

GOODWIN LANE AT ALLIGATOR CREEK
PRELIMINARY DEVELOPMENT AGREEMENT

This Preliminary Development Agreement (this “**Agreement**”) is made and entered into by and between the CITY OF NEW BRAUNFELS, TEXAS, a Texas municipal corporation (“**City**”), and CHESMAR HOMES CT, LTD., a Texas limited partnership (“**Developer**”), effective as of the date City executes this Agreement after Developer first executes Agreement. (“**Effective Date**”).

WHEREAS, on June 27, 2016, Developer submitted a “Master Plan” and “Concept Plan” for the proposed development of the Wasser Ranch Planned Development District, such development being more particularly described on the attached **Exhibit A** (the “**Subdivision**”); and

WHEREAS, Developer submitted an application for platting the Wasser Ranch PD, Unit 1 (“**Unit 1**”) and Wasser Ranch PD, Unit 2 (“**Unit 2**”), for a combined total of 192 single-family residential lots (the “**Plats**”); and

WHEREAS, Developer has recorded Wasser Ranch PD plat for Unit 1 in Document No. 201706044236, Map and Plat Records, Comal County, Texas and Developer has received approval for recording Wasser Ranch PD plat for Unit 2 but has not yet recorded same; and

WHEREAS, Developer desires to work with City to improve flood prone Goodwin Lane at Alligator Creek which is on City’s Roadway Impact Fee Capital Program, by widening the roadway to 24 feet and adding box culverts for the ultimate four-lane divided minor arterial and to elevate the roadway out of the 25-year flood event (the “**Project**” depicted in **Exhibit B**); and

WHEREAS, the total cost of the Project for improving Goodwin Lane at Alligator Creek is roughly estimated at \$3,000,000.00, (the “**Total Costs**”); and

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

WHEREAS, the Ordinance currently requires the payment of roadway impact fees adopted for Service Area No. 3 in the amount of \$1,875 per dwelling unit (the “**Roadway Impact Fees**”) upon the issuance of a building permit for construction of dwelling units on the lots within a recorded plat; and

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

WHEREAS, the Ordinance authorizes 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 City’s thoroughfare system; and

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

WHEREAS, the total amount of roadway impact fees due by Developer for the 192 single-family residential (detached) lots subject to the plat for Unit 1 and plat for Unit 2 is \$360,000.00 based on roadway impact fees currently in effect, as shown on the Roadway Impact Fee Calculation Worksheets attached hereto and incorporated herein by reference as **Exhibit C**; and

WHEREAS, Developer desires to participate in the Project and Total Costs; and

WHEREAS, Developer would like to enter into this Agreement in order to begin working on the initial engineering design work of the Project as set forth in **Exhibit D** (the “**Preliminary Survey and Engineering Work**”) in anticipation that the subsequent development agreement will encompass the remainder of the design and construction for the Project; and

WHEREAS, it is anticipated that the costs of the Preliminary Survey and Engineering Work for the Project will cost Developer the sum of \$111,000 and City desires to offset these specific costs up to a maximum of \$125,000 with Roadway Impact Fees from Unit 1 and Unit 2 as collected; and

WHEREAS, it is further anticipated, that after the Preliminary Survey and Engineering Work, the City and Developer will have a more precise cost estimate for the Total Costs which will be used in drafting the future development agreement for the remaining design and construction of the Project and a reimbursement process by City for Developer.

NOW, THEREFORE, City and Developer agree as follows:

1. Preliminary Survey and Engineering Design of Goodwin Lane at Alligator Creek. Developer, at its initial cost, shall immediately commence with the Preliminary Survey and Engineering Work. The Preliminary Survey and Engineering Work will be completed within six (6) months of the Effective Date, subject to the following sentence. In the event Developer will be delayed or hindered or prevented from the performance of any obligation required under this Agreement by reason of strikes, lockouts, inability to procure labor or materials, fire or other casualty, acts of God, riots, insurrection, war or any other reason not within the reasonable control of Developer then the performance of the foregoing obligation will be excused for a period of such delay and the period for the performance act will be extended for a period equivalent to the period of such delay, SAVE AND EXCEPT that no such period of delay shall total more than thirty (30) days, cumulatively, without the express consent of City.

2. Reimbursement of Preliminary Survey and Engineering Costs. After review and approval by the City of New Braunfels Engineer of the Preliminary Survey and Engineering Work, then Developer shall be eligible for reimbursement for costs not to exceed the maximum of sum of \$125,000.00. Once approved, Developer shall be reimbursed within 45 days of approval from the collected roadway impact fees for Unit 1. In the event, the total amount of collected Roadway Impact fees for Unit 1 is less than the approved costs for the Preliminary Survey and Engineering Work, then a credit pool shall be established whereby City shall credit Developer the amount of any future collected Roadway Impact Fees from Units 1 and 2 until Developer has received the total amount of approved costs under this Agreement.

3. Subsequent Event. In the event, the Parties do not move forward and enter into a subsequent development agreement to complete the Project, Developer after receiving full

reimbursement for the costs under this Agreement, shall assign each and every right of ownership of the Preliminary Survey and Engineering Work to City.

4. 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 thirty (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 thirty (30) days so long as the defaulting party commences activities to cure such default within thirty (30) days and continues to diligently pursue such cure (such period of thirty (30) days or longer as may be applicable, the “*Cure Period*”). If the defaulting entity does not cure the default within the applicable Cure Period, and if a non-defaulting entity has not waived the default in writing, then after the expiration of the applicable Cure Period, the non-defaulting entity may, in its sole discretion, and without prejudice to any other right or remedy allowed under this Agreement, terminate this Agreement by written notice to the defaulting party or seek any other relief available at law or in equity, all of which are cumulative and are in addition to any other right or remedy given under this Agreement which may now or subsequently exist in law or in equity by statute or otherwise, and the exercise of any one remedy does not preclude the exercise of another. Notwithstanding any provision herein to the contrary, if notice of default has been given by one party to the other party, and the other party believes that it is not in default or there is a dispute as to whether the default has been cured, then the parties shall make a good faith effort to resolve the dispute before this Agreement is declared terminated or in default.

5. City Code of Ordinances/Enforcement. This Agreement is made subject to the existing provisions of the Charter of City, its rules and regulations, procedures, and ordinances, present and future, and all applicable laws of the State of Texas and the United States. The parties agree that this Agreement will be performable in New Braunfels, Texas, and that if legal action is necessary to enforce this Agreement, exclusive venue shall lie in Comal County, Texas.

6. Notice. Any notice, communication, request, demand, reply or advice (severally and collectively referred to as “*Notice*”) in this Agreement required or permitted to be given, made or accepted must be in writing. Notice may, unless otherwise specifically provided herein, be given or served (a) by depositing the same in a receptacle regularly maintained and serviced by the United States Postal Service, postage pre-paid, registered or certified, and addressed to the party to be notified, with return receipt requested, (b) by delivering the same to such party, or an agent of such party, in person or by commercial courier or (c) by regular mail, facsimile transmission, email or other commercially reasonable means addressed to the party to be notified. Notice sent by registered or certified mail in the manner hereinabove described shall be effective on the date of deposit as evidenced by the mail receipt stamped by the post office. Notice given in any other manner shall be effective only if and when received by the party to be notified. City’s and Developer’s respective legal counsel may give any notice on its client’s behalf. For the purposes of Notice, the addresses of the parties shall, until changed as provided below, be as follows:

City:

City Engineer
City of New Braunfels
550 Landa Street
New Braunfels, Texas 78130

With a copy to: City Attorney
City of New Braunfels
550 Landa Street
New Braunfels, Texas 78130

Developer: Chesmar Homes CT, Ltd.
1846 North Loop 1604, Suite 200
San Antonio, Texas 78248
Attention: Bart Swider

With a copy to: Chesmar Homes Ct, Ltd.
400 Gears Road, Suite 330
Houston, Texas 77067
Attention: Donald Klein

Mr. Ronald W. Hagauer
Attorney at Law
4630 N. Loop 1604, Suite 514
San Antonio TX 78249

The addresses and addressees, for the purpose of this Agreement, may be changed by City and Developer by giving notice of such change to the other party in the manner provided herein for giving notice. For the purpose of changing such addresses or addressees only, unless and until such written notice is received, the last address and addressee stated herein will be deemed to continue in effect for all purposes.

7. Miscellaneous.

- a. This Agreement may be amended only by the written agreement of 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.
- c. The findings and recitals in the recitals of this Agreement are hereby found to be true and correct and are hereby incorporated by reference as if set out in full.

Notary Public Signature

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:

CHESMAR HOMES CT, LTD.,
a Texas limited partnership

By: Chesmar CT, LLC, a Texas limited liability company, General Partner of the Partnership, by its manager
Donald P. Klein

By: _____
Donald P. Klein, Manager

STATE OF TEXAS §

COUNTY OF _____ §

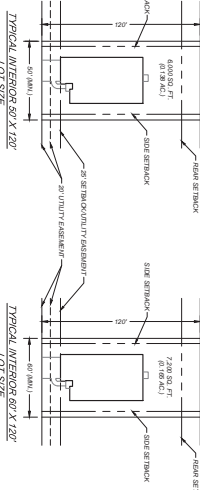
This instrument was acknowledged before me the ____ day of _____, 2018, by Donald P. Klein, Manager of Chesmar CT, LLC, a Texas limited liability company, General Partner of Chesmar Homes CT, Ltd, a Texas limited partnership, on behalf of said limited liability company and limited partnership.

(seal)

Notary Public Signature

EXHIBIT "A"

LAND USE DENSITY TABLE								
UNITS	AREA (ACRES)	DWELLING UNITS	50' LOTS	60' LOTS	EXISTING HOUSHOLD	PARKLAND (ACRES)	OPEN SPACE/RANGE EQUINE (ACRES)	DENSITY (DWELLING UNITS/ACRES)
1	23.44	79	61	17	1	1.92	2.14	3.37
2	55.550	113	47	66	0	0.67	2.476	2.03
3	26.88	111	70	41	0	0.00	2.87	4.13
TOTAL	105.87	303	178	124	1	2.59	29.77	2.86



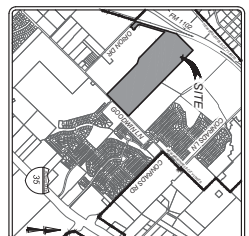
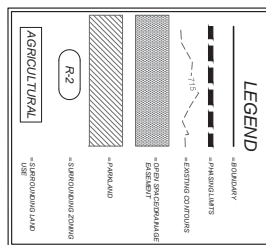
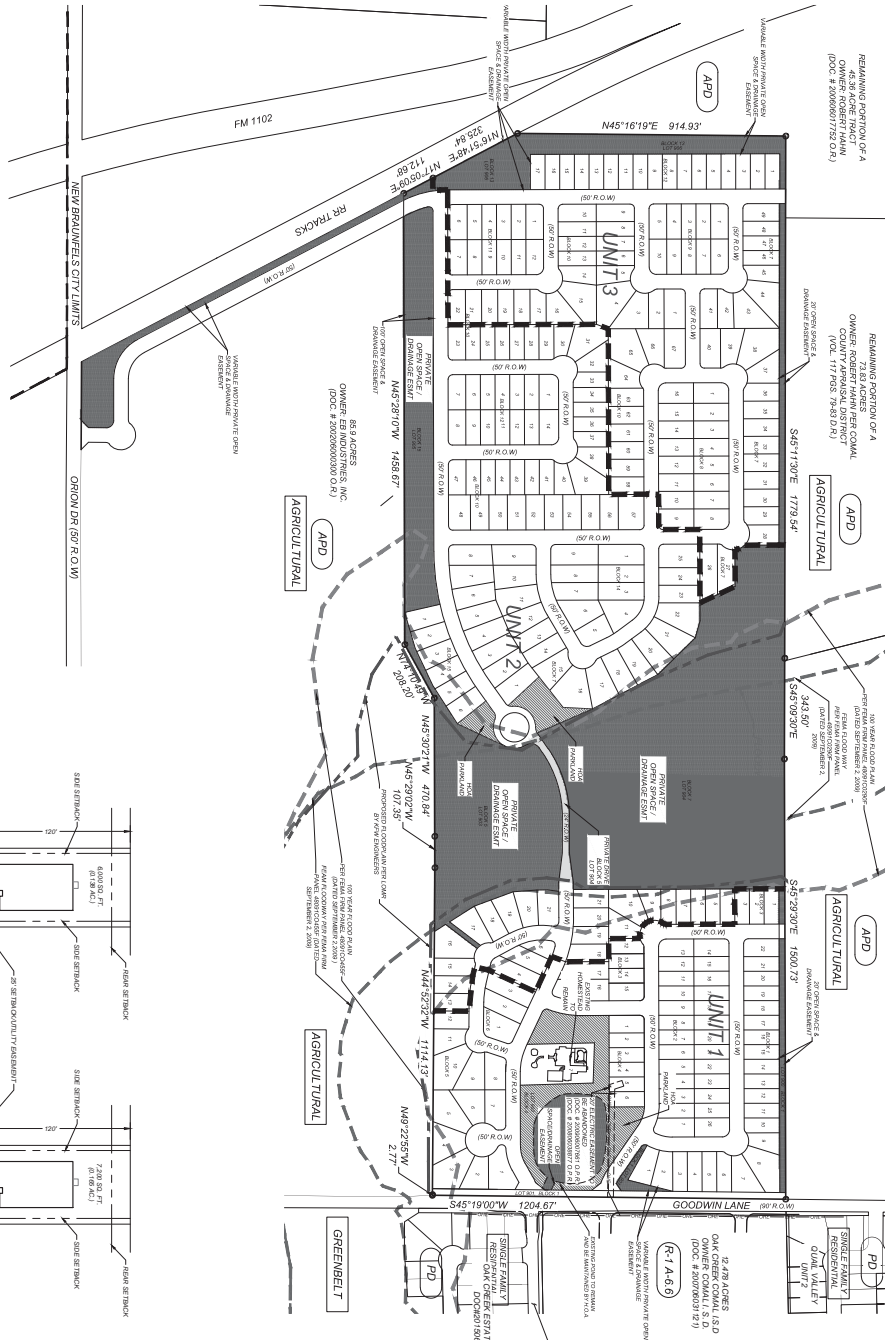
1. THE PROPOSED LOT LAYOUTS ARE BASED ON THE ASSUMPTION THAT THE PROPOSED LOT LAYOUTS WILL BE USED FOR RESIDENTIAL PURPOSES. ANY USE OF THE PROPOSED LOT LAYOUTS FOR OTHER PURPOSES IS AT THE USER'S RISK.
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OWNER: DOWNSIDE DEVELOPMENT, LLC
PROJECT: NEW BRAUNFELS, TX
SITE: 200
SAN ANTONIO, TX 78241
PHONE: (210) 973-3944
FAX: (210) 973-3944

ENGINEER: KFW ENGINEERS
PROJECT: NEW BRAUNFELS, TX
SITE: 200
SAN ANTONIO, TX 78241
PHONE: (210) 973-3944
FAX: (210) 973-3944

MASTER PLAN
WASSER RANCH
NEW BRAUNFELS, TX

MP-1



LOCATION MAP
NOT-TO-SCALE

REVISIONS

ISSUE DATE

KFW
ENGINEERS + SURVEYORS
1600 Hubbard Rd. Bldg. 40, San Antonio, TX 78201
Phone: (210) 973-3944 • Fax: (210) 973-3944
Toll Free: 800-455-1111 • TDD: 800-455-1111

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ROADWAY IMPACT FEE CALCULATION WORKSHEETS



Roadway Impact Fee Calculation Worksheet City of New Braunfels, Texas

Development Name: Wasser Ranch Unit 2

Applicant: Insert Applicant Name

Legal Description (Lot, Block): Wasser Ranch, Unit-2

Case Number: PL-17-001

Date: 4/4/2017

Worksheet Last Updated: 11/19/2013

Was the final plat approved after January 1, 2014?

Yes

Service Area* (select from list):

SA 3

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

**THIS WORKSHEET IS FOR ESTIMATION PURPOSES
ONLY - ACTUAL FEES WILL BE DETERMINED AT THE
TIME OF BUILDING PERMIT**

ROADWAY IMPACT FEE CALCULATION:

Land Uses (select from list):

Single-Family Detached Housing

Development Unit:

Dwelling Unit

of Units:

113

Maximum Assessable Fee¹
Impact Fee Per Development Unit: \$ 2,280.00
Roadway Impact Fee: \$ 257,640.00

Potential Collection Amounts
Impact Fee Per Development Unit: \$ 1,875.00
Roadway Impact Fee: \$ 211,875.00

MAXIMUM ASSESSABLE ROADWAY IMPACT FEE: \$ 257,640.00

TOTAL POTENTIAL ROADWAY IMPACT FEE COLLECTION AMOUNT: \$ 211,875.00

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

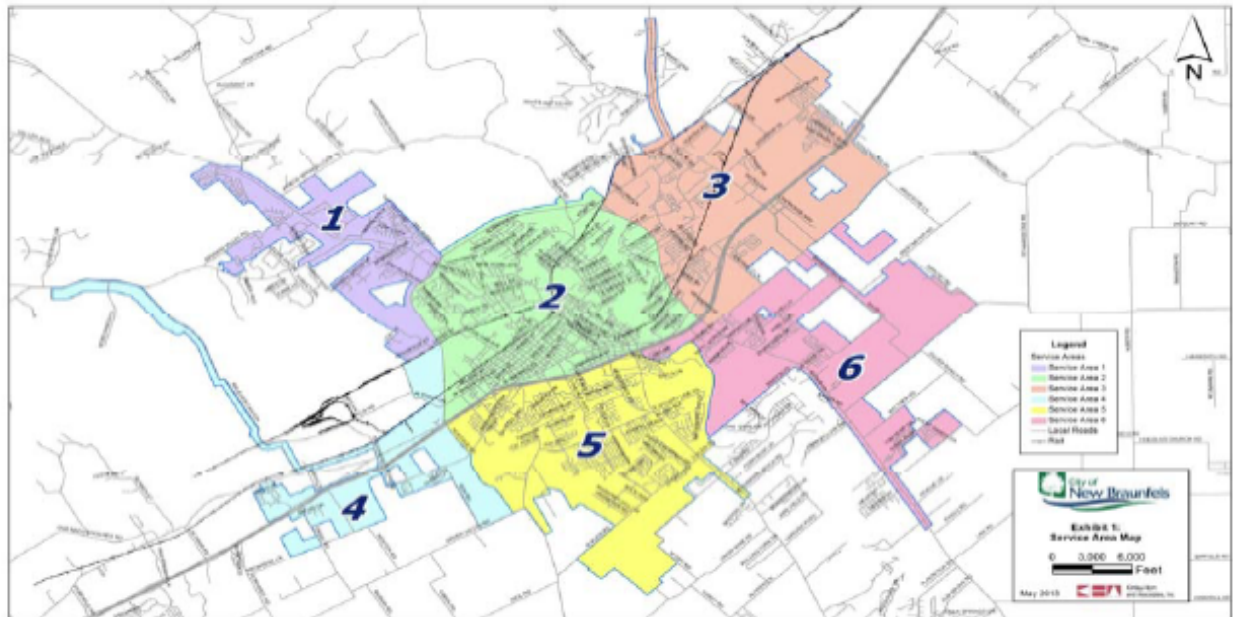


EXHIBIT “D”

PRELIMINARY SURVEY AND ENGINEERING WORK

Project Management (Not to Exceed \$5,000 Allowance)

This task includes project planning and project meetings on a limited basis. An Additional Services Request will be required for project meetings should the budget exceed this allocation.

Design Survey (\$15,000)

KFW will provide design topography required for HEC-RAS modeling of Alligator Creek. The survey will consist of existing improvements on Goodwin Lane from Orion to Pader.

Hydraulic Analysis (\$18,000)

KFW will model the existing and proposed conditions floodplain for the 2, 10, 25, 50, and 100-year flood event.

30% Roadway Plan & Profile (\$19,500)

KFW will provide a 30% plan and profile of the proposed roadway.

30% Culvert Plan & Profile (\$21,500)

KFW will design the culverts to contain the 25-year flood event allowing the 100-year flood event overtop the road in a safe condition.

Right-of-Way Analysis (Not to Exceed \$4,500 Allowance)

KFW will research the existing ROW and determine the required ROW acquisition. Survey documents are not included in this proposal. We will bill this time hourly. If more time is required than the budget allows, we will ask for additional services ahead of time.

Utility Coordination (\$2,500)

KFW will meet with the various utility providers to determine potential conflicts and reconstruction of outdated utilities.

Jurisdictional Waters Determination (\$6,000)

The Goodwin Lane Improvements will require a Preliminary Jurisdictional Determination to determine the extent of potential jurisdictional waters. This will allow us to adjust the design as needed to minimize impacts.

Mass Grading Plan (\$7,500)

This task includes mass grading of the lots as required by the Developer's specification. This does not represent a detailed calculation of each lot, but will include 1-foot proposed contours and spot elevations at lot corners and breakpoints.

Geotechnical Engineering (\$6,000)

The proposed investigation of the site will involve one site visit to the subject site and six points of exploration. The six points of exploration will involve four explanatory test borings, advanced to depths of 25 feet or shallow auger refusal with CME-55 drill rig in the area of the proposed building, as well as two test borings advanced to 15 feet in the proposed parking areas.

Sidewalk Plans (\$5,500)

Per the city's request provide a Sidewalk plans to connect Oaks creek estates with the elementary school.

EXCLUSIONS

This proposal is specifically limited to the Scope of Services, with any and all other services or matters being expressly excluded. Without limiting the generality of the foregoing sentence, and by way of example only, the following items are assumed and/or excluded from this proposal:

- Endangered Species Study
- Structural design, including retaining walls
- Landscape, Lighting, and Irrigation Plans
- Tree ordinance compliance
- Platting services
- Storm drain detention design
- Construction documents
- Preparation of As-Built Drawings
- Design of a fire sprinkler system, hydraulic calculations, or a fire flow test
- Submittal for a SAWS Utility Service Agreement
- Flood Study
- Construction staking services
- Construction phase services
- Design of public utility
- Fire flow tests and hydraulic calculations will be billed as a direct expense.

- Exact service entrances and sizes for domestic water, fire lines, sanitary sewer, gas, and electric services will be provided by the Architect or MEP Engineer.
- All agency review and impact fees are to be provided by the client.
- Additional services requested by the client will be compensated by a negotiated lump sum fee. Additional services shall include, but are not limited to, any revisions to plans to accommodate site plan revisions after computations are complete.

Fee Summary:

Project Management (Allowance)	\$5,000
Design Survey	\$15,000
Hydraulic Analysis	\$18,000
30% Roadway Plan & Profile	\$19,500
30% Culvert Plan & Profile	\$21,500
Right-of-Way Analysis (Allowance)	\$4,500
Utility Coordination	\$2,500
Jurisdictional Waters Determination	\$6,000
Mass Grading Plan	\$7,500
Geotechnical Engineering	\$6,000
Sidewalk Plans	<u>\$5,500</u>

Total Lump Sum Fee:	\$111,000
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