

**AUGUST FIELDS SUBDIVISION – BROOK AVENUE
ALVES LANE CONNECTION
DEVELOPMENT AGREEMENT**

This Development Agreement (this “**Agreement**”) is made and entered into by and between the CITY OF NEW BRAUNFELS, TEXAS, a Texas municipal corporation (“**City**”), and AUGUST FIELDS, LP, a Texas limited partnership (“**Developer**”), effective as of the date City executes this Agreement after Developer first executes Agreement. (“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”); and

WHEREAS, The City, as part of the 2013 Bond Program, is currently in the construction phase of the Alves Lane Improvements Project which will provide drainage improvements as well as a 3-lane road section to Alves Lane from Highway 46 to Barbarosa Road (the “**Project**”).

WHEREAS, Developer desires to work with City to make a connection to the proposed Brook Ave. from Alves Lane and as part of the Project, as shown on the attached **Exhibit “B”**, and has agreed to pay all the necessary design and construction costs;

NOW, THEREFORE, City and Developer agree as follows:

1. Survey and Engineering Design. Within thirty (30) days of the execution of this agreement, Developer shall deposit with the City of New Braunfels the sum of \$7,500.00 for the Engineering, Design and Survey costs associated with the requested modifications to the Project. Upon receipt of the funds, the City shall engage the services of M&S Engineering to perform the scope of work described on the attached **Exhibit “C”**.

2. Cost of Construction. Upon delivery of the Engineering, Design and Survey from M&S Engineering, the City shall notify the Developer of the costs associated with constructing the modifications. Upon receipt of the funds for either or both modifications, the City shall execute a change order with the construction contractor for the Project to add the approved modification(s).

3. Right-of-Way Dedication. Upon delivery of Engineering, Design and Survey from M&S Engineering, the Developer shall convey the necessary right-of-way and utility easements as necessary to accommodate the modification(s). The Developer will be responsible for preparing all metes and bounds descriptions and property exhibits necessary to convey the right-of-way and utility easement. The City shall prepare and deliver to the Developer a General Warranty Deed and Public Utility Easement which shall be executed by the Developer within 10 days of delivery. There shall be no compensation due to the Developer for the conveyance of the right-of-way or utility easement. The right-of-way and utility easement shall be conveyed regardless of Developer’s intent to proceed with funding construction of the modification.

4. Subsequent Event. In the event, the Developer elects to not move forward and fund the construction of either or both of the modifications, City, after all provisions in this Agreement are met, shall assign each and every right of ownership of the Engineering, Design

and Survey from M&S Engineering as it pertains to this modification to the Developer.

5. 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.

6. 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.

7. 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 Manager
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: August Fields, LP
501 Vale Street
Austin, Texas 78746
Attention: Barth Timmermann
Email: barhtimm@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

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.

8. 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.
- d. This Agreement shall be approved by the City Council of City by formal action and shall be effective upon the signature of all parties hereto. City shall be the last Party to execute this Agreement.

- e. Developer and City hereby covenant and agree that this Agreement cannot be assigned, transferred or conveyed, in whole or in part, to a third party without the prior written consent of the other party.

CITY:

CITY OF NEW BRAUNFELS, TEXAS

By: _____
Robert Camareno, City Manager

APPROVED AS TO FORM:

Valeria M. Acevedo, City Attorney

STATE OF TEXAS §

COUNTY OF COMAL §

This instrument was acknowledged before me on the ____ day of _____, 2018, by Robert Camareno, City Manager 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 §

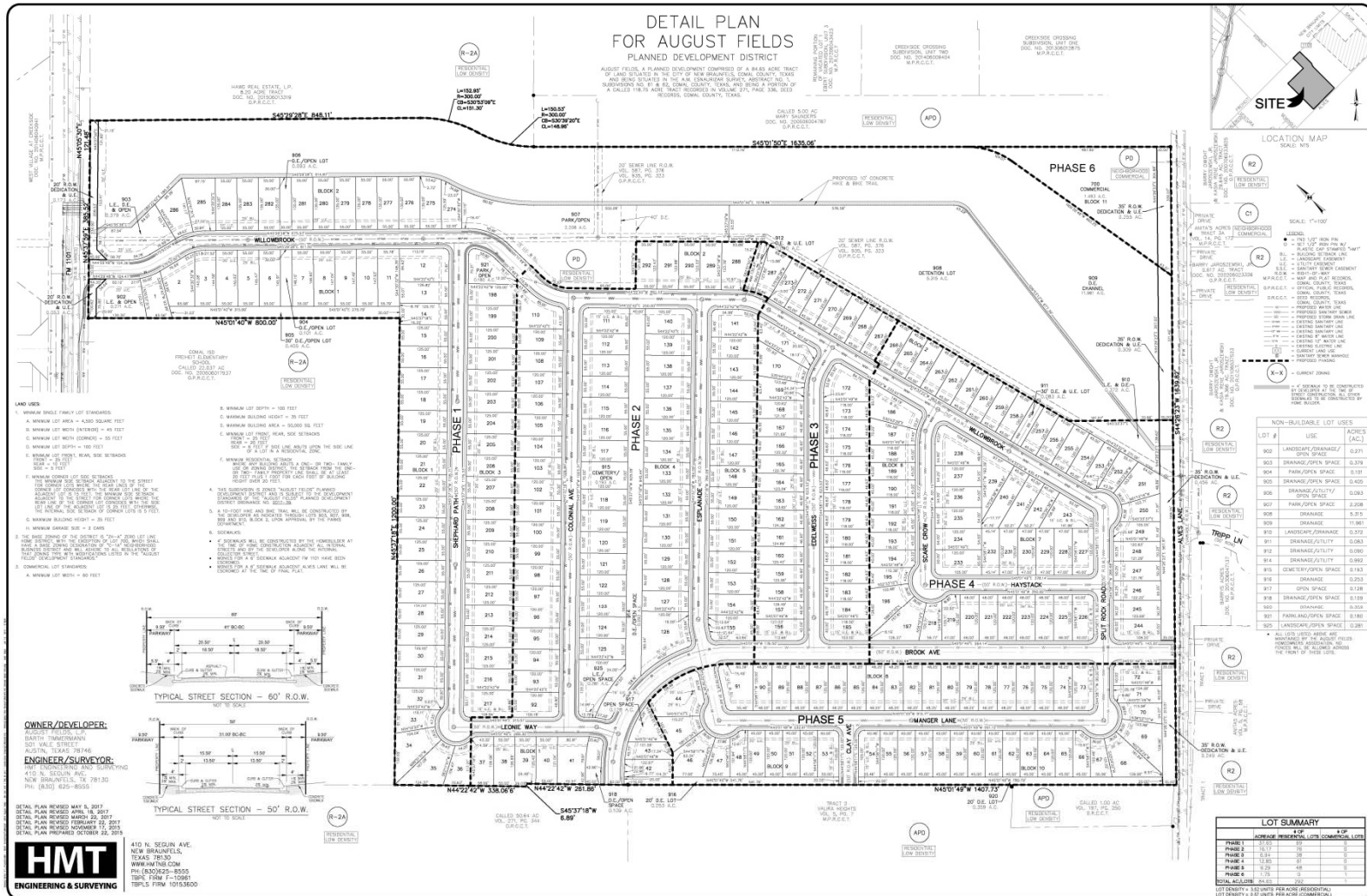
COUNTY OF _____ §

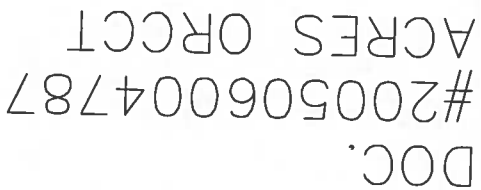
This instrument was acknowledged before me the ____ day of _____,
2018, by Barth Timmermann, President of Greenview Development Corp., a Texas corporation,
General Partner of August Fields, L.P., a Texas limited partnership, on behalf of said corporation
and limited partnership.

(seal)

Notary Public Signature

EXHIBIT “A”





AUGUST FIELD PROPOSED ENTRANCE

HMT
ENGINEERING & SURVEYING
410 N. SEGUN AV.
NEW BRAUNFELS,
TEXAS, 78130
PH: (830)625-8655
FAX: (830)625-8556
WWW.HMTNB.COM
TBPB FIRM F-10961



October 9, 2018

Adam Michie, P.E.
Capital Programs Project Manager
City of New Braunfels
424 S. Castell Ave
New Braunfels, Texas 78130

**Re: August Field Development Storm Sewer and Brook Avenue Intersection Improvements
Request for Additional Engineering Fees
Alves Lane Street and Drainage Improvements Project**

Dear Mr. Michie,

M&S Engineering, LLC is providing this fee proposal to provide an update to the plan set for the coordination of the August Fields development with the Alves Lane Street and Drainage Improvements Project.

Scope of Work

Design

- M&S will coordinate with HMT to confirm location and design of the Brook intersection in able to incorporate this into the Alves Lane plan set.
- M&S will update the storm sewer plan and profile to relocate a storm sewer inlet that is in conflict with the proposed intersection of Brook Avenue related to the August Fields development. The intersection improvements will be made to the new apparent ROW line as shown in the HMT plans that includes the ROW dedication required for this project.
- M&S will update the street plan to relocate the storm sewer line and show the intersection location.
- M&S will prepare an intersection sheet showing the design of the Brook Avenue intersection.
- M&S will update the street striping plan to incorporate crosswalk striping and signage for the Brook Avenue intersection.
- M&S will update the sign sheet to include the signage for Brook Avenue intersection.

Schedule

M&S Engineering will complete the design and coordination in an effort to minimize impacts to the project schedule.



Compensation

M&S Engineering proposes the lump sum basis fee of \$7,500, not be exceeded without written permission from the City of New Braunfels.

Terms and Conditions

M&S Engineering proposes to complete these services in accordance with our current Engineering Services Agreement for Street and Drainage Projects, dated November 25, 2013.

If you have any questions about this fee proposal, please do not hesitate to contact our office.

Sincerely,

Gary W. Freeland, P.E.
Project Manager
M&S Engineering, LLC