

STRATEGIC PARTNERSHIP AGREEMENT

between the

CITY OF NEW BRAUNFELS, TEXAS

and the

COMAL COUNTY WATER IMPROVEMENT DISTRICT NO. 3

STATE OF TEXAS §

§

COUNTY OF COMAL §

This Strategic Partnership Agreement (this “**Agreement**”) is between THE CITY OF NEW BRAUNFELS, TEXAS, a home rule municipal corporation (“**City**”), acting by and through its duly authorized Mayor, and the COMAL COUNTY WATER IMPROVEMENT DISTRICT NO. 3, a Texas water control and improvement district (“**District**”), acting by and through its duly authorized Board of Directors, under the authority of Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 51 of the Texas Water Code, as amended.

RECITALS:

- A. Texas Local Government Code, Section 43.0751 (the “Act”) authorizes the City and the District to negotiate and enter into a strategic partnership agreement by mutual consent.
- B. The District and the City desire that effective, efficient, and responsible local government be provided to citizens of the District and the City before, during, and after the City annexes the District for full purposes. To that end, the District and the City also desire to avoid any unnecessary duplication of services and taxes, and to provide for the orderly and seamless succession of the District.
- C. By this Agreement, the Parties desire to establish, among other things, (i) terms and conditions of the City’s limited purpose annexation of certain lands comprising the commercial portion of the District, as described in this Agreement and in accordance with the Act and (ii) provisions regarding the City’s delivery of City Services (hereinafter defined) prior to full purpose annexation of the District, in accordance with the Texas Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.
- D. The District and the City acknowledge that this Agreement does not require the District to provide revenue to the City solely for the purpose of obtaining an agreement with the City to forego annexation of the District.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained in this Agreement, and other good and valuable consideration, the District and the City agree as follows:

ARTICLE I FINDINGS

- 1.1 The District is a water control and improvement district created pursuant to Article XVI, Section 59 of the Texas Constitution, and Chapters 49 and 51 of the Texas Water Code.
- 1.2 The District's boundaries include the approximately 1,888 acres of land in Comal County shown in the map attached as Exhibit A, that is located outside of the corporate limits of the City and within the extra-territorial jurisdiction ("ETJ") of the City (the "Eligible Property").
- 1.3 The land subject to this Agreement consists of the Eligible Property as shown on Exhibit A and described in Exhibit B attached to this Agreement.
- 1.4 The land initially subject to limited purpose annexation includes approximately acres of property designated for commercial development (the "Initial Tract") as shown in Exhibit C and described in Exhibit D and attached to this Agreement.
- 1.5 The District and the City acknowledge and agree that, in accordance with the requirements of Subsection (p)(2) of the Act, this Agreement provides benefits to the City and the District, including revenue, services, and regulatory benefits which are reasonable and equitable to both the District and the City.
- 1.6 The City and the District desire to enter into this Agreement providing for limited purpose annexation of the Limited Purposes Tract (defined below) for the purpose of collecting Sales and Use Tax Revenues within the annexed areas in accordance with Subsection (k) of the Act.
- 1.7 The District will provide notice of two public hearings concerning the adoption of this Agreement and the proposed limited purpose annexation of the Limited Purposes Tract, in accordance with the procedural requirements of the Act.
- 1.8 The Board of Directors of the District conducted two public hearings regarding this Agreement and the proposed limited purpose annexation of the Limited Purposes Tract on _____, at ____ p.m. within the District at _____, New Braunfels, Texas and on _____, at ____ p.m. within the District at _____, New Braunfels, Texas, at which members of the public who wished to present testimony or evidence regarding this Agreement and the proposed limited purpose annexation were given the opportunity to do so in accordance with the procedural requirements of the Act.
- 1.9 The Board of Directors of the District approved this Agreement on _____, 2021, in open session at a meeting held in accordance with Chapter 551 of the Texas Government Code.

- 1.10 The City provided notice of two public hearings concerning the adoption of this Agreement and the proposed limited purpose annexation of the Limited Purposes Tract, in accordance with the procedural requirements of the Act.
- 1.11 The City Council conducted two public hearings regarding this Agreement and the proposed limited purpose annexation of the Limited Purposes Tract on _____, at _____, 2021 at City Hall, 550 Landa St., New Braunfels, Texas and on _____, 2021, at _____ at City Hall, 550 Landa St., New Braunfels, Texas, at which members of the public who wished to present testimony or evidence regarding this Agreement and the proposed limited purpose annexation were given the opportunity to do so in accordance with the procedural requirements of the Act.
- 1.12 The City Council approved this Agreement on _____, 2021, in open session at a meeting held in accordance with Chapter 551 of the Texas Government Code, which approval occurred after the Board of Directors of the District approved this Agreement.
- 1.13 All procedural requirements imposed by law for the execution and adoption of this Agreement have been met.

ARTICLE II DEFINITIONS

- 2.1 “Act” means Texas Local Government Code § 43.0751 and any amendments thereto.
- 2.2 “Agreement” means this Strategic Partnership Agreement between the City and the District, as may be amended from time to time pursuant to the terms of this Agreement.
- 2.3 “Board” means the Board of Directors of the District.
- 2.4 “City” means the City of New Braunfels, a Texas home rule municipal corporation, located in Comal and Guadalupe Counties, Texas.
- 2.5 “City Council” means the elected body of the City of New Braunfels, as such term is defined in Section 1.02 of the Charter.
- 2.6 “City Manager” means the chief administrative officer of the City.
- 2.7 “City Services” shall have the meaning described in Section 6.2 hereof.
- 2.8 “Comptroller” means the Comptroller of Public Accounts of the State of Texas.
- 2.9 “Development Agreement” means the means the Development Agreement between the City and Southstar at Mayfair, LLC for Proposed Mixed Use Development, including any assignments as authorized therein and future

amendments thereto. The Development Agreement provides for certain public services and facilities in the District.

- 2.10 “District” means the Comal County Water Improvement District No. 3, a water control and improvement district created or operating under the authority of Article XVI, Section 59 of the Texas Constitution and Chapters 49 and 51 of the Texas Water Code, as amended.
- 2.11 “District Type B Revenues” has the meaning set forth in the definition of “Sales and Use Tax Revenues”.
- 2.12 “Effective Date” means the date on which the City Council adopts this Agreement, as provided in Section 3.3.
- 2.13 “Eligible Property” means all real property within the borders of the District that is subject to the Development Agreement.
- 2.14 “ETJ” means the extraterritorial jurisdiction of the City.
- 2.15 “ESD No. ____” shall have the meaning described in Section 6.1 hereof.
- 2.16 “Fire and EMS Contract” shall have the meaning described in Section 6.1 hereof.
- 2.17 “Fire and EMS Services” shall have the meaning described in Section 6.1 hereof.
- 2.18 “Full Purpose Annexation” means full purpose annexation as provided for in the Act.
- 2.19 “Initial Tract” means all of that certain approximately ____ acre tract located within the District and in Comal County, Texas as shown in **Exhibit C** and described in **Exhibit D**.
- 2.20 “Landowner” means Southstar at Mayfair, LLC, a Texas limited liability company, its successors or assigns.
- 2.21 “Limited Purpose Annexation” means annexation for the limited purpose of collecting Sales and Use Tax as provided for in the Act.
- 2.22 “Limited Purpose Tract” means the Initial Tract and all or any portion(s) of the Eligible Property after it has been annexed for limited purposes pursuant to Section 3.9 of this Agreement.
- 2.23 “Notice” means notice as defined in Section 8.3 of this Agreement.
- 2.24 “Party” means, individually, the City or the District, their successors and assigns.
- 2.25 “Parties” means, together, the City and the District.
- 2.26 “Sales and Use Tax Revenues” means those revenues (a) received by the City from the sales and use tax authorized to be imposed by the City on sales

consummated at locations within the Limited Purpose Tract pursuant to the Act and Chapter 321 of the Texas Tax Code, and to the extent not otherwise controlled or regulated, in whole or in part, by another governmental entity, authority, or applicable law, ordinance, rule, or regulation less (b) any portion of such sales and use tax dedicated to the purposes described in Chapters 501-505 of the Texas Local Government Code (such portion being referred to as the "District Type B Revenues").

- 2.27 "Sector Plan" shall have the meaning described in the Development Agreement.
- 2.28 "TIA" means the Project Transportation Plan dated _____, prepared by _____ and referred to in the Development Agreement, as may be amended from time to time.
- 2.29 "Trigger Date" shall mean the date that the owner of property designated as "commercial" or "mixed commercial and residential" property, as described in an approved Sector Plan and Section 3.9, provides written notice to the City of a commercial use, accompanied with a copy of the building permits for such property, such notice to be delivered to the City no later than thirty (30) days after the issuance of such permit.

ARTICLE III LIMITED-PURPOSE ANNEXATION

- 3.1 Generally. Subject to the terms of this Agreement and the Development Agreement, the District and the City agree that the City, from time to time, shall annex certain property included in approved plats within the City for the limited purpose of collecting Sales and Use Tax Revenues within such annexed property pursuant to Subsection (k) of the Act. The District and the City further agree that the City shall annex such properties for limited purposes in accordance with Section 3.9 of this Agreement within one hundred eighty (180) days following the recording in the Comal County Real Property Records of a final plat of such property within the Eligible Property.
- 3.2 Limited Purpose Annexation Procedures. The City Council shall adopt a Limited Purpose Annexation ordinance consistent with this Agreement at a meeting conducted in accordance with Chapter 551 of the Texas Government Code, and the District acknowledges that no additional notices, hearings, or other procedures are required by law in order to approve such Limited Purpose Annexation of all or any portion of the Eligible Property.
- 3.3 Effective Date. Pursuant to Subsection (c) of the Act, this Agreement is effective on _____, 2021, the date of adoption of this Agreement by the City.
- 3.4 Filing in Property Records. Upon approval by the City, the City or the District shall file this Agreement in the Real Property Records of Comal County, Texas. **As provided in § 43.0751(c) of the Act, this Agreement binds each owner as of the Effective Date and each future owner of land included within the**

District's boundaries. Landowner has executed this Agreement to evidence its consent to the Agreement and the recording of the Agreement.

- 3.5 Property Taxes and District Liability for Debts of the City. During the term of this Agreement, except as provided in Article IV regarding Sales and Use Tax, (a) owners of taxable property within the District (by reason of mere ownership of that land) shall not be liable for any present or future debts of the City until Full Purpose Annexation takes effect in accordance with the Development Agreement, and (b) current and future ad valorem taxes levied by the City will not be levied on taxable property within the District until Full Purpose Annexation takes effect in accordance with the Development Agreement, or as otherwise authorized by future statutory amendments.
- 3.6 Powers and Functions Retained by the District. After Limited Purpose Annexation under this Agreement, the District shall continue to be authorized to exercise all powers and functions of the District, and to provide the services authorized by those powers within its boundaries, pursuant to existing law or any amendments or additions thereto. The District's assets, liabilities, indebtedness and obligations will remain the responsibility of the District. Except as provided by law, upon Full Purpose Annexation, neither the City nor any owners of taxable property within the City (by reason of mere ownership of that land) shall be liable for any present or future debts of the District.
- 3.7 Continuing Right. The City's rights under Section 3.1 herein to annex all or any portion of the Eligible Property for the limited purpose of collecting Sales and Use Tax Revenues within the Limited Purpose Tract are continuing and may be exercised through the adoption of multiple annexation ordinances for portions of the Limited Purpose Tract.
- 3.8 District Consents to Non-Contiguous Limited Purposes Annexation. The District consents to the annexation of non-contiguous portions of the Eligible Property as authorized by Subsection (r) of the Act.
- 3.9 Additional Land Annexed for Limited Purposes. The City's approval of a Sector Plan in the Eligible Property that contains property designated for commercial or "mixed commercial and residential" development that is not yet included in the Limited Purposes Tract shall serve as the City's agreement to annex such additional property into the City for limited purposes (whether or not contiguous to the then-existing Limited Purpose Tract). For purposes of clarity, it is agreed that only that portion of the Eligible Property that is designated as "commercial" or "mixed commercial and residential" development on an approved Sector Plan will be annexed into the City and made a part of the Limited Purpose Tract. The City shall take all necessary steps under this Agreement to complete the limited purpose annexation of such commercial or "mixed commercial and residential" property approved in such Sector Plan upon the recording of a Final Plat containing such property and upon annexation such additional land shall be considered part of the Limited Purpose Tract.

ARTICLE IV VOTING RIGHTS IN THE DISTRICT

- 4.1 Qualified Voters. The qualified voters residing within the Limited Purpose Tract may vote in City elections pursuant to Texas Local Government Code Section 43.130(a). Voting rights are subject to all federal and state laws and regulations.
- 4.2 Eligibility to Vote. On or after the fifteenth (15th) day but before the fifth (5th) day before the date of the first election held in which the residents of the Limited Purpose Tract are entitled to vote as set out in Section 4.1 herein, the City, at its own expense, shall publish a quarter page advertisement in a newspaper of general circulation in the City notifying residents of the Limited Purpose Tract of their eligibility to vote in the election and stating the location of all polling places for the residents. The District, at its own expense, may provide for similar notice in a newspaper of general circulation in the District or otherwise.

ARTICLE V SALES AND USE TAX

- 5.1 Imposition of Sales and Use Tax. The City shall impose a sales and use tax within the Limited Purpose Tract pursuant to Subsection (k) of the Act. The sales and use tax shall be imposed on all eligible commercial activities at the rate of 1.5%, or such other maximum rate allowed under Chapter 321 of the Texas Tax Code or otherwise permitted under the laws of the State of Texas and imposed by the City. Collection of the Sales and Use Tax Revenues shall take effect on the date described in Texas Tax Code Section 321.102.
- 5.2 Payment of Sales and Use Tax to the District. In return for the benefits received by the City pursuant to this Agreement, the City shall pay to the District an amount equal to forty percent (40%) of the Sales and Use Tax Revenues reported on the "Confidential Local Tax Information Report" for the Limited Purpose Tract provided by the Comptroller and received by the City from the Comptroller (less the adjustment for the District Type B Revenues) for the first five (5) years after a certificate of occupancy is issued for the initial sales tax producing property within any portion of the Limited Purpose Tract designated as "commercial" or "mixed commercial and residential" on the applicable Sector Plan. The District and the City acknowledge and understand that the Comptroller may not issue its first Confidential Local Tax Information Report reflecting Sales and Use Tax Revenues from the Limited Purpose Tract until a minimum of four (4) businesses within the Limited Purpose Tract are collecting Sales and Use Tax and that no payment will be due from the City to the District until such a report is received, provided that when the first such report is received, the City will make any retroactive payments due to the District in accordance with this Agreement to reflect any previously received but not reported Sales and Use Taxes from businesses within the Limited Purpose Tract. The City, beginning in the sixth (6th) year, shall pay to the District an amount equal to fifty percent (50%) of the Sales and Use Tax Revenues reported on the "Confidential Local Tax Information Report" for the Limited Purpose Tract provided by the Comptroller

and received by the City from the Comptroller (less the adjustment for the District Type B Revenues). The City shall deliver the District's portion of the Sales and Use Tax revenues to the District within thirty (30) days of the City's receipt of that Report from the Comptroller, by regular U.S. Mail or other method of delivery mutually acceptable to the Parties. Texas Government Code Chapter 2251 shall govern and provide the penalty if the City fails to deliver the District's portion in a timely manner. For the purposes of determining the applicable overdue date under Chapter 2251, the City is deemed to have received an invoice from the District on the date the City receives the Sales and Use Tax Revenues from the Comptroller without further action from the District.

- 5.3 Amended and Supplemental Reports. If and when the Comptroller adjusts its calculations of Sales and Use Tax Revenues generated within the boundaries of the Limited Purpose Tract or issues supplemental tax reports, then any revenues reflected in such adjusted calculations or supplemental reports will be divided and paid as provided above, and the District and the City agree to pay the other any sums necessary to correct any prior over or under distributions. The City and the District agree that, for purposes of Section 321.3022 of the Texas Tax Code, this Agreement qualifies also as a revenue sharing agreement.
- 5.4 Reporting. Within thirty (30) days of the City's receipt of each sales tax report provided by the Comptroller, the City shall deliver to the District a condensed version of the report, containing only the contents relating to retail sales tax collected and retailers in the Limited Purpose Tract.
- 5.5 Notification of Comptroller. The City shall send notice of this Agreement, together with other required documentation, to the Comptroller in the manner provided by Texas Tax Code, Section 321.102, within ten (10) days after the City Council annexes any portion of the Eligible Property for limited purposes. The City shall send to the District a copy of any notice from the Comptroller delaying the effectiveness of the Sales and Use Tax Revenues in the Eligible Property.
- 5.6 District Use of Sales and Use Tax Revenue. The District may use the Sales and Use Tax Revenues received by the District pursuant to this Agreement for any lawful purpose.
- 5.7 City Use of Sales and Use Tax Revenue. Without limiting the terms of Section 5.11 below, the Sales and Use Tax Revenues received and retained by the City pursuant to this Agreement may be used by the City for any lawful purpose.
- 5.8 District Audit Rights. The District may audit the Sales and Use Tax collections by the City solely to determine whether the Sales and Use Tax Revenue payments have been made to the District in accordance with this Agreement. Any audit shall be made at the District's sole cost and expense and may be performed at any time during the City's regular business hours by an auditor hired by the District on thirty (30) days written notice to the City. For the purpose of any audits, the City shall maintain and make available to the District or its representatives all books, records, documents and other evidence of accounting

procedures or practices in whatever form sufficiently maintained to reflect the collection of all Sales and Use Tax Revenues that are subject to this Agreement. For the avoidance of doubt, the District's audit rights provides the District with no right to see any City book, record, document, or other evidence unrelated to the Sales and Use Tax collections received pursuant to this Agreement.

- 5.9 City Audit Rights. The District is required by law in certain circumstances to prepare an annual audit within one hundred and thirty-five (135) days after the close of the District's fiscal year. The District shall provide a copy of its annual audit to the City within thirty (30) days after the audit is completed and approved and accepted by the District's board of directors. The District shall not unreasonably delay the approval of its annual audit.
- 5.10 Termination. Unless agreed, ordered or specifically provided otherwise, all Sales and Use Tax Revenues collected by the City from the Limited Purpose Tract after the date of termination of this Agreement and satisfaction of obligations described in Section 5.2 shall be retained by the City and may be used for any lawful purpose.
- 5.11 District Type B Revenues. During the term of this Agreement, the City shall collect a portion of the sales and use tax from the Limited Purpose Tract in the form of District Type B Revenues, which are not included within the term "Sales and Use Tax Revenues." During the term of this Agreement, a portion of the District Type B Revenues (such portion to be determined in accordance with the following sentence) shall be devoted to approved projects (a) within the Eligible Property and (b) that comply with the terms of Chapters 501-505 of the Texas Local Government Code, all in accordance with the procedures outlined in Chapters 501-505 of the Texas Local Government Code. The applicable portion of the District Type B Revenues that are subject to the preceding sentence shall match the District's percentage for any applicable year as described in Section 5.2 above (either 40% or 50%, depending on the year in question). The City and the New Braunfels Industrial Development Corporation shall enter into a written agreement reflecting the foregoing and the City shall provide a copy of the agreement to the District. Nothing in this Agreement is intended to limit the expenditure of additional District Type B Revenues within the District, pursuant and subject to compliance with the terms and procedures outlined in Chapters 501-505 of the Texas Local Government Code and upon application therefore and agreement by the City to do so.
- 5.12 Notice of Breach and Opportunity to Cure. In no event will the City or the District be in breach of this Agreement unless it receives written notice of the breach from the other Party and fails to cure or remedy such breach within the time period described in Section 8.1 below.

ARTICLE VI SERVICES

- 6.1 Fire and EMS Services. Pursuant to Chapter 791 of the Texas Local

Government Code, the Interlocal Cooperation Act, the District and the City agree that fire and emergency services shall be provided to the District by Comal County Emergency Services District No. ____ (“ESD No. ____”) pursuant to the same terms and conditions as set forth in that certain Service Provider Contract by and between the City and ESD No. ____, as such Contract may be amended from time to time (such services shall be herein referred to as the “Fire and EMS Services”, and such Contract shall be herein referred to as the “Fire and EMS Contract”). The City currently provides all Fire and EMS Services to ESD No. ____, in which the District is currently located, in return for payment from ESD No. ____ under the Fire and EMS Contract. The District and the City further agree that the term Fire and EMS Services shall include all services provided to the City pursuant to the Fire and EMS Contract, including Fire Protection and Suppression, Hazardous Materials and Control, Emergency Rescue, Emergency Medical Services, and other emergency assistance as described in Section 1.01 of the Fire and EMS Contract. Notwithstanding the foregoing, in the event the Fire and EMS Contract is terminated or amended, which would have the effect of the City no longer providing the District Fire and EMS Services under the Fire and EMS Contract, the City and the District shall cooperate and enter into an Interlocal Agreement, whereby the City shall provide Fire and EMS Services in the District on the same basis of payment and on similar terms as provided for in the Fire and EMS Contract as was in effect on the date of termination of the Fire and EMS Contract; provided, however, such Interlocal Agreement shall provide for potential modification of payment terms over time as would be customary for agreements of such type and as may be agreed upon by the Parties.

6.2 Police Services. The City and the District acknowledge that (a) the District may contract with the City for the City to provide police services to the District in accordance with Chapter 791 of the Texas Government Code, the Interlocal Cooperation Act, and pursuant to Section 49.216 of the Texas Water Code and other applicable state laws and (b) at this time, no agreement has been reached for the City to provide such police services to the District.

- (a) In the event that the District does not contract with the City to provide one or more police services, from and after the Trigger Date the City may to provide police services to the District upon compliance with the terms and procedures described in this Section 6.2.
 - (i) In the event that the City elects to provide police services to the District after the Trigger Date, the City shall so notify the District in writing, and such notice shall contain the rate or fee that the City proposes that the District pay for such police services, and the interval at which time such payments shall be made.
 - (ii) Within sixty (60) days of the District’s receipt of the written notice from the City specified in Section 6.2.(a)(i) above, the District shall provide written notice to the City of District’s decision to accept or reject the rate or fee and payment interval stated in the City’s notice. If the District accepts the rate or fee and the payment

interval stated in the City's notice, the City shall provide, or begin to provide, said City Services to the District upon the latter to occur of (i) the expiration of sixty (60) days after the District's written acceptance is received by the City or (ii) the expiration of the current term of the District's contract for such police services, unless otherwise agreed to in writing by the City and the District.

- (iii) If the District fails to provide timely written notice to the City of the District's decision to accept or reject the rate or fee or payment interval stated in the City's notice, then it shall be deemed that the District has accepted such rate or fee and payment interval, and the City shall provide, or begin to provide, said police services to the District upon the later to occur of (i) sixty (60) days of the District's deemed acceptance of the rate or fee and payment terms or (ii) the expiration of the current term of the District's contract for such police services, unless otherwise agreed to in writing by the City and the District.
 - (iv) If the District rejects the rate or fee or payment interval specified in the City's notice, the District shall provide written notice to the City of the City's decision to reject the rate or fee or payment interval. The sole reason that the District may reject the terms reflected in the City notice shall be the economic terms quoted in such City notice, but the District may not reject the City's election to provide such police services. Within sixty (60) days after providing such notice to the City, the District shall provide to City an alternative rate or fee or payment interval for such police services.
 - (v) Within sixty (60) days of the City receiving the alternative rate or fee or payment interval from the District, the City shall provide written notice to the District of the City's acceptance or rejection of the alternative rate or fee or payment interval.
 - (vi) If the City accepts the alternative rate or fee or payment interval as proposed by the District, the City shall provide, or begin to provide, said police services to the District upon the later to occur of (i) sixty (60) days of the City's acceptance of the rate or fee and payment interval proposed by the District or (ii) the expiration of the current term of the District's contract for such police services, unless otherwise agreed to in writing by the City and the District.
- (b) In the event that hereafter the City and the District reach an agreement whereby the City shall provide police services to the District as described above, such agreement shall be reflected in a written amendment to this Agreement executed by duly authorized signatories of the District and the City.

- (c) If and until such time as the City and the District reach an agreement whereby the City shall provide police services to the District, the District may provide or contract for the police services in any manner permitted by law.
- (d) City Training Obligations Regarding Police Services. The City will be responsible for training its police officers on the different jurisdiction and powers of police officers when they exercise police powers within the District as compared to within the corporate limits of the City.

City Services. The City and the District acknowledge that as of the Effective Date, the District may not have the lawful authority to provide code enforcement services, animal control services, or health inspection services (collectively, whether one or more, the “City Services”) within the District. In the event there is a change in or clarification to applicable state law and the City and District agree the District is authorized to perform such City Services, then for purposes of establishing the Parties’ rights and obligations with respect to City Services, Section 6.2. is deemed to be copied below in its entirety with each reference to “police services” revised to read “City Services” and each reference to “police officers” revised to read “City Services inspectors or agents,” provided that the “Trigger Date” for police services shall not apply to City Services. The District agrees not to oppose any attempt by the City to clarify the District’s legislative authority to perform the City Services and contract with the City to perform those City Services, whether by amendment to applicable law or an Attorney General’s opinion, provided that, in order to better assess whether the enforcement of certain of the City Services by means of private deed restrictions imposed pursuant to the Development Agreement is adequate, the City agrees not to seek such clarification or require the District to contract with the City for City Services until ten (10) years after the Effective Date of the Development Agreement.

- 6.3 Solid Waste Disposal. The City may provide Solid Waste Disposal services to all residents within the District in the same manner and on the same terms as provided to residents of the City, except that until Full Purpose Annexation, the residential rate for District residents shall be equal to one hundred five percent (105%) of the rate charged to City residents for Solid Waste Disposal services.

ARTICLE VII FULL PURPOSE ANNEXATION

- 7.1 No Full Purpose Annexation. The timing, procedures, and restrictions on Full Purpose Annexation shall continue to be governed by the terms set forth in the Development Agreement.
- 7.2 Strip Annexation of Portions of Limited Purposes Tract. The District agrees to cooperate with and assist the City in strip annexing one or more areas in the Eligible Property in the manner prescribed by law and subject to any limits prescribed by applicable law, which does not result in the dissolution of the District, none of which may exceed five hundred twenty-five (525) feet in width at its widest point or such other width limitation subsequently imposed by law, as reasonably necessary for the City to connect areas within the Limited Purposes Tract to the City that the City intends to annex for limited purposes. The City agrees that such areas shall be located within right-of-way areas or along lot

lines whenever possible. Notwithstanding the zoning designation approved for the annexed area, such area may be developed and used in accordance with the Development Agreement.

ARTICLE VIII DEFAULT/REMEDIES

- 8.1 Default. In the event of a default under or violation of this Agreement, the non-defaulting party shall send the defaulting party written notice describing the breach in reasonable detail. Except as otherwise specifically provided in this Agreement, the defaulting party shall have thirty (30) days following receipt of the notice of default or violation to initiate steps to cure the default or violation. The defaulting party shall thereafter have sixty (60) days to cure the default or violation. If the defaulting party fails to timely initiate steps to cure or to thereafter diligently proceed to cure, the non-defaulting party may bring suit to enforce this Agreement and seek any remedy provided at law or in equity. In the event such a suit is filed, the prevailing party shall be entitled, in addition to any other remedies to which it is entitled, to receive its attorneys' fees and court costs.
- 8.2 Waiver of Sovereign Immunity; Chapter 271, Texas Local Government Code. The Parties hereby agree that this Agreement constitutes an agreement for providing goods and/or services to the District and the City, which is subject to the provisions of Subchapter I of Chapter 271 of the Texas Local Government Code and any successor statutes. In accordance with Sections 271.152 and 271.153 of the Texas Local Government Code, the District and the City hereby waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign or governmental immunity from liability or suit and expressly consent to be sued and held liable with respect to their performance and/or failure to fully and timely perform each and every obligation under this Agreement, but only to the extent such liability or suit arises from or relates to this Agreement or a claim brought under this Agreement.

ARTICLE IX MISCELLANEOUS

- 9.1 Approval. This Agreement shall not be effective until it is approved and executed by the respective governing bodies of the City and the District and recorded in the Real Property Records of Comal County pursuant to Section 3.4 of this Agreement.
- 9.2 Term. Except as provided below, the term of this Agreement shall commence on the Effective Date and continue thereafter until 12:01 a.m. on the day immediately following the date the City annexes the District for full purposes in accordance with this Agreement and the Development Agreement; provided, however, in the event the District and City mutually agree for purposes allowed under Section 43.0751(g) of the Act, as may be amended, to extend the term hereof until the tenth (10th) anniversary of the date the City annexes the District for full purposes in accordance with this Agreement and the Development

Agreement, such later date shall be the date of termination of this Agreement. The provisions of this Agreement relating to the collection of Sales and Use Tax Revenues will automatically terminate with regard to any portion of the Limited Purpose Tract upon disannexation or Full Purpose Annexation of the Limited Purposes Tract.

- 9.3 Notices. Any notice required by this Agreement shall be void and of no effect unless given in accordance with the provisions of this Section 9.3. All notices shall be in writing and delivered, either by personal delivery or commercial delivery service to the office of the person to whom the notice is directed, or by United States Mail, postage prepaid, as a registered or certified item, return receipt requested. Notices delivered by personal delivery or commercial delivery service shall be deemed to have been given upon receipt at the office of the person to whom the notice is directed. Notices delivered by mail shall be deemed to have been given on the third (3rd) day after the date such notice is deposited in a Post Office or other depository under the care or custody of the United States Postal Service, enclosed in a wrapper with proper postage affixed and addressed, as provided below. Notice may also be provided by facsimile transmission. Facsimile notice shall be deemed to have been given upon the sender's receipt of electronic confirmation of delivery to the facsimile station indicated below.

The proper address and facsimile number for the District is as follows:

Comal County Water Improvement District, No. 3

Attention: _____

with copies to:

The proper address and facsimile number for the City is as follows:

City of New Braunfels
Attn: City Manager
550 Landa St.
New Braunfels, Texas 78130
Fax: (830) 626-5578

with copies to:

City Attorney
550 Landa St.
New Braunfels, Texas 78130
Fax: (830) 626-5578

Any Party may change the address or facsimile number for notices specified above by giving the other party ten (10) days' advance written notice of such change of address or facsimile number.

- 9.4 Assignment. This Agreement may not be assigned or partially assigned by either party without the prior written consent of the non-assigning party, which shall not be unreasonably withheld.
- 9.5 Sub-Districts. If any sub-districts are created by or within the District, the City may not agree with any such sub-district to amend or otherwise alter the terms of this Agreement, but the City may continue to negotiate amendments to this Agreement with the District. The City and the District intend that any sub-district will be bound to and governed by this Agreement, as it may be amended from time to time, and the City and the District each agrees to take steps reasonably necessary to ensure all of the sub-districts are governed by this single Agreement, as amended from time to time, including ratifying this Agreement or its amendments by the sub-districts or entering into a separate agreement between the sub-district and the City confirming the sub-district's and City's agreement to be bound by all of the terms of this Agreement, as amended, with respect to the area contained in any sub-district.
- 9.6 Governing Law. **THIS AGREEMENT MUST BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ANY CHOICE OF LAW RULES OR PRINCIPLES TO THE CONTRARY, AND THE OBLIGATIONS OF THE PARTIES HERETO ARE AND SHALL BE PERFORMABLE IN COMAL COUNTY, TEXAS.**
- 9.7 No Oral Modification. This Agreement may not be supplemented, modified or amended, except by written agreement with approval of the governing bodies of the District and the City.
- 9.8 No Oral Waiver. The parties may waive any of the conditions or obligations of the other party under this Agreement, but any such waiver shall be effective only if in writing and signed by the waiving party.
- 9.9 Headings, Gender, etc. The headings used in this Agreement have been inserted for convenience and do not constitute matter to be construed or interpreted in connection with this Agreement. Unless the context of this Agreement otherwise requires (a) words of any gender are deemed to include each other gender, (b) words using the singular or plural number also include the plural or singular number, respectively.

- 9.10 Partial Invalidity. If any clause or provision of this Agreement is or should ever be held to be illegal, invalid, or unenforceable under any present or future law applicable to the terms hereof, then and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected thereby, and that in lieu of each such clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.
- 9.11 Authorization. The District and the City represent that each party executing this Agreement on behalf of the District and the City possesses all requisite authority to execute this Agreement on that such party's behalf.
- 9.12 Holidays. If any deadline, or any date on which any duties or obligations under this Agreement are to be performed falls on a Saturday, Sunday or legal holiday, that date is automatically extended to the next business day.
- 9.13 Incorporation of Exhibits by Reference. All exhibits attached to this Agreement are incorporated into this Agreement by reference and for the purposes set forth in this Agreement, as follows:

Exhibit A	Map of the District
Exhibit B	Description of the District
Exhibit C	Map of the Initial Tract
Exhibit D	Legal Description of the Initial Tract

EXECUTED and EFFECTIVE as of the Effective Date.

COMAL COUNTY WATER IMPROVEMENT DISTRICT NO. 3:

By: _____,
_____, President, Board of Directors

ATTEST:

_____, Secretary, Board of Directors

THE CITY OF NEW BRAUNFELS:

By: _____
Robert Camareno, City Manager

ATTEST:

Caitlin Krobot, City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF COMAL §

Before me, the undersigned authority, on this day personally appeared _____, President of the Board of Directors of the Comal County Improvement District No. 3, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said water control improvement district, for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the _____ day of _____ 2012.

Notary Public, State of Texas
Print Name: _____
My Commission Expires: _____

APPROVED AND ACKNOWLEDGED

SOUTHSTAR AT MAYFAIR, LLC, a Texas limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT A

(MAP OF THE ELIGIBLE PROPERTY)

EXHIBIT B
(DESCRIPTION OF THE ELIGIBLE TRA)

All of the _____ acres described in the Act of _____ relating to the creation of Comal County Water Control & Improvement District No. 3, which is comprised of all of the real property included in the metes and bounds description as Tract "A" and the metes and bounds description as Tract "B" attached herein.

EXHIBIT C

(MAP OF THE INITIAL TRACT)

EXHIBIT D

(LEGAL DESCRIPTION OF THE INITIAL TRACT)