

MEMORANDUM OF UNDERSTANDING

Between
City of New Braunfels
and
New Braunfels Parks Foundation

This Memorandum of Understanding (hereinafter the “Memorandum”) is established and entered into by City of New Braunfels (hereinafter the “City”) and New Braunfels Parks Foundation (hereinafter the “Foundation”)

WITNESSETH:

WHEREAS, the City and the Foundation anticipate entering into a purchase contract (hereinafter the “Contract”) to acquire a 151.43 acre parcel of land at the intersection of Klein Road and FM 1044, as more particularly described in Exhibit “A” which is attached hereto and made a part thereof (hereinafter the “Whole Property”); and

WHEREAS, the City proposes to use bond proceeds from Proposition 3 of the City of New Braunfels 2013 Bond Election toward the purchase of the Property for a future sports complex save and except the Donation Property and for ten to twenty acres to be set aside for future development by the New Braunfels Industrial Development Corporation which plans to contribute funds in part for said acreage; and

WHEREAS, the Sellers of the Whole Property have elected to convey a 25 acre portion of the Whole Property (hereinafter the “Donation Property”) to the Foundation as part of their “Legacy Contribution”; and

WHEREAS, the Foundation is able to pursue unique fundraising opportunities, made possible by the organization’s 501(c)(3) status established in 2005, to increase private sector support; and

WHEREAS, the Foundation’s purpose is to further the development, growth and excellence of the City in providing quality parks and recreation services; and

WHEREAS, on this date set forth below the Foundation has agreed by a majority vote of its Board to approve this Memorandum of Understanding and approved entering into the Contract and authorizing its Chairman to execute same; and

NOW, THEREFORE, in consideration of the foregoing mutual covenants and conditions, all of which are hereby acknowledged by the parties hereto, the Foundation and the City each agree as follows:

SECTION 1 – FOUNDATION COMMITMENTS

- a.** The Foundation shall hold the Donation Property in trust for the sole benefit of the City for use solely as a park.
- b.** The Foundation shall allow the City to have access and full administrative authority to control the use of the Donation Property. Furthermore, any agreements that need to be executed pertaining to the use or development of the Donation Property shall be executed as necessary by the Foundation.
- c.** The Foundation shall allow the Donation Property to be used for the benefit of the City to apply for matching grants and shall execute all necessary applications or documentation as requested by the City.
- d.** The Foundation shall execute any documentation necessary to verify the Sellers donation.
- e.** At the request of the City, the Foundation shall execute all necessary conveyance documents necessary to transfer title of the Donation Property to the City and to no other entity.

SECTION 2 – CITY COMMITMENTS

- a.** The City shall have sole administrative authority over the Donation Property at all times. This administrative authority shall include, but is not limited to the following:
 - 1. Property management
 - 2. Property maintenance
 - 3. Property use
 - 4. Property development
- b.** The City shall engage the services of appropriate contractors to perform the necessary tasks of developing the property. The City shall have the sole responsibility of negotiating any contracts necessary to engage those services.
- c.** The City shall have the sole right to determine the appropriate time for the Donation to be conveyed to the City. Within 30 days of the written request by the City, the Foundation shall convey the Donation to the City by General Warranty Deed without any compensation.

SECTION 3 – MUTUALITY OF COMMITMENTS

- a.** The parties agree that the obligations imposed upon the parties are for the benefits of the parties and that the timely fulfillment of each obligation in accordance with this Memorandum is necessary. The failure of any party to fulfill its obligations under this Memorandum or the failure of any event to occur by a date established by this

Memorandum shall constitute a breach of this Memorandum unless the fulfillment of such obligation is waived or modified by written agreement of the parties.

- b. Except as may otherwise be provided herein, the parties to this Memorandum shall be solely responsible for any cost incurred in fulfilling their obligations under this Memorandum and no party shall have any claim against the other party for reimbursement of such cost whether or not a party is in default.

SECTION 4 – MISCELLANEOUS PROVISIONS

- a. This Memorandum shall be executed by original signatures of authorized representatives of each party.
- b. The terms and conditions of this Memorandum shall be binding upon signature and shall inure to the benefit of the successor of authorized representatives of the parties.
- c. The headings set forth in this Memorandum are for convenience only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Memorandum.
- d. This Memorandum sets forth the entire understanding of the parties with respect to the subject matter hereof, supersedes all existing agreements among them concerning the subject, and may be modified only by a written instrument duly executed by each party.
- e. Time is of the essence in the performance of each of the terms and conditions of this Memorandum.
- f. All notices, requests, demands, waivers, amendments and other communications regarding this Memorandum shall be in writing and agreed to by both parties as necessary.

SECTION 5 – SIGNATURES

As authorized representatives of the parties, we hereby enter this Memorandum of Understanding and agree to abide by the terms and conditions contained herein.

Executed and Effective as of this _____ day of _____, 2018

New Braunfels Parks Foundation

City of New Braunfels

David Hubbard, Chairman

Robert Camareno, City Manager

STATE OF TEXAS §

COUNTY OF COMAL §

SUBSCRIBED and SWORN to BEFORE ME, a Notary Public, on this _____ day of _____, 2018 personally appeared David Hubbard, in his capacity as the Chairman of the Board of Directors of New Braunfels Parks Foundation, a Texas non-profit corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he was duly authorized to execute and has executed the same for the purposes and consideration therein expressed.

Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF COMAL §

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public, on this _____ day of _____, 2018 personally appeared Robert Camareno, in his capacity as City Manager for the City of New Braunfels, Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he was duly authorized to execute and has executed the same for the purposes and consideration therein expressed.

Notary Public, State of Texas