT “A”**

## **LEGAL DESCRIPTION OF THE SUBDIVISION**



## **EXHIBIT "B"**

### **DESCRIPTION OF EXCESS COSTS**

#### **SW3P & SITEWORK**

<b>ITEM</b>	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>EST/QTY</b>	<b>\$/UNIT</b>	<b>AMOUNT</b>
1	Site Excavation	CY	2,500	\$ 5.00	\$ 12,500.00
2	Site Embankment	CY	2,500	\$ 5.00	\$ 12,500.00
3	Curb Inlet Protection (Filter Dike)	EA	2	\$ 200.00	\$ 400.00
4	Construction Entrance	EA	1	\$ 1,500.00	\$ 1,500.00
5	Silt Fence	LF	1,680	\$ 2.00	\$ 3,360.00
6	Concrete Washout Pit	EA	1	\$ 800.00	\$ 800.00
7	Clear & Grub/Strip Top Soil	SY	11,200	\$ 0.50	\$ 5,600.00
SUBTOTAL					\$ 36,660.00

**ESTIMATED STREET QUANTITIES**

ITEM	DESCRIPTION	UNIT	EST/QTY	\$/UNIT	AMOUNT
1	2" HMA	SY	-5,040	\$ 11.00	\$ (55,440.00)
2	3" HMA	SY	6,620	\$ 18.00	\$ 119,152.98
3	10" Flex Base (50' ROW)	SY	-6,160	\$ 10.50	\$ (64,680.00)
4	16.5" Flex Base (60' ROW)	SY	7,723	\$ 13.50	\$ 104,260.50
5	Prime Coat	GAL	313	\$ 5.00	\$ 1,563.00
6	6" Lime Stabilized Subgrade	SY	1,563	\$ 7.50	\$ 11,722.50
7	Tensor Geogrid	SY	1,563	\$ 6.50	\$ 10,159.50
8	4" Sidewalks (Drains and Public Areas)	SY	873	\$ 40.00	\$ 34,920.00
SUBTOTAL					\$ 161,658.48

Note: 1) It is assumed that the street section will be 2" asphalt, 16.5" of base, 6" lime subgrade, and Tensor Geogrid.


**MISCELLANEOUS COSTS**

ITEM	DESCRIPTION	UNIT	EST/QTY	\$/UNIT	AMOUNT
1	Engineering Fees	LS	1	\$ 46,500.00	\$ 46,500.00
2	Bonds, Mobilization, Prep ROW, Insurance	%	12%	N/A	\$ 23,798.22
3	Contingency	%	20%	N/A	\$ 39,663.70
4	Additional ROW Collector	LS	1	\$ 16,800.00	\$ 16,800.00
5	Alves Lane ROW	LS	1	\$ 63,000.00	\$ 63,000.00
SUBTOTAL					\$ 189,761.91
TOTAL COST					\$ 388,080.39

1:46 PM 5/25/2017 N:\\_Projects\096 - Barth Timmermann\096.003 - 2015 August Fields - 69 Lots Unit 1 Plat & Unit 1 Construction Drawings\096.003.106 - OPC\OPC Land Opt 3R\OPC Thoroughfare ROW Only As Per Bryan Woods.xlsx

## EXHIBIT "C"

### ROADWAY IMPACT FEE CALCULATION WORKSHEET



### Roadway Impact Fee Calculation Worksheet

City of New Braunfels, Texas

Development Name: August Fields

Applicant: August Fields, LP

Legal Description (Lot, Block): August Fields Amended Master Plan

Case Number: PL-17-018

Date: 5/2/2017

Was the final plat approved after January 1, 2014? ☒ Yes

Service Area\* (select from list): SA 6

\*Service Area 4 does not have a roadway impact fee for properties final platted on or before January 1, 2014.

**ROADWAY IMPACT FEE CALCULATION:**

Land Uses (select from list):  
Single-Family Detached Housing

Development Unit: Dwelling Unit

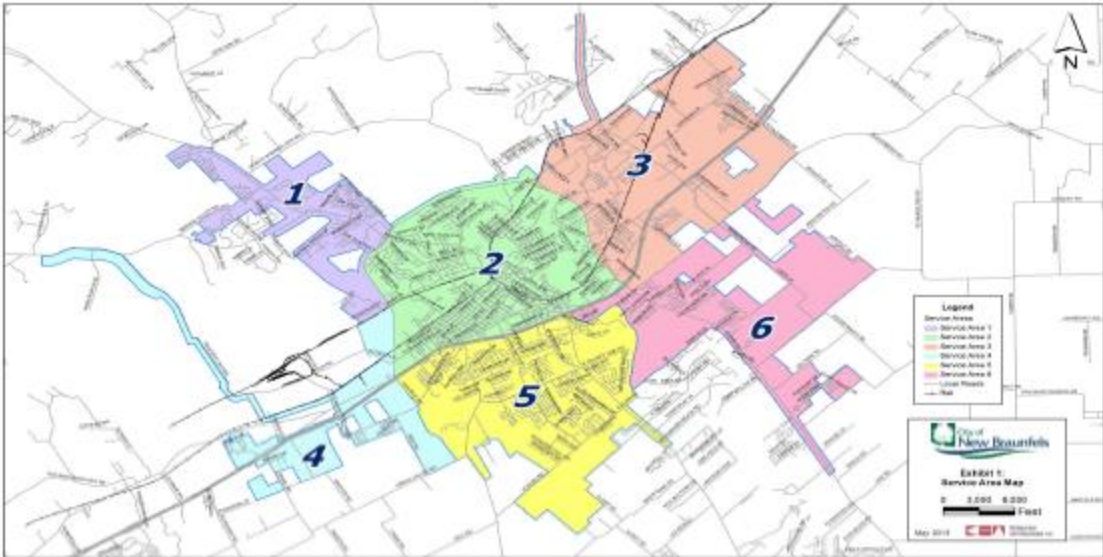
# of Units: 292

Maximum Assessable Fee <sup>1</sup>		Potential Collection Amounts	
Impact Fee Per Development Unit:	Roadway Impact Fee:	Impact Fee Per Development Unit:	Roadway Impact Fee:
\$ 6,765.00	\$ 1,975,380.00	\$ 1,875.00	\$ 547,500.00

MAXIMUM ASSESSABLE ROADWAY IMPACT FEE: \$ 1,975,380.00

TOTAL POTENTIAL ROADWAY IMPACT FEE COLLECTION AMOUNT: \$ 547,500.00

1. Maximum assessable roadway impact fee may be used as a measure of rough proportionality



**EXHIBIT “D”**  
**PARK CONCEPT PLAN**



**AUGUST FIELDS PARK / CONCEPT PLAN**

📍 New Braunfels, Tx    📅 28 April 2017    👤 Greenview Development



## EXHIBIT "E"

### DESCRIPTION OF DEVELOPER INSTALLED PARK IMPROVEMENTS



**August Fields - Park Concept**  
**Opinion of Probable Construction Costs**  
**Prepared by TBG Partners**  
 April 28, 2017  
 S15644

ITEM	UNIT	QTY.	UNIT COST	TOTAL	REMARKS
Mobilization	Allow	1	\$ 20,000.00	\$ 20,000.00	Setup and mobilization
Pavilion	EA	1	\$ 25,000.00	\$ 25,000.00	20'x20' single Tier square steel frame shelter
Playground	Allow	1	\$ 60,000.00	\$ 60,000.00	Playground equipment & accessories with fiber mulch surfacing
Site furniture	Allow	1	\$ 5,000.00	\$ 5,000.00	Picnic Tables/Benches/Trash Receptacles
Concrete Walk	SF	6,700	\$ 5.00	\$ 33,500.00	4" Thick concrete, 6' wide
Lighting & Electrical	Allow	1	\$ 10,000.00	\$ 10,000.00	Pavilion/Pergola/Landscape lighting + Transformer
Shade Treas	EA	45	\$ 650.00	\$ 29,250.00	4" Caliper 12' height
Landscape Planting Bed	SF	1,300	\$ 5.00	\$ 6,500.00	Various shrubs and groundcover
Turf Lawn / Sod	SF	11,940	\$ 0.75	\$ 8,955.00	Solid bermuda sod
Seeded / Hydromulch	SF	64,240	\$ 0.15	\$ 9,636.00	Bermuda seed and Native seed mix
Plant Mix	CY	160	\$ 28.00	\$ 4,480.00	Soil amendments for planting beds, 2" for sod/seeded areas
Irrigation	SF	41,700	\$ 1.00	\$ 41,700.00	Complete irrigation system necessary for turf and planting areas
Fine Grading	Allow	1	\$ 5,000.00	\$ 5,000.00	Fine grading in landscape areas
Drainage	Allow	1	\$ 7,500.00	\$ 7,500.00	Landscape/Playground drainage
Design Fees	Allow	1	\$ 25,000.00	\$ 25,000.00	Estimate for Landscape Architectural Services
			<b>Park Concept 2 Subtotal</b>	<b>\$ 291,521.00</b>	
			<b>CONTINGENCY 20%</b>	<b>\$ 58,304.20</b>	
			<b>Park Concept 2 Total</b>	<b>\$ 349,825.20</b>	

**EXCLUDES**  
 Regional Trail, Permits, Tap Fees,



**EXHIBIT “F”**

**Phase 1 Park Improvements and Maintenance Responsibilities for Public Park and Trail**

<b>Item Description</b>	<b>Installation</b>	<b>Maintenance</b>	<b>Agreement</b>
Irrigation system	Phase 1–Developer*	August Fields HOA	City to pay for water HOA to operate and repair
Trails	Phase 1–Developer*	City	Maintenance and repairs
Playground equipment	Phase 1–Developer*	City	Maintenance and repairs
Turf	Phase 1–Developer*	August Fields HOA	HOA – Mowing and fertilization
Trees	Phase 1–Developer*	August Fields HOA	HOA – Maintenance
Landscaping flower beds, native species	Phase 1–Developer*	August Fields HOA	HOA at their discretion
Benches, tables, drinking fountains, and trash	Phase 1– Developer*	City	Maintain and replace park furnishings.
Pet waste and trash receptacles	Phase 1– Developer*	August Fields HOA	HOA –garbage collection and pet waste supplies
Signage	Phase 1– Developer*	City	Maintenance and repairs
Lighting, conduit, poles, fixtures, and railings	Phase 1– Developer*	City	City will maintain, repair and replace lightbulbs for all lighting fixtures. City to pay for electricity

\*Developer’s obligations with respect to construction of the Phase 1 Park Improvements in the Subdivision are expressly limited in Paragraph 4(b) of this Agreement.