



**CITY OF NEW BRAUNFELS, TEXAS
CITY COUNCIL MEETING**



**CITY HALL - COUNCIL CHAMBERS
550 LANDA STREET**

MONDAY, MARCH 8, 2021 at 6:00 PM

Rusty Brockman, Mayor

Shane Hines, Councilmember (District 1)

Justin Meadows, Mayor Pro Tem (District 2)

Harry Bowers, Councilmember (District 3)

Matthew E. Hoyt, Councilmember (District 4)

Jason E. Hurta, Councilmember (District 5)

James Blakey, Councilmember (District 6)

Robert Camareno, City Manager

**To participate via Zoom, use the following link:
<https://us02web.zoom.us/j/83369443180> or call (833) 926-2300
Webinar ID: 833 6944 3180**

MISSION STATEMENT

***The City of New Braunfels will add value to our community
by planning for the future, providing quality services, encouraging
community involvement and being responsive to those we serve.***

AGENDA - AMENDED 3.5.21

CALL TO ORDER

CALL OF ROLL: CITY SECRETARY

**REQUEST ALL PHONES AND OTHER DEVICES BE TURNED OFF, EXCEPT
EMERGENCY ON-CALL PERSONNEL.**

INVOCATION: COUNCILMEMBER BLAKEY

PLEDGE OF ALLEGIANCE & SALUTE TO THE TEXAS FLAG

PRESENTATIONS:

- A) Presentation, discussion and possible direction to staff regarding whether to require the use of face coverings by the public while at city facilities, and whether to place a limit on the building occupancy of certain city facilities.
Robert Camareno, City Manager
- B) Presentation of "New Braunfels at Work" web application and dashboard
Neil Rose, GIS Manager
- C) Presentation and update on the 2013 Bond, 2019 Bond and other various ongoing Capital projects.

Jennifer Cain, Capital Programs Manager

1. MINUTES

- A) Discuss and consider approval of the minutes of the February 22, 2021 City Council meeting.

Caitlin Krobot, City Secretary

2. CITIZENS' COMMUNICATIONS

This time is for citizens to address the City Council on issues and items of concerns not on this agenda. There will be no City Council action at this time.

3. CONSENT AGENDA

All items listed below are considered to be routine and non-controversial by the City Council and will be approved by one motion. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case the item will be removed from the consent agenda and considered as part of the normal order of business.

Resolutions & Action Items

- A) Approval of a resolution, ratification of the submission of an application for funding to purchase forensic data collection equipment utilizing a U.S. Department of Justice, Bureau of Justice Assistance, Edward Byrne Memorial Justice Assistance Grant Program grant for Program Year 2022, and authorization for the City Manager to act on behalf of the City in all matters related to this grant.

Keith Lane, Interim Police Chief

- B) Approval of a contract with Ultimate Roof Systems for roof repairs at the New Braunfels Public Library and roof replacement at Fire Station 1 and the appropriate budget amendment.

Matthew Eckmann, Facilities and Real Estate Manager

- C) Approval of a contract modification to J3 Company as part of the 2013 Bond Klein Road Reconstruction project in the amount of \$108,291 for Change Order #9 and an additional \$75,000 for contingency that is needed for unforeseen conditions associated with the TXDOT FM1044 intersection alignment and the appropriate budget amendment.

Jennifer Cain, Capital Programs Manager

- D) Approval of a resolution authorizing the City Manager to execute a deed accepting two acres of park property as prescribed in a development agreement with August Fields, LP.

Stacey Dicke, Parks and Recreation Director

- F) Approval to authorize the City Manager to execute a Memorandum of

Understanding with the New Braunfels Parks Foundation allowing the Foundation to accept 46 acres of land to hold in trust for the City of New Braunfels for a future park.

Stacey Dicke, Parks and Recreation Director

- E) Approval of a resolution authorizing the City Manager to enter into an Agreement to Contribute Right-of-way Funds with the Texas Department of Transportation for highway improvements on FM 725 from Zipp Road to County Line Road.

Garry Ford, City Engineer

- G) Approval to authorize the City Manager to enter into a five-year software maintenance contract with Presidio Networked Solutions Group in the amount of \$86,400 (\$17,280 annually) for the City's phone system utilizing a Texas Department of Information Resources contract

Tony Gonzalez, Director of Information Technology

- H) Approval of the City of New Braunfels FY 2021 First Quarter Investment Report.

Sandy Paulos, Assistant Chief Financial Officer

- I) Approval to authorize the City Manager to enter into a joint election agreement between the City of New Braunfels, the New Braunfels Independent School District, the Comal Independent School District, the City of Garden Ridge, and the City of Bulverde regarding the May 1, 2021 election.

Caitlin Krobot, City Secretary

- J) Approval to authorize the City Manager to enter into an agreement between the City of New Braunfels and Comal County regarding election services for the May 1, 2021 elections.

Caitlin Krobot, City Secretary

- K) Approval of an expenditure with Fun Abounds of Southern Texas for the purchase of a shade structure for the Fischer Park Archeology Dig for \$42,000 utilizing a Buyboard contract 529-19.

Stacey Dicke, Parks and Recreation Director

- L) Approval to authorize the City Manager to execute an amendment to the contract with the Law Offices of Ryan Henry, PLLC for legal representation in matters involving an administrative ADAA complaint, and for review and analysis of related City policies and procedures.

Valeria Acevedo, City Attorney

- M) Approval of a contract amendment with Doucet and Associates for engineering design and bid support services for a stormwater treatment

basin to be included as part of the Elizabeth Ave Realignment project.

Mark Enders, Watershed Program Manager

- N) Approval to authorize the City Manager to execute an Interlocal Cooperative Purchasing Agreement with Michigan Collegiate Telecommunications Association in accordance with the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code and Chapter 271, Texas Local Government Code for telecommunication products and services.

Barbara Coleman, Purchasing Manager

- O) Approval to purchase a Commercial Paver for the City's Public Works Streets & Drainage Division staff, from Cooper Equipment Co. through a BuyBoard Cooperative contract and approval of the appropriate budget amendment.

John Cox, Streets & Drainage Manager/Public Works

- P) Approval of a resolution in support of Comal County urging the Texas Legislature to amend Section 502.402, Texas Transportation Code during the 87th legislative session.

Greg Malatek, Public Works Director

Ordinances

(In accordance with Section 3.10 of the City Charter, a descriptive caption of each ordinance shall be read on two separate days.)

- Q) First reading on an ordinance regarding a request from the Humane Society of New Braunfels Area (HSNBA) to waive development related fees for their new spay and neuter building.

Bryan Ruiz, Neighborhood Services Manager

- R) Approval of the second and final reading of an ordinance to designate the property currently addressed as 210 South Castell Avenue as a historic landmark to be known as the Producer's Co-Op.

Caleb Gasparek, Historic Preservation Officer

- S) Approval of the second and final reading of an ordinance regarding the proposed rezoning of approximately 14.608 acres out of the H. Foster Survey No. 34, Abstract No. 154, Comal County, Texas, located at the northwest corner of the intersection of IH 35 and FM 306, from "M-1" Light Industrial District to "MU-B" High Intensity Mixed Use District.

Christopher J. Looney, AICP, Planning and Development Services Director

4. INDIVIDUAL ITEMS FOR CONSIDERATION

- A) Discuss and consider an ordinance authorizing the issuance of short

term obligations in the aggregate principal amount not to exceed \$100,000,000 to pay project costs for eligible projects for the City's utility systems, authorizing the execution of agreements to be entered into on connection therewith, approving and authorizing certain authorized officers and employees to act on behalf of the City and New Braunfels Utilities in the sale and delivery of such short term obligations and resolving other matters incident and related thereto and providing an effective date.

Dawn Schriewer, NBU Chief Financial Officer

- B) Discuss and consider approval of an ordinance regarding the ratification of a waiver of certain permit fees and solid waste management fees related to the 2021 winter storm.

Robert Camareno, City Manager

- C) Discuss and consider approval of a construction contract with Stoddard Construction Management Inc., a materials testing contract with Raba Kistner, payment to New Braunfels Utilities (NBU) for water and sewer impact fees, a contract with Hill International for on-site Owner's Representative services and authorize the City Manager to execute any change orders up to the contingency amount as part of the 2019 Bond Westside Library Branch Project.

Jennifer Cain, Capital Programs Manager

- D) Discuss and consider the reconsideration of a proposed ordinance to rezone approximately 68.05 acres out of the O. Russell Survey No. 2, Abstract No. 485, located at the northern corner of the intersection of Goodwin Lane and Orion Drive, from "APD" Agricultural/Pre-Development District to "R-1A-4" Single-Family Small Lot Residential and "R3-H" Multifamily High Density District.

Jason Hurta, Councilmember

- E) Public hearing and first reading of proposed amendments to Chapter 6, Animals, related to tethering, keeping of rabbits, general standards of pet care, and penalties, as recommended by the Animal Services Advisory Board.

Christopher J. Looney, AICP, Planning and Development Services Director

- F) Public hearing and first reading of an ordinance regarding a proposed amendment to Chapter 66 Historic Preservation for the protection and preservation of trees within historic districts and historic properties.

Christopher Looney, AICP, Planning and Development Services Director

5. EXECUTIVE SESSIONS

In accordance with Texas Government Code, Subchapter D, the City Council may convene in a closed session to discuss any of the following items; any final action or vote taken will be in public.

- A) Deliberate issues regarding economic development negotiations in accordance with section 551.087 of the Texas Government Code.
 - Project Broadband
 - Project Locked
 - CGT
- B) Deliberate the purchase, exchange, lease or value of real estate in accordance with Section 551.072 of the Texas Government Code; and, Deliberate pending/contemplated litigation, settlement offers, and matters related to privileged and unprivileged client information deemed confidential by Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct in accordance with Section 551.071 of the Texas Government Code, specifically
 - Tolle Street ROW Abandonment

NOTE: The City Council reserves the right to retire into executive session concerning any of the items listed on this Agenda whenever it is considered necessary and legally justified under the Open Meetings Act (Chapter 551 of the Texas Government Code).

6. **RECONVENE INTO OPEN SESSION AND TAKE ANY NECESSARY ACTION RELATING TO THE EXECUTIVE SESSION AS DESCRIBED ABOVE.**

7. **ADJOURNMENT**

CERTIFICATION

I hereby certify the above Notice of Meeting was posted on the bulletin board at the New Braunfels City Hall.

Caitlin Krobot, City Secretary

NOTE: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, or large print, are requested to contact the City Secretary's Office at 221-4010 at least two (2) work days prior to the meeting so that appropriate arrangements can be made.

3/8/2021

Agenda Item No. A)

Presenter/Contact

Robert Camareno, City Manager
rcamareno@nbtexas.org

SUBJECT:

Presentation, discussion and possible direction to staff regarding whether to require the use of face coverings by the public while at city facilities, and whether to place a limit on the building occupancy of certain city facilities.

BACKGROUND / RATIONALE:

On March 2, 2021 Governor Abbott issued Executive Order GA-34 which ends Texas' statewide mask mandate and allows businesses to operate at full capacity effective March 10, 2021. The executive order allows businesses and other establishments to require employees and/or customers to follow additional measures, including the wearing of a face covering and limiting their operational capacity. Cities fall under the category of "other establishments" and thus staff is looking for direction from the Mayor and City Council on whether to require customers wear masks at city facilities and whether to operate city facilities at 100% occupancy.

FISCAL IMPACT:

There is no fiscal impact.

COMMITTEE RECOMMENDATION:

There is no committee recommendation.

STAFF RECOMMENDATION:

Staff recommends discussion and direction to staff from Mayor and City Council.

3/8/2021

Agenda Item No. B)

Presenter/Contact
Neil Rose, GIS Manager
(830) 221-4337 - nrose@nbtexas.org

SUBJECT:

Presentation of "New Braunfels at Work" web application and dashboard

BACKGROUND / RATIONALE:

The fast growth of the City of New Braunfels necessitates the funding, execution and tracking of many projects over many years, including transportation, parks, utilities, etc. The tracking and reporting of these projects is a major component of transparency and accountability within the organization as well as to our citizens, business partners and visitors. This new web application and dashboard summarizes data from many different departments and projects in an attempt to put information out to the public in an easy to use and meaningful format. "New Braunfels at Work" summarizes costs, project descriptions, contact information, location, project timelines and funding sources all in one place. Utilizing GIS technology, users can visualize the types and location of the many projects the City has in progress or has completed over the last several years. Through the use of filters, users can search for and visualize projects by status, type, and Council District. The "New Braunfels at Work" web application and dashboard is a new way to tell the story of the growth of the City of New Braunfels, while putting some of the most requested information together in a new and easy to use application available to anyone at any time.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

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FISCAL IMPACT:

[Enter Fiscal Impact Here]

COMMITTEE RECOMMENDATION:

[Enter Committee Recommendation Here]

STAFF RECOMMENDATION:

[Enter Staff Recommendation Here]

3/8/2021

Agenda Item No. C)

Presenter/Contact

Jennifer Cain, Capital Programs Manager
(830) 221-4646 - jcain@nbtexas.org

SUBJECT:

Presentation and update on the 2013 Bond, 2019 Bond and other various ongoing Capital projects.

BACKGROUND / RATIONALE:**ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:**

X	Yes	City Plan/City Priority	Continue an ongoing program of infrastructure and maintenance.
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FISCAL IMPACT:

N/A

COMMITTEE RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

N/A

City Council Agenda Item Report

550 Landa Street
New Braunfels, TX

3/8/2021

Agenda Item No. A)

Presenter/Contact

Caitlin Krobot, City Secretary
(830) 221-4006 - ckrobot@nbtexas.org

SUBJECT:

Discuss and consider approval of the minutes of the February 22, 2021 City Council meeting.

City of New Braunfels, Texas

City Hall – Council Chambers

Regular City Council Meeting Minutes

Monday, February 22, 2021

6:00 PM

City Council

Rusty Brockman, Mayor - Present

Shane Hines, Councilmember (District 1) - Present

Justin Meadows, Mayor Pro Tem (District 2) - Present

Harry Bowers, Councilmember (District 3) - Present

Matthew E. Hoyt (District 4) – Present

Jason E. Hurta (District 5) – Present

James Blakey (District 6) – Present

Item 4B has been pulled from consideration.

Item 3H has been pulled from consideration.

The meeting was called to order by Mayor Brockman at 6:00 via Zoom with the assistance of Mayor Pro-Tem Meadows. Councilmember Hurta gave the invocation and Mayor Brockman led the Pledge of Allegiance and Salute to the Texas Flag.

PROCLAMATIONS

A) George Washington Day Proclamation.

Mayor Pro-Tem Meadows presented the proclamation.

PRESENTATIONS:

A) Presentation and update from New Braunfels Utilities.

Mayor Pro-Tem Meadows read the aforementioned caption.

Ian Taylor presented this item along with Dawn Hubbard, Ryan Kelso, and Dawn Schriewer.

The following individuals spoke on this item: Timothy Davis, Piper Olson, Chris DeLaCruz, and Les Shephard.

No action was taken.

- B) Presentation of the proposed FY 2021 Street Maintenance Plan and possible action by City Council.

Mayor Pro-Tem Meadows read the aforementioned caption.

Greg Malatek presented the item.

Councilmember Hines moved to approve the FY 2021 Street Maintenance Plan. Councilmember Bowers seconded the motion which passed unanimously via roll call vote.

- C) Presentation on proposed amendments to Chapter 66 Historic Preservation for the protection and preservation of trees within historic districts and historic properties.

Mayor Pro-Tem Meadows read the aforementioned caption.

Christopher Looney presented the item.

No action was taken.

- D) Presentation on proposed amendments to Chapter 6, Animals, related to tethering, keeping of rabbits, and general standards of pet care, as recommended by the Animal Services Advisory Board.

Mayor Pro-Tem Meadows read the aforementioned caption.

Christopher Looney presented the item.

No action was taken.

- E) Presentation and discussion regarding the City of New Braunfels Boards and Commissions.

Mayor Pro-Tem Meadows read the aforementioned caption.

Jordan Matney presented the item.

Jim Holster and Timothy Davis spoke on the item.

No action was taken.

1. MINUTES

- A) Discuss and consider approval of the minutes of the special City Council meeting of January 15, 2021 and regular City Council Meeting of January 25, 2021.

Monday, February 22, 2021 New Braunfels City Council Regular Meeting

Mayor Pro-Tem Meadows read the aforementioned caption.

Councilmember Hurta moved to approve the item. Councilmember Bowers seconded the motion which was approved unanimously via roll call.

2. CITIZENS' COMMUNICATIONS

This time is for citizens to address the City Council on issues and items of concerns not on this agenda. There will be no City Council action at this time.

Jim Holster and Timothy Davis spoke during Citizen's Communication.

Mayor Pro-Tem Meadows recessed for a break at 8:16 p.m. and reconvened at 8:26 p.m.

3. CONSENT AGENDA

All items listed below are considered to be routine and non-controversial by the City Council and will be approved by one motion. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case the item will be removed from the consent agenda and considered as part of the normal order of business.

Resolutions & Action Items

- A) Approval of a contract with Sequel Data Systems Incorporated, in the amount of \$147,924 for the purchase of a video archiving network.
- B) Approval of a contract with GIS, Inc in the amount of \$40,500 for the implementation of a new credit card processor, Card Connect, to be used with the Cityworks software application.
- C) Approval of a contract modification for MAC, Inc for final close-out of the MPO City Wide Sidewalk Project and the appropriate budget amendment.
- D) Approval of the Final Addendum to the Development Agreement for Roadway Impact Fee Offsets between the City of New Braunfels and Milestone Crest Investments, LTD authorizing payment of excess costs of constructing Pahmeyer Road within the Silos Subdivision and authorizing the city manager to execute the agreement.
- E) Approval of a lease agreement between the City of New Braunfels and Cellco Partnership d/b/a Verizon Wireless for the installation and operation of Small Cell equipment on the property described as 105.821 acres out of the JM Veramendi Survey No. 1, Abstract No. 2, addressed as 115 Elizabeth Ave, New

Braunfels, Comal County, Texas.

- F) Approval of an expenditure of up to \$95,000 and authorization for the City Manager to execute all necessary agreements for the acquisition of a 2.836-acre easement and 2.034-acre temporary construction easement located in the J.S.Johnson Survey No. 47, Abstract No.190 and Sarah Dewitt Survey No. 48, Abstract No. 103, Guadalupe County, Texas on behalf of the Guadalupe Blanco River Authority.
- G) Approval of a contract amendment with Arcadis U.S., Inc for professional services associated with implementation of the Dry Comal Creek and Comal River Watershed Protection Plan.
- H) Approval of a contract with Ultimate Roof Systems for modular office building for roof repairs at the New Braunfels Public Library and roof replacement at Fire Station 1 and the appropriate budget amendment.

Item 3 H has been pulled from consideration.

Mayor Brockman read the aforementioned captions A through G.

Councilmember Bowers moved to approve the consent agenda items A through G. Councilmember Blakey seconded the motion which passed unanimously via roll call vote.

4. INDIVIDUAL ITEMS FOR CONSIDERATION

- A) Approval of the Mayoral appointment of one individual to the New Braunfels Housing Authority Board of Commissioners for a term ending January 22, 2023.

Mayor Brockman read the aforementioned caption.

Mayor Brockman presented this item.

The following spoke on the item: Molly Bursey, Timothy Davis, Shari Bennett, John Kennedy, Heather Olson, Lauren Alaniz, Ty Fullerton, Isaac Hayes, Collette Nies, Kristi Simmons, Steve Ceh, Robert Wolf, John Porter, Wayne Bennett, Amy Parks, Jim Holster, Jennifer Johnson, and Laurie Shrink.

No action was taken.

- B) Discuss and consider approval of a Letter of Intent with New Braunfels Utilities for the installation of standalone solar powered generation projects at a series of distributed generation solar sites owned or controlled by the City on the terms and conditions specified in the letter.

Item 4B has been pulled from consideration.

- C) Public hearing and first reading of an ordinance regarding the proposed rezoning of approximately 14.608 acres out of the H. Foster Survey No. 34, Abstract No.154, Comal County, Texas, located at the northwest corner of the intersection of IH 35 and FM 306, from “M-1” Light Industrial District to “MU-B” High Intensity Mixed Use District.

Mayor Brockman read the aforementioned caption.

Christopher Looney presented the item.

Councilmember Hines moved to approve the item.

Councilmember Hurta seconded the motion which was approved unanimously via roll call.

- D) Public hearing and first reading of an ordinance to designate the property currently addressed as 210 South Castell Avenue as a historic landmark to be known as the Producer’s Co-Op.

Mayor Brockman read the aforementioned caption.

Caleb Gasparek presented this item.

Councilmember Hoyt moved to approve the item.

Councilmember Hurta seconded the motion which was approved unanimously via roll call.

- E) Public hearing and first reading of an ordinance regarding a proposed rezoning of approximately 68.05 acres out of the O. Russell Survey No. 2, Abstract No. 485, located at the northern corner of the intersection of Goodwin Lane and Orion Drive, from “APD” Agricultural/Pre-Development District to “R-1A-4” District. Single-Family Small Lot Residential and “R3-H” Multifamily High Density.

Mayor Brockman read the aforementioned caption.

Christopher Looney presented the item.

The following spoke on the item: Brenda Dunn, Andrew Hand, Donald Featherston, Adam Bartling, Alicia Cook, James Ingall, and James Ray.

Councilmember Hines moved to approve the item.

Councilmember Hoyt seconded the motion which failed

5–2 via roll call vote with Councilmember Blakey,

Councilmember Hurta, Councilmember Hoyt, Councilmember Bowers, Mayor Pro-Tem Meadows in opposition.

- F) Discuss and consider a request for a waiver to Section 118-49 of the Subdivision Platting Ordinance to not require sidewalk construction along FM 2722 for the Preserve at Elm Creek Subdivision.

Mayor Brockman read the aforementioned caption.

Christopher Looney presented the item.

Councilmember Hines moved to approve the item.

Mayor Pro-Tem Meadows seconded the motion which passed 6-1 via roll call vote with Councilmember Bowers in opposition.

- G) Discussion and possible direction to staff regarding the implementation of mid-year compensation adjustments.

Mayor Brockman read the aforementioned caption.

Robert Camareno presented the item.

Councilmember Hoyt moved to approve the item.

Councilmember Hines seconded the motion which was approved unanimously via roll call.

5. EXECUTIVE SESSIONS

In accordance with Texas Government Code, Subchapter D, the City Council may convene in a closed session to discuss any of the following items: any final action or vote taken will be in public.

- A) Deliberate pending/contemplated litigation, settlement offer(s), and matters concerning privileged and unprivileged client information deemed confidential by Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct in accordance with Section 551.071, of the Texas Government Code, specifically:
- J3 Company construction contract for Klein Rd. reconstruction project
- B) Deliberate pending/contemplated litigation, settlement offer(s), and matters concerning privileged and unprivileged client information deemed confidential by Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct in accordance with Section 551.071, of the Texas Government Code, specifically:
- Discuss legal action regarding possible restrictions on further development of property commonly known as 413 Gruene Rd, New Braunfels 78130, Texas, for use as Disaster Recovery Center for NBU; the property is also described as 2.693 acre tract of land, situated in the Henry Foster Survey, Abstract No 154, Comal County, Texas, conveyed to the City of New Braunfels, recorded in

Mayor Brockman read the aforementioned caption and recessed into executive session at 10:57 p.m.

NOTE: The City Council reserves the right to retire into executive session concerning any of the items listed on this Agenda whenever it is considered necessary and legally justified under the Open Meetings Act (Chapter 551 of the Texas Government Code).

6. RECONVENE INTO OPEN SESSION AND TAKE ANY NECESSARY ACTION RELATING TO THE EXECUTIVE SESSION AS DESCRIBED ABOVE.

Mayor Brockman reconvened from executive session at 11:47.

Councilmember Hines made the motion: I move that the City of New Braunfels authorize litigation for a declaratory judgement action to Determine whether certain language in the deed conveying to the City Of New Braunfels the property commonly known as 413 Gruene Rd., New Braunfels, Texas 78130, constitutes a restrictive covenant, and the use of the power of eminent domain, in the alternative only, to condemn the restrictive covenant if necessary. The Property being also described as:

- **2.693 acre tract of land, situated in the Henry Foster Survey, Abstract No 154, Comal County, Texas, conveyed to the City Of New Braunfels, recorded in Volume 192, Page 543, Deed Records, Comal County, Texas.**

Such action to construct, utilize, and maintain a disaster recovery center, to advance and achieve the public use of servicing the people of New Braunfels and surrounding areas during a disaster. Councilmember Hoyt seconded the motion which passed unanimously via roll call.

7. ADJOURNMENT

Mayor Brockman adjourned the meeting at 11:50 p.m.

Rusty Brockman, Mayor

Caitlin Krobot, City Secretary

DRAFT

3/8/2021

Agenda Item No. A)

Presenter/Contact*Keith Lane, Interim Police Chief*
(830) 221-4102 - klane@nbtexas.org**SUBJECT:**

Approval of a resolution, ratification of the submission of an application for funding to purchase forensic data collection equipment utilizing a U.S. Department of Justice, Bureau of Justice Assistance, Edward Byrne Memorial Justice Assistance Grant Program grant for Program Year 2022, and authorization for the City Manager to act on behalf of the City in all matters related to this grant.

BACKGROUND / RATIONALE:

The New Braunfels City Council strategic priorities include using a variety of funding sources for operational and capital needs. As such, Staff recently submitted a grant application to the U.S. Department of Justice, Bureau of Justice Assistance, Edward Byrne Memorial Justice Assistance Grant Program as administered by the Office of the Governor, Public Safety Office, Criminal Justice Division's Criminal Justice Program grant for Program Year 2022 for the purchase of forensic data collection equipment for the New Braunfels Police Department (NBPD).

The grant application requests funding for the purchase of equipment that will replace critically outdated forensic data collection equipment currently in use by the New Braunfels Police Department (NBPD). The NBPD Traffic Unit utilizes a Total Station that has been in continuous use since 2007 to collect data points at traffic accidents to reconstruct collision scenes that result in loss of life and/or criminal charges. Due to its age, the equipment frequently malfunctions, causing significant traffic delays and increased risk to officers as they process the accident scene. After extensive research, it has been determined that a 3D laser scanning system will not only support the Traffic Unit but will also dramatically increase the efficiency and accuracy of NBPD's Crime Scene Unit as it will allow them to collect photos and detailed measurements at major crime scenes such as homicides, suspicious deaths, and shooting incidents.

City staff has submitted a grant application for a total amount of \$65,000 which includes the cost of the equipment as well as anticipated training and one-time equipment and supply costs. The granting agency will provide funds for 100% of the total amount therefore, there is no City-match requirement.

If approved, the grant will be awarded by September 2021.

Staff is also requesting City Council approval of a resolution, as required by the granting agency, that will authorize our City Manager to act as the authorized official on behalf of the City in all matters related to this grant. The designated authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the applicant agency.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<input checked="" type="checkbox"/>	Yes	Strategic Priorities	Use a variety of funding sources for operational and capital needs.
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FISCAL IMPACT:

The granting agency will provide funds for 100% of the total amount therefore, there is no City-match requirement.

COMMITTEE RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff recommends approval of a resolution, ratification of the submission of an application for funding to purchase forensic data collection equipment utilizing a U.S. Department of Justice, Bureau of Justice Assistance, Edward Byrne Memorial Justice Assistance Grant Program grant for Program Year 2022, and authorization for the City Manager to act on behalf of the City in all matters related to this grant.

RESOLUTION 2021-R_____

A RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION FOR FUNDING UNDER THE U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE, EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM AS ADMINISTERED BY THE OFFICE OF THE GOVERNOR, PUBLIC SAFETY OFFICE, CRIMINAL JUSTICE DIVISION'S CRIMINAL JUSTICE PROGRAM GRANT AND AUTHORIZING THE CITY MANAGER TO ACT ON BEHALF OF THE CITY OF NEW BRAUNFELS IN ALL MATTERS RELATED TO THIS GRANT, INCLUDING EXECUTION OF ALL REQUIRED DOCUMENTATION ASSOCIATED WITH ANY RESULTING AWARD.

WHEREAS, The City of New Braunfels finds it in the best interest of the citizens of Comal County that the "Forensic Data Collection Equipment" project be operated for the 2022 Program Year; and

WHEREAS, the City of New Braunfels agrees to provide applicable matching funds for said project as required by the U.S. Department of Justice, Bureau of Justice Assistance, Edward Byrne Memorial Justice Assistance Grant Program as administered by the Office of the Governor, Public Safety Office, Criminal Justice Division's Criminal Justice Program for Program Year 2022 grant application; and

WHEREAS, the City of New Braunfels agrees that in the event of loss or misuse of the Office of the Governor funds, the City of New Braunfels assures that the funds will be returned to the Office of the Governor in full.

WHEREAS, the City of New Braunfels designates the City Manager as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the applicant agency.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS;

THAT, the City of New Braunfels' City Council approves submission of the grant application for the "Forensic Data Collection Equipment" project to the Office of the Governor.

ADOPTED AND APPROVED on this the 8th day of March 2021.
Grant Number: 4242701

City of New Braunfels, Texas

RUSTY BROCKMAN, Mayor

Attest:

CAITLIN KROBOT, City Secretary

3/8/2021

Agenda Item No. B)

Presenter/Contact

*Matthew Eckmann, Facilities and Real Estate Manager
(830) 221-4089 - Meckmann@nbtexas.org*

SUBJECT:

Approval of a contract with Ultimate Roof Systems for roof repairs at the New Braunfels Public Library and roof replacement at Fire Station 1 and the appropriate budget amendment.

BACKGROUND / RATIONALE:

The FY 2021 budget allocated \$33,000 for roof repairs at the New Braunfels Public Library and Fire Station 1. It has since been discovered that repairs to Fire Station 1 would be inadequate and a roof replacement is recommended.

The library roof is approximately 22 years old and is made from galvanized metal which is a material that is not currently used any longer due to its known issues with corrosion. The Library has several areas of corrosion which are causing leaking throughout the building. After obtaining quotes from three roofers, the cost to install a sealant on the portions of the roof that are currently corroded was provided for a total cost of \$2,070.

The Fire Station 1 roof is a tar and gravel roof that is in excess of 40 years old and has a number of areas that are currently leaking. It has been recommended by multiple roofing contractors that the roof is at the end of its lifespan and should be replaced as opposed to repairing. Staff has obtained quotes for repairing the roof which will come with very limited warranties as it is difficult to determine where the source of the leaks are. Staff also obtained quotes to replace the roof and is requesting the authority to approve a contract with Ultimate Roofing Systems who would install a Dura Last PVC roof coating which would leave the existing roof in place, deck over it and install the new roof material. This roofing system carries a full 20-year material and labor warranty. The total cost for replacement is \$46,207.

Staff has obtained quotes from three contractors and is recommending Ultimate Roofing Systems as the best value for both the repairs and the roof replacement. The total contract cost for the Library and complete replacement for Fire Station1 is \$48,275.

As mentioned above, \$33,000 was allocated initially to support the roof repairs for both facilities. To fund the repairs at the library and replace the fire station #1 roof, there is currently a \$15,275 shortfall. To provide the additional funding, staff recommends a budget amendment from the funds currently allocated as our matching portion of a grant to replace outdated diesel vehicles. We have already made our full commitment for that project and there is currently enough surplus within that project to support the additional funds needed for the roof repairs/replacement. The following budget amendment is recommended for City Council consideration.

2008 Certificates of Obligation

From: Grant Match/Dump Truck Purchase \$15,275

To: Roof Repair/Replacement - Fire Department/Library \$15,275

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

Yes	Strategic Priorities:	Use a variety of funding sources for operational and capital needs.
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FISCAL IMPACT:

With the funding previously allocated in the FY 2021 Budget for this project as well as the recommended budget amendment, sufficient funds are available to award the contract for the services described above.

COMMITTEE RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff recommends approval of a contract with Ultimate Roof Systems for modular office building for roof repairs at the New Braunfels Public Library and roof replacement at Fire Station 1.

3/8/2021

Agenda Item No. C)

Presenter/Contact

Jennifer Cain, Capital Programs Manager
(830) 221-4646 - jcain@nbtexas.org

SUBJECT:

Approval of a contract modification to J3 Company as part of the 2013 Bond Klein Road Reconstruction project in the amount of \$108,291 for Change Order #9 and an additional \$75,000 for contingency that is needed for unforeseen conditions associated with the TXDOT FM1044 intersection alignment and the appropriate budget amendment.

BACKGROUND / RATIONALE:

In 2018 City Council approved to enter into agreement with J3 Company for construction phase services for Klein Road Phase 1 from FM 1044 to Walnut Ave. A contract modification of \$183,291 will be needed for items that include:

- Change Order #9: Impact fees for irrigation; field adjustments for drainage system; omitted bid items (\$108,291).
- FM 1044 Contingency: As part of the Klein Road intersection realignment, TXDOT is requiring the City to lengthen the left-turn lane to original length which requires shoulder widening to maintain lane widths. It was found that the existing subgrade was saturated and therefore work ceased to determine a repair solution. The design team has recommended an additional 3x5 rock sub layer prior to installing the proposed shoulder pavement. As a change of field condition this will be billed as a time and material directive (\$75,000).

Budget Amendment - 2013 Bond Fund

There are currently no uncommitted funds available in the Klein Road Phase 1 project budget. Therefore, to amend the contract to address the additional costs outlined above, the following budget amendment is recommended for City Council consideration.

From: Proposition 1: Staffing/Available Funds \$183,291

To: Proposition 1: Klein Road Construction \$183,291

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<input checked="" type="checkbox"/>	Yes	City Plan /Council Priority	Continue ongoing program of infrastructure, construction and maintenance
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FISCAL IMPACT:

With the approval of the budget amendment described above, sufficient funds are available in the 2013 bond fund to support the contract modification.

COMMITTEE RECOMMENDATION:

No

STAFF RECOMMENDATION:

Staff recommends approval of the contract modification to J3 Company as part of the 2013 Bond Klein Road Reconstruction project in the amount of \$108,291 for Change Order #9 and an additional \$75,000 for contingency that is needed for unforeseen conditions along TXDOT FM1044 intersection alignment and the appropriate budget amendment.

3/8/2021

Agenda Item No. D)

Presenter/Contact

Stacey Dicke, Parks and Recreation Director
(830) 221-4350 - sdicke@nbtexas.org

SUBJECT:

Approval of a resolution authorizing the City Manager to execute a deed accepting two acres of park property as prescribed in a development agreement with August Fields, LP.

BACKGROUND / RATIONALE:

The City of New Braunfels entered into a development agreement with August Fields, LP on March 1, 2018. As part of this development agreement, the owner will dedicate to the city a two-acre park with at least \$250,000 in park improvements and dedicate a 10' wide hike and bike trail from FM1101 to the park.

The development agreement also specifies park improvement and maintenance responsibilities for the public park and trail. The City of New Braunfels will generally be responsible for all equipment maintenance and repair and water/electric costs. The August Fields HOA will be responsible for routine landscape and irrigation maintenance and trash collection.

These jointly accepted improvements are now in place and the developer is ready to deed the park land to the City of New Braunfels. A park inspection has taken place and staff is in agreement that all obligations under the negotiated development agreement have been met and the park is ready to be deeded to the City.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<input checked="" type="checkbox"/>	Yes	Strategic Priorities	Preserve and Improve our open space.
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FISCAL IMPACT:

The utility costs for lights and irrigation will be paid from the Parks General Fund line item for utilities and can be absorbed in the current budget. Any equipment repairs will also be paid from the existing budget. Park equipment will be covered by warranty for a time period.

COMMITTEE RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff recommends the City Manager be authorized to execute a deed transferring ownership of the two-acre park from August Fields, LP to the City of New Braunfels.

RESOLUTION 2021-R_____

A RESOLUTION AUTHORIZING THE ACCEPTANCE OF TWO ACRES OF PARK LAND AND AUTHORIZING THE CITY MANAGER TO ACT ON BEHALF OF THE CITY OF NEW BRAUNFELS ("CITY") IN ALL MATTERS RELATED TO THIS LAND DEDICATION, INCLUDING EXECUTION OF ALL REQUIRED DOCUMENTATION.

WHEREAS, the City of New Braunfels developed and approved Envision New Braunfels, a city-wide effort that creates a vision and 'roadmap' for New Braunfels' future through 2030; and

WHEREAS, Envision New Braunfels identifies that current quality and quantity of existing parks and facilities is underserved and the City needs 649 acres of park land to keep up with growth; and

WHEREAS, the Parkland Dedication Ordinance contributes to meeting the public parkland needs of residents by requiring dedication of suitable land for parks and recreation purposes; and

WHEREAS, the developer of August Fields subdivision, August Fields, L.P., a Texas limited partnership, will dedicate to the City after the completion of the trail and park improvements, in fee simple, a two-acre tract for use as a public linear park trail, more fully described in Exhibit A attached hereto, for full satisfaction of the requirements under the 2006 Park Land Dedication Ordinance for the subdivision; and

WHEREAS, the developer and the City entered into that certain Development Agreement effective March 1, 2018 that included, inter alia, the construction of the public Hike and Bike Trail (the "Trail") and the development of the Public Park (the "Park") in the August Fields subdivision.

WHEREAS, the Development Agreement provided that the future maintenance and repair responsibility for the Park and Trail would be shared between the City and the August Fields HOA, as set forth in Exhibit F therein.

WHEREAS, August Fields, L.P. granted to the City on May 1, 2019, the Hike and Bike Trail Easement, filed of record under Document No. 201906015310 in the Official Public Records of Comal County, Texas, which sets forth the boundaries of the Trail. This Easement provides that the City shall own the concrete pathway located on the Trail.

WHEREAS, August Fields, L.P. dedicated by plat to the City, the approximately two-acre lot known as Lot 907R as established in the Replat of August Fields, Phase 1, Lots 907 and 908 Establishing August Fields, Phase 1 Lots 907R and 908R. Said Replat is filed of record under Document No. 2017060442254 in the Official Public Records of Comal County, Texas. Lot 907R shall serve as the Park as further described in the Development Agreement. The City is the owner of the Park and all fixtures therein.

WHEREAS, the City of New Braunfels deems it to be in the public interest to accept this dedication for park land so that the Property may be dedicated for public use so that the Property may be dedicated for public use; and

WHEREAS, the residents of the City as well as those residents who live in the August Fields subdivision will derive substantial benefits from the responsibilities and duties of the City and HOA in maintaining and keeping in good repair the Park and Trail.

THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS;

THAT passage of this resolution adopts all of the facts stated herein and formally accepts the dedication of the two-acre park.

ADOPTED AND APPROVED on this the 8th day of March 2021.

City of New Braunfels, Texas

RUSTY BROCKMAN, Mayor

Attest:

CAITLIN KROBOT, City Secretary

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 15th day of March, 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.

- 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 is set out in full.
- d. This Agreement shall be effective upon the signature of all parties hereto. The City shall be the last Party to execute the 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: 
 Printed Name: Robert Camarena
 Title: 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 1st day of March, 2018, by Robert Camarena, City Manager of the City of New Braunfels, Texas, a home-rule city, on behalf of the City.

(seal)


 Notary Public Signature



STATE OF TEXAS §

COUNTY OF COMAL §

This instrument was acknowledged before me on the 15th day of March, 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
Barth Timmermann, President

STATE OF TEXAS §

COUNTY OF Travis §

This instrument was acknowledged before me the 27th day of February, 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

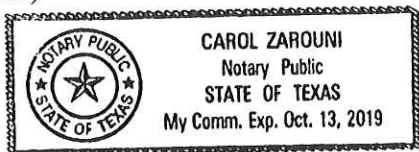
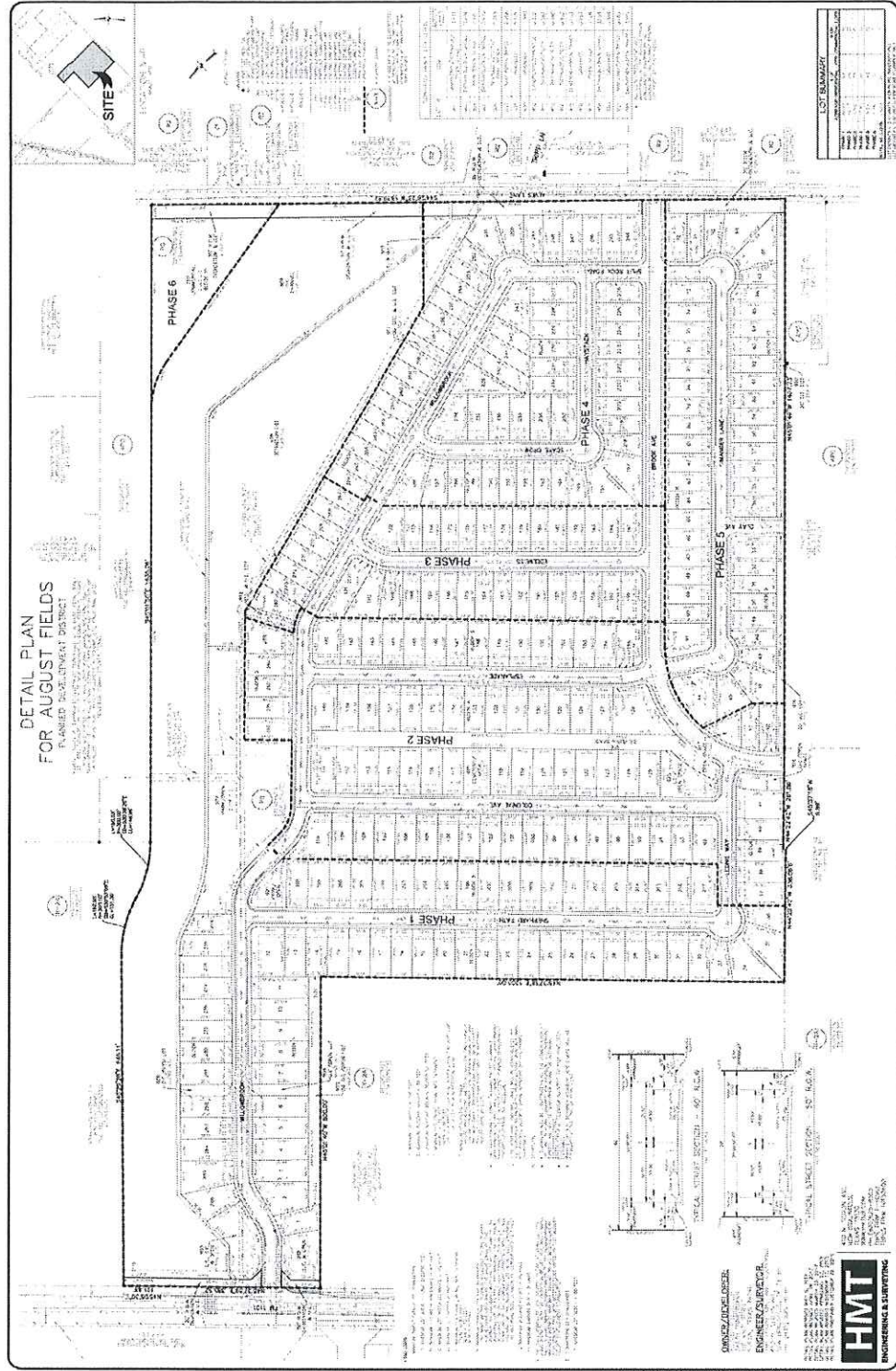


EXHIBIT "A"

LEGAL DESCRIPTION OF THE SUBDIVISION



{W0744244.8}

Exhibit "A"

EXHIBIT "B"**DESCRIPTION OF EXCESS COSTS****SW3P & SITEWORK**

ITEM	DESCRIPTION	UNIT	EST/QTY	\$/UNIT	AMOUNT
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	Tensar 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 Tensar 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

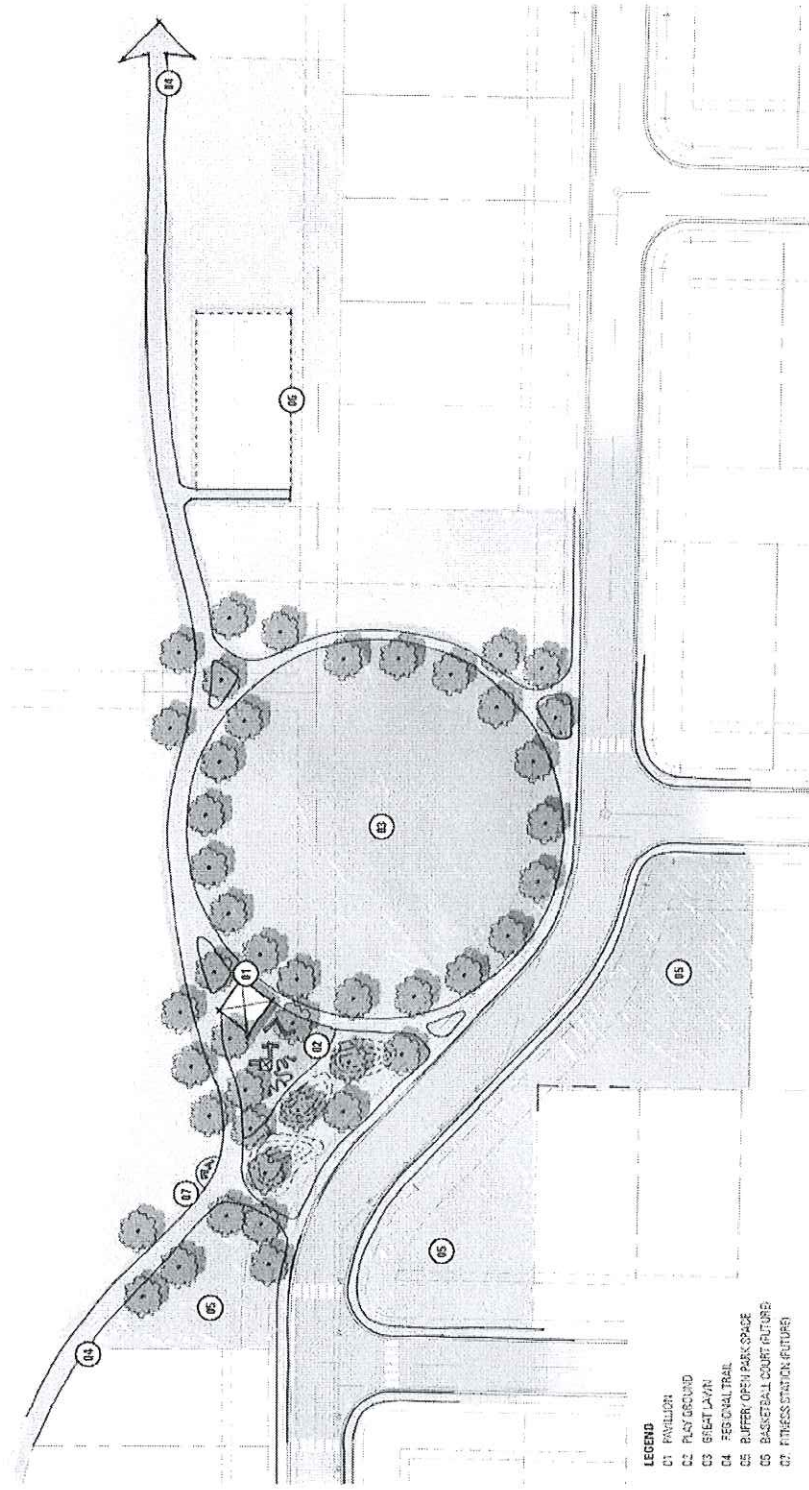
1:46 PM 5/25/2017 N:_Projects\096 - Barth Timmermann\096.003 -2015 August Fields - 69 Lots Unit 1 Plat & Unit 1 Construction Drawings\096.003.106 - OPC\OPC Land Opt 3R\OPC Thoroughfare ROW Only As Per Bryan Woods.xlsx

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																
Worksheet Case Number: 101502012																	
Was the final plat approved after January 1, 2014? Yes																	
Service Area* (select from list): SA 6																	
*Service Area 4 does <u>not</u> have a roadway impact fee for properties final platting 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):	Development Unit:																
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>Single Family Detached Housing</td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> </table>	Single Family Detached Housing								<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>Dwelling Unit</td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> <tr><td> </td></tr> </table>	Dwelling Unit							
Single Family Detached Housing																	
Dwelling Unit																	
# of Units:	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2" style="text-align: center; font-size: x-small;">Maximum Assessable Fee¹</th> </tr> <tr> <th style="width: 50%; font-size: x-small;">Impact Fee Per Development Unit:</th> <th style="width: 50%; font-size: x-small;">Roadway Impact Fee:</th> </tr> <tr> <td style="text-align: center;">\$ 6,765.00</td> <td style="text-align: center;">\$ 1,975,380.00</td> </tr> </table>	Maximum Assessable Fee ¹		Impact Fee Per Development Unit:	Roadway Impact Fee:	\$ 6,765.00	\$ 1,975,380.00										
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Impact Fee Per Development Unit:	Roadway Impact Fee:																
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	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2" style="text-align: center; font-size: x-small;">Potential Collection Amounts</th> </tr> <tr> <th style="width: 50%; font-size: x-small;">Impact Fee Per Development Unit:</th> <th style="width: 50%; font-size: x-small;">Roadway Impact Fee:</th> </tr> <tr> <td style="text-align: center;">\$ 1,875.00</td> <td style="text-align: center;">\$ 547,500.00</td> </tr> </table>	Potential Collection Amounts		Impact Fee Per Development Unit:	Roadway Impact Fee:	\$ 1,875.00	\$ 547,500.00										
Potential Collection Amounts																	
Impact Fee Per Development Unit:	Roadway Impact Fee:																
\$ 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



- LEGEND**
- C1 FANCLUB
 - C2 PLAY GROUND
 - C3 GREAT LAWN
 - C4 PEBBLE TRAIL
 - C5 RAFFER (OPEN PARK SPACE)
 - C6 BASKETBALL COURT (FUTURE)
 - C7 FITNESS STATION (FUTURE)

AUGUST FIELDS PARK / CONCEPT PLAN

T B G New Braunfels, Tx 28 April 2017 28 April 2017 28 April 2017

{W0744244.8}

Exhibit "D"

EXHIBIT "E"**DESCRIPTION OF DEVELOPER INSTALLED PARK IMPROVEMENTS**

August Fields - Park Concept
Opinion of Probable Construction Costs
Prepared by TBG Partners
 April 28, 2017
 S15645

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	30'x30' 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	Benches/Benches/Trash Hasseptics
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 Trees	EA	45	\$ 480.00	\$ 21,600.00	4" Caliper 12' height
Landscape Planting Bed	GF	1,300	\$ 5.00	\$ 6,500.00	Various shrubs and groundcover
Turf Lawn/ Sod	SF	11,840	\$ 0.75	\$ 8,880.00	Solid bermuda sod
Seedbed / Hydromulch	SF	64,240	\$ 0.15	\$ 9,636.00	Bermuda seed and Native seed mix
Plant Mix	CY	160	\$ 28.00	\$ 4,480.00	6" 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
Final 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
Park Concept 2 Subtotal				\$ 291,521.00	
CONTINGENCY 20%				\$ 58,304.20	
Park Concept 2 Total				\$ 349,825.20	

EXCLUDES

Regional Trail, Farrants, Tap Fees,

Page 1 of 1

EXHIBIT “F”**Phase 1 Park Improvements and Maintenance Responsibilities for Public Park and Trail**

Item Description	Installation	Maintenance	Agreement
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.

3/8/2021

Agenda Item No. F)

Presenter/Contact

Stacey Dicke, Parks and Recreation Director
(830) 221-4350 - sdicke@nbtexas.org

SUBJECT:

Approval to authorize the City Manager to execute a Memorandum of Understanding with the New Braunfels Parks Foundation allowing the Foundation to accept 46 acres of land to hold in trust for the City of New Braunfels for a future park.

BACKGROUND / RATIONALE:

Developers of the Oak Creek subdivision have 46 acres of land along the Alligator Creek identified to dedicate to the City of New Braunfels for future park/trail development. This dedication was approved as a note on the recorded plat.

The New Braunfels Parks Foundation has agreed to accept the land and hold it in trust for the city. While the Foundation holds the deed for the property, the City can use the value of the land as a match for potential grants. The Memorandum of Understanding will state that ownership will be transferred from the Foundation to the City upon request. This is similar to how land has been held for Fischer Park, the sports complex and Mission Hill Park.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<input checked="" type="checkbox"/>	Yes	Strategic Priorities	Preserve and Improve our open space.
-------------------------------------	-----	----------------------	--------------------------------------

FISCAL IMPACT:

The property is undeveloped at this time and will only require minimal inspection and maintenance, therefore no fiscal impact will be realized.

COMMITTEE RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff recommends the City Manager be authorized to execute a Memorandum of Understanding with the New Braunfels Parks Foundation allowing the Foundation to accept 46 acres of land to hold in trust for the City for a future park.

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 Foundation has been gifted a 46 acre parcel of land legally described as Lot 908, Block K, Oak Creek Estates Unit 4, as more particularly described on the Plat recorded as Document No. _____, Map and Plat Records of Comal County, TX (hereinafter the “Property”); 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 _____ the Foundation agreed by a majority vote of its Board to approve this agreement and authorize the Foundation Chairman to execute same;

WHEREAS, on _____ the City of New Braunfels City Council approved the agreement and authorized the City Manager 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 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 Property. Furthermore, any agreements that need to be executed pertaining to the use or development of the Property shall be executed as necessary by the Foundation.
- c.** The Foundation shall allow the 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 donation of the Property.
- e.** At the request of the City, the Foundation shall execute all necessary conveyance documents necessary to transfer title of the Property to the City and to no other entity.

SECTION 2 – CITY COMMITMENTS

- a.** The City shall have sole administrative authority over the 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 to be conveyed to the City. Within 30 days of the written request by the City, the Foundation shall convey the 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 on this the _____ day of _____, 2021

New Braunfels Parks Foundation

City of New Braunfels

Joyce Culbertson

Robert Camareno, City Manager

STATE OF TEXAS §

COUNTY OF COMAL §

SUBSCRIBED and SWORN to BEFORE ME, a Notary Public, on this _____ day of _____, 2021 personally appeared Joyce Culbertson, in her 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.

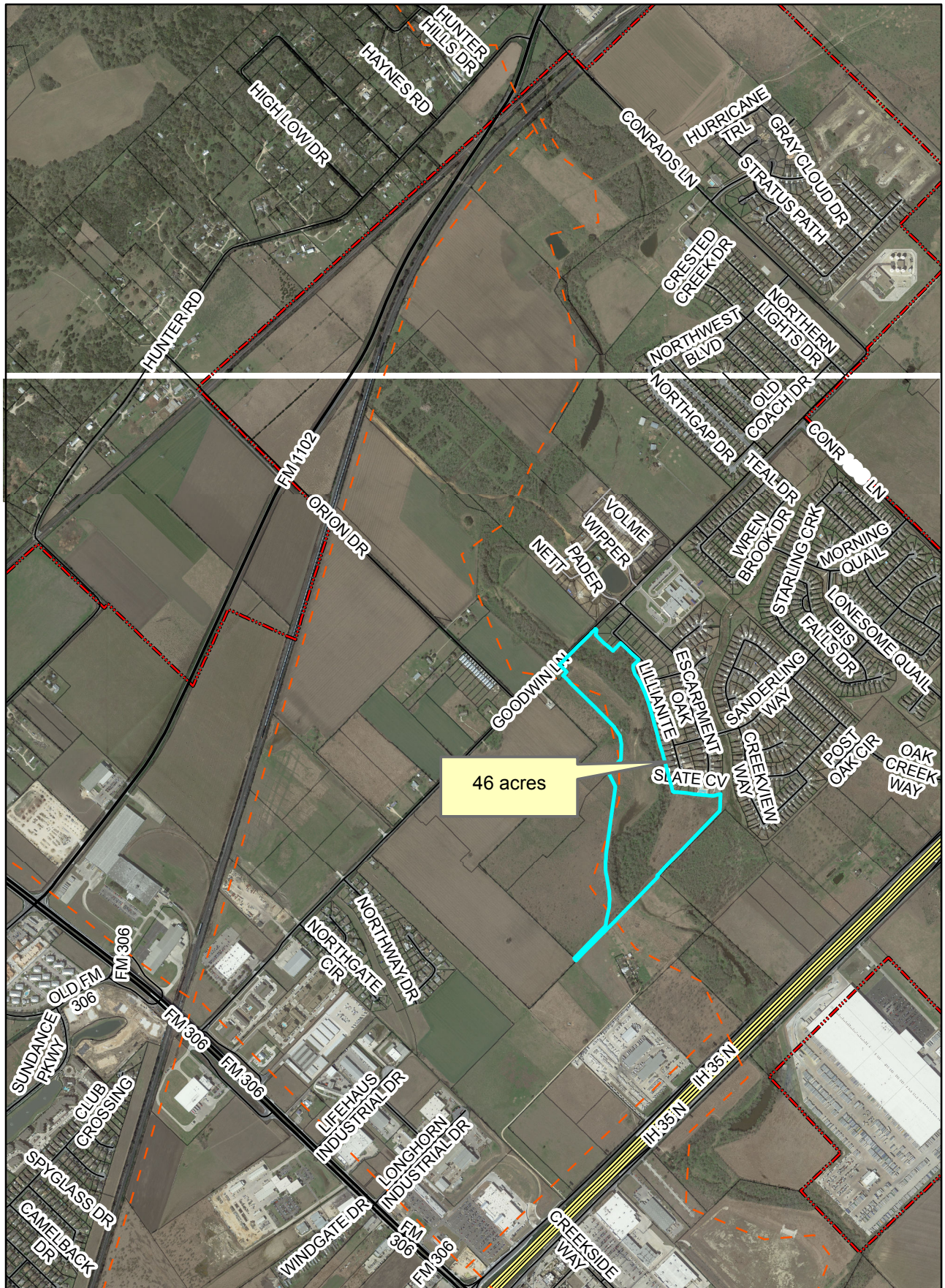
Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF COMAL §

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public, on this _____ day of _____, 2021 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



3/8/2021

Agenda Item No. E)

Presenter/Contact

Garry Ford, City Engineer
(830) 221-4020 - gford@nbtexas.org

SUBJECT:

Approval of a resolution authorizing the City Manager to enter into an Agreement to Contribute Right-of-way Funds with the Texas Department of Transportation for highway improvements on FM 725 from Zipp Road to County Line Road.

BACKGROUND / RATIONALE:

In coordination with the City of New Braunfels, the Texas Department of Transportation (TxDOT) will be making highway improvements to improve mobility, reduce congestion and accommodate pedestrian and bicycle traffic on FM 725 from Zipp Road to County Line Road. The project will expand FM 725 from the exiting two-lane roadway to four-lanes with a center raised median with left turn bays at various locations, a shared use path on the south side, sidewalk on the north side, and associated traffic signal and drainage improvements. The project is currently scheduled for construction in 2024.

Roadway right-of-way (ROW) will increase from 100 feet to approximately 120 feet and requires approximately 4.58 acres of additional ROW. Although additional ROW is required, no residential or non-residential structures are anticipated to be displaced. The total cost of the project is estimated to be approximately \$13 Million and funded through the Surface Transportation Block Grant Program administered through the Alamo Area Metropolitan Planning Organization.

As part of the project funding, the City of New Braunfels is responsible for 10 percent of ROW costs. The total cost estimate for ROW is \$904,716.00 and the City is responsible for \$90,471.60.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:**Envision New Braunfels
Comprehensive Plan**

ACTION 7.55 [PARTNERSHIP] Collaborate with regional partners (MPO, TxDOT, AACOG, other cities, etc.) on future corridors between New Braunfels and Seguin to relieve congestion on SH 46, FM 725, and FM 1044 including an extension of FM 306 towards the Airport, an extension of Business 35, an extension of Rueckle Road or Solms Road, and a connection to SH 130.

FISCAL IMPACT:

Funds are available in Roadway Impact Development Service Area 5.

COMMITTEE RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff recommends approval.

RESOLUTION NO. 2021-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT TO CONTRIBUTE RIGHT-OF-WAY FUNDS WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR HIGHWAY IMPROVEMENTS ON FM 725 FROM ZIPP ROAD TO COUNTY LINE ROAD.

WHEREAS, the State has deemed it necessary to make certain highway improvements on Highway No. FM 725 from Zipp Road to County Line Road, and this section of highway improvements will necessitate the acquisition of certain right of way and the relocating and adjusting of utilities; and

WHEREAS, the needed improvements involve expanding the roadway from two lanes to four lanes, adding continuous two-way left turn lanes and/or raised medians with turning bays, the addition of shared-use paths, curbs, and sidewalks along the roadway, along with drainage improvements and intersection improvements within the project area; and

WHEREAS, the City of New Braunfels acknowledges the need for the planned improvements; and

WHEREAS, the City of New Braunfels requests that the State assume responsibility for acquisition of all necessary right of way and adjustment of utilities for this highway project; and

WHEREAS, the City of New Braunfels desires to enter into a fixed price joint participation agreement to contribute to the State funding participation for the cost of acquiring the right of way and relocating or

adjusting utilities for the proper improvement of the State Highway System; and

WHEREAS, funding is available within the City's Roadway Impact Fee Funds.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

THAT, the City of New Braunfels will participate in the fixed price joint participation agreement as indicated in Exhibit "A" which is attached hereto.

PASSED, ADOPTED, AND APPROVED this 8th day of March, 2021

CITY OF NEW BRAUNFELS, TEXAS

BY: _____
Rusty Brockman, Mayor

ATTEST:

Caitlin Krobot, City Secretary

Exhibit "A"

STATE OF TEXAS §

COUNTY OF TRAVIS §

AGREEMENT TO CONTRIBUTE RIGHT OF WAY FUNDS (FIXED PRICE)

THIS AGREEMENT is made by and between the State of Texas, acting through the Texas Department of Transportation, (the “**State**”), and the City of New Braunfels, Texas, acting through its duly authorized officials (the “**Local Government**”).

WITNESSETH

WHEREAS, Texas Transportation Code §§ 201.103 and 222.052 establish that the State shall design, construct, and operate a system of highways in cooperation with local governments; and

WHEREAS, Texas Transportation Code, §§ 201.209 authorizes the State and a Local Government to enter into agreements in accordance with Texas Government Code, Chapter 791; and

WHEREAS, the State has deemed it necessary to make certain highway improvements on Highway No. FM 725 from Zipp Road to County Line Road, and this section of highway improvements will necessitate the acquisition of certain right of way and the relocating and adjusting of utilities (the “**Project**”); and

WHEREAS, the Local Government requests that the State assume responsibility for acquisition of all necessary right of way and adjustment of utilities for this highway project; and

WHEREAS, the Local Government desires to enter into a fixed price joint participation agreement pursuant to 43 TAC §15.52 to contribute to the State funding participation as defined in 43 TAC §15.55 for the cost of acquiring the right of way and relocating or adjusting utilities for the proper improvement of the State Highway System;

WHEREAS, the Governing Body of the Local Government has approved entering into this agreement by resolution or ordinance dated _____, 20__, which is attached to and made a part of this agreement as Attachment A. A map showing the Project location appears in Attachment B, which is attached to and made a part of this agreement.

NOW THEREFORE, the State and the Local Government do agree as follows:

AGREEMENT

1. Agreement Period

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed. This agreement shall remain in effect until the Project is completed or unless terminated as provided below.

2. Termination

This agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A.** The agreement is terminated in writing with the mutual consent of the parties;
- B.** The agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party; or
- C.** The Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this agreement.

3. Local Project Sources and Uses of Funds

- A.** The total estimated cost of the Project is shown in Attachment C, Project Budget Estimate and Payment Schedule, which is attached to and made a part of this agreement. The expected cash contributions from the Federal or State government, the Local Government, or other parties is shown in Attachment C. The Local Government shall pay to the State the amount shown in Attachment C as its required contribution of the total cost of the Project and shall transmit to the State with the return of this agreement, duly executed by the Local Government, a warrant or check for the amount and according to the payment schedule shown in Attachment C.
- B.** The Local Government's fixed price contribution set forth in Attachment C is not subject to adjustment unless:
 - 1.** site conditions change;
 - 2.** work requested by the Local Government is ineligible for federal participation; or
 - 3.** the adjustment is mutually agreed on by the State and the Local Government.
- C.** If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local

Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.

- D. Whenever funds are paid by the Local Government to the State under this agreement, the Local Government shall remit a warrant or check made payable to the “Texas Department of Transportation Trust Fund.” The warrant or check shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied to this highway project.
- E. Notwithstanding that this is a fixed price agreement, the Local Government agrees that in the event any existing, future, or proposed Local Government ordinance, commissioner’s court order, rule, policy, or other directive, including, but not limited to, outdoor advertising or storm water drainage facility requirements, is more restrictive than State or federal regulations, or any other locally proposed change, including, but not limited to, plats or re-plats, results in any increased costs to the State, then the Local Government will pay one hundred percent (100%) of all those increased costs, even if the applicable county qualifies as an Economically Disadvantaged County (EDC). The amount of the increased costs associated with the existing, future, or proposed Local Government ordinance, commissioner’s court order, rule, policy, or other directive will be determined by the State at its sole discretion.
- F. If the Local Government is an EDC and if the State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.
- G. If the Project has been approved for an “incremental payment” non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment C will clearly state the incremental payment schedule.

4. Real Property in Lieu of Monetary Payment

- A. Contributions of real property may be credited to the Local Government's funding obligation for the cost of right of way to be acquired for this project. Credit for all real property, other than property which is already dedicated or in use as a public road, contributed by the Local Government to the State shall be based on the property's fair market value established as of the effective date of this agreement. The fair market value shall not include increases or decreases in value caused by the project and should include the value of the land and improvements being conveyed, excluding any damages to the remainder. The amount of any credit for real property contributed for this project is clearly shown in Attachment C.
- B. The Local Government will provide to the State all documentation to support the determined fair market value of the donated property. This documentation shall include an appraisal of the property by a licensed appraiser approved by the State. The cost of appraisal will be the responsibility of the State. The State will review the submitted documentation and make a final determination of value; provided however, the State may perform any additional investigation deemed necessary, including supplemental appraisal work by State employees or employment of fee appraisers.

County: Guadalupe
 District 15 – San Antonio
 ROW CSJ #0215-09-031
 CCSJ #0215-09-029
 Federal Project #: N/A
 CFDA Title: Highway Planning & Construction
 CFDA # 20.205
 Federal Highway Administration
 Not Research and Development

- C.** Credit shall be given only for property transferred at no cost to the State after the effective date of this agreement and the issuance of spending authority, and only for property which is necessary to complete this project, has title acceptable to the State, and is not contaminated with hazardous materials. Credit shall be in lieu of monetary contributions required to be paid to the State for the Local Government's funding share of the right of way to be acquired for this project. The total credit cannot exceed the Local Government's matching share of the right of way obligation under this agreement, and credits cannot be reimbursed in cash to the Local Government, applied to project phases other than right of way, nor used for other projects.
- D.** In the event the Local Government's monetary contributions to the State for acquisition of right of way, when added to its real property credits, exceed the Local Government's matching share of the right of way obligation, there will be no refund to the Local Government of any portion of its contributed money.

5. Amendments

Amendments to this agreement due to changes in the character of the work, terms of the agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written supplemental agreement.

6. Notices

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, to the following addresses:

Local Government:	State:
City of New Braunfels	Director of Right of Way Division
By: Robert Camareno	Texas Department of Transportation
Title: City Manager/City Administration	125 E. 11 th Street
Address: 550 Landa St New Braunfels, TX 78130	Austin, Texas 78701
Date:	

All notices shall be deemed given on the date delivered or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail and that request shall be honored and carried out by the other party.

7. Remedies

This agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this agreement and shall be cumulative.

8. Legal Construction

If one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

9. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

10. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

11. Sole Agreement

This agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the subject matter of this agreement.

12. Ownership of Documents

Upon completion or termination of this agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

13. Inspection of Books and Records

The Local Government shall maintain all books, papers, accounting records and other documentation relating to costs incurred under this agreement and shall make such materials available to the State and, if federally funded, the Federal Highway

Administration (FHWA) or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this agreement or until any impending litigation, or claims are resolved. Additionally, the State and FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

14. State Auditor

The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly through a subcontract under this agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

15. Procurement and Property Management Standards

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

16. Civil Rights Compliance

The parties to this agreement shall comply with the regulations of the U.S. Department of Transportation as they relate to nondiscrimination (49 CFR Part 21 and 23 CFR Part 200), and Executive Order 11246 titled “Equal Employment Opportunity,” as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

17. Applicability of Federal Provisions

Articles 18 through 23 only apply if Federal funding is used in the acquisition of right of way or the adjustment of utilities.

18. Office of Management and Budget (OMB) Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

19. Disadvantaged Business Enterprise (DBE) Program Requirements

- A. The parties shall comply with the DBE Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State’s federally approved DBE program.

- C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally -Approved Disadvantaged Business Enterprise by Entity and attachments found at web address http://txdot.gov/business/business_outreach/mou.htm.
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).
- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

20. Debarment Certification

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this

contract to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

21. Lobbying Certification

In executing this agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A.** No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B.** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C.** The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 USC §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

22. Federal Funding Accountability and Transparency Act Requirements

- A.** Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B.** The Local Government agrees that it shall:
 - 1.** Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM/>
 - 2.** Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows Federal government to track the

County: Guadalupe
District 15 – San Antonio
ROW CSJ #0215-09-031
CCSJ #0215-09-029
Federal Project #: N/A
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and

3. Report the total compensation and names of its top five (5) executives to the State if:

- i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
- ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

23. Single Audit Report

- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.
- B. If threshold expenditures of \$750,000 or more are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 E. 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at <http://txdot.gov/inside-txdot/office/audit/contact.html>
- C. If expenditures are less than \$750,000 during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We did not meet the \$750,000 expenditure threshold and therefore, are not required to have a single audit performed for FY ____."
- D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

24. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

County: Guadalupe
District 15 – San Antonio
ROW CSJ #0215-09-031
CCSJ #0215-09-029
Federal Project #: N/A
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT

Signature

Robert Camareno

Typed or Printed Name

City Manager/City Administration

Title

Date

THE STATE OF TEXAS

Rose Wheeler
Contracts and Finance Director
Right of Way Division
Texas Department of Transportation

Date

County: Guadalupe
District 15 – San Antonio
ROW CSJ #0215-09-031
CCSJ #0215-09-029
Federal Project #: N/A
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

ATTACHMENT A RESOLUTION OR ORDINANCE

County: Guadalupe
District 15 – San Antonio
ROW CSJ #0215-09-031
CCSJ #0215-09-029
Federal Project #: N/A
CFDA Title: Highway Planning & Construction
CFDA # 20.205
Federal Highway Administration
Not Research and Development

ATTACHMENT B LOCATION MAP SHOWING PROJECT



ATTACHMENT C PROJECT BUDGET ESTIMATE



County	Guadalupe
District	San Antonio District
ROW CSJ #	0215-09-031
CCSJ #	0215-09-029

Federal Project #	
CFDA Title: <u>Highway Planning and Construction</u>	
FHWA CFDA # 20.205	
Federal Highway Administration	
Not Research and Development	

Standard Agreement to Contribute State Performs Work Attachment C

Description	Total Estimated Cost	Participation				Total % (should be 100%)
		State		Local		
		%	Cost	%	Cost	
Right of Way Acquisition	\$904,716.00	90.0%	\$814,244.40	10.0%	\$90,471.60	100.0%
Reimbursable Utility Adjustments						0.0%
Joint Bid - Reimbursable Utility Adjustments						0.0%
TOTAL	\$904,716.00		\$814,244.40		\$90,471.60	

Fixed Amount
Except as otherwise provided in the Agreement, the fixed amount of Local
Government
participation will be that amount provided above.

3/8/2021

Agenda Item No. G)

Presenter/Contact

Tony Gonzalez, Director of Information Technology
(830) 221-4339 - tgonzalez@nbtexas.org

SUBJECT:

Approval to authorize the City Manager to enter into a five-year software maintenance contract with Presidio Networked Solutions Group in the amount of \$86,400 (\$17,280 annually) for the City's phone system utilizing a Texas Department of Information Resources contract

BACKGROUND / RATIONALE:

In the FY 2021 Adopted Budget, the City included funding for a one-year software maintenance agreement for our phone system. However, Cisco has changed the available options they offer for these agreements. The new Enterprise Agreement is offered as a five-year agreement, with annual payments of \$17,280. This maintenance agreement will entitle the City to keep the Unity System updated to the latest software releases, in addition to direct technical support with Cisco.

This contract is offered through a Texas DIR contract, which meets the City's competitive bidding requirements.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

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FISCAL IMPACT:

As mentioned above, funding was included in the FY 2021 Adopted budget to continue supporting a maintenance agreement for our telephone system. The annual expenditure for years 2-5 will be incorporated into future budgets.

COMMITTEE RECOMMENDATION:

[Enter Committee Recommendation Here]

STAFF RECOMMENDATION:

Staff recommends entering into this contract.

TO: City of New Braunfels
Steve Daggett
473 S Castell Ave
New Braunfels, TX 78130

sdaggett@nbtexas.org
(p) 830-221-4334

FROM: Presidio Networked Solutions Group, LLC
Jen Eckhardt
777 E. Sonterra Blvd.
Suite 300
San Antonio, TX 78258

jeckhardt@presidio.com
(p) 210.245.3804

Customer#: CITY0174

Account Manager: Jen Eckhardt

Inside Sales Rep: Linda Beaver

Title: City of New Braunfels - FLEX

Comments: Notwithstanding the foregoing, for usage-based services (Usage-Based Services) (i.e. Cisco-provided WebEx or Software as a Service (SaaS) services), the Master Agreement, or following terms and conditions as applicable, and the Cisco terms and conditions for use located at <http://contractdocuments.webex.com/webextermsconditions> shall govern CLIENT'S use of such services.

Cisco WebEx and SaaS Services. Notwithstanding anything else contained herein or in the Master Agreement, in the event of a conflict between the terms governing payment for Usage Based Services below and the Master Agreement, the terms below shall prevail. For Usage-Based services purchased by CLIENT, Presidio shall invoice CLIENT once a month. The invoice for Usage-Based services will vary from month to month based upon CLIENT's usage and shall include all charges for the Usage-Based Services used by CLIENT in the previous month. If CLIENT is delinquent in its payment obligations for the Usage-Based Services, then, upon reasonable, prior notice, Presidio reserves the right to suspend or discontinue such services at its sole discretion. CLIENT acknowledges and agrees that such discontinuation or suspension by PRESIDIO will not constitute a breach of PRESIDIO'S obligations to CLIENT. CLIENT agrees to hold harmless PRESIDIO for any resulting damages due to the suspension or discontinuation of the Usage-Based Services due to CLIENT's delinquent or non-payment.

Usage-Based Services. Term and Termination of Orders. The "Initial Term" of an order for Usage-Based Services ("Order") starts on the date the Usage-Based Services are available for use by CLIENT and lasts for the time period stated in the Order. After the Initial Term, unless prohibited by applicable law or unless the Order states otherwise, there will be an automatic "Renewal Term" of the same length of time unless CLIENT notifies Presidio in writing that CLIENT does not want to renew the Usage-Based Services at least sixty (60) days before the end of the then current Initial Term or Renewal Term. If the fees will change for the Renewal Term, Presidio will notify CLIENT reasonably in advance of the Renewal and in time for CLIENT to accept or reject renewing the Usage-Based Services. If CLIENT agrees with the fee changes, CLIENT may do nothing and the new fees will apply for the upcoming Renewal Term. Either party may terminate an Order by providing the other party written notice of termination at least sixty (60) days before the end of such Initial or Renewal Term. The termination will be effective on the last day of the Initial or Renewal Term and CLIENT will pay for the Usage-Based Services until the end of the current Initial or Renewal Term regardless of when CLIENT provided notice.

Usage-Based Services/Multi-Year OEM Agreement Non-Appropriation. In the event of a non-appropriation of funds, and CLIENT's written request within at least seventy-five (75) days prior to expiration of an annual subscription term, PRESIDIO shall pass-through the applicable OEM Non-Appropriation Policies and will permit the right to terminate the remainder of the multi-year subscription without any penalties to the extent permitted by the applicable OEM, provided CLIENT complies with the applicable OEM requirements. Notwithstanding the foregoing, PRESIDIO will not refund any subscription amount paid upfront for a certain annual subscription term.

Contract Vehicle: Texas DIR-TSO-4167 Cisco

#	Part #	Description	Unit Price	Qty	Ext Price
A-FLEX-3		Initial Term: 60 months	Billing Model: Annual		
		Auto-Renewal Term: Do Not Renew	Requested Start Date: 03/04/2021		
1	A-FLEX-3	Collaboration Flex Plan 3.0	\$0.00	1	\$0.00
Recurring Charges					
2	SVS-FLEX-SUPT-BAS	Basic Support for Flex Plan	\$0.00	1 Each for 60 months	\$0.00

3	A-FLEX-EAPL	EntW On-Premises Calling	\$4.50	304 Each for 60 months	\$82,080.00
4	A-FLEX-PL-COMMON	On-Premises Common Area Add-on	\$2.25	32 Each for 60 months	\$4,320.00
5	A-FLEX-SME11	Session Manager v11 (1)	\$0.00	1 Users for 60 months	\$0.00
6	A-FLEX-SRST-E	SRST Endpoints (1)	\$0.00	397 Users for 60 months	\$0.00
7	A-FLEX-P-PLMENC-K9	Unified Communications Manager Encryption License (1)	\$0.00	1 Users for 60 months	\$0.00
8	A-FLEX-P-UCM11	Unified Communications Manager v11 License (1)	\$0.00	365 Users for 60 months	\$0.00
9	A-FLEX-P-ACC-11X	Access v11 License (1)	\$0.00	61 Users for 60 months	\$0.00
10	A-FLEX-P-CA-11X	Common Area v11 License (1)	\$0.00	184 Users for 60 months	\$0.00
11	A-FLEX-P-UCXN11	Unity Connection v11 License (1)	\$0.00	365 Users for 60 months	\$0.00
12	A-FLEX-P-ER-11	Emergency Responder v11 License (1)	\$0.00	912 Users for 60 months	\$0.00
13	A-FLEX-EXP-PAK	Expressway Product Authorization Key (1)	\$0.00	1 Users for 60 months	\$0.00
14	A-FLEX-UCM-PAK	UCM Product Authorization Key (1)	\$0.00	1 Users for 60 months	\$0.00
15	A-FLEX-SW-11.5-K9	On-Premises & Partner Hosted Calling SW Bundle v11.5 (1)	\$0.00	1 Users for 60 months	\$0.00
16	A-FLEX-C-DEV-ENT	Cloud Device Registration Entitlement	\$0.00	365 Users for 60 months	\$0.00
17	A-FLEX-MSG-ENT	Messaging Entitlement	\$0.00	365 Users for 60 months	\$0.00
18	A-FLEX-FILESTG-ENT	File Storage Entitlement	\$0.00	7296 Users for 60 months	\$0.00
19	A-FLEX-PROPACK-ENT	Pro Pack for Cisco Control Hub Entitlement	\$0.00	365 Users for 60 months	\$0.00
20	A-FLEX-EXP-RMS	Expressway Rich Media Session (1)	\$0.00	16 Users for 60 months	\$0.00
Recurring Annual Charges:					\$17,280.00
Total Recurring Charges:					\$86,400.00
Total:					\$86,400.00
			Sub Total:	\$86,400.00	
			Grand Total:	\$86,400.00	

This quote is governed by Terms and Conditions of Texas DIR-TSO-4167 Contract.
State of Texas Vendor ID 17605152499
Standard-Terms-for-Purchase-of-Services or Goods
Quote valid for 30 days from date shown above.
Prices may NOT include all applicable taxes and shipping charges
All prices subject to change without notice. Supply subject to availability.

Purchase Order should be issued to:
Presidio Networked Solutions Group, LLC
7701 Las Colinas Ridge #600,
Irving, TX 75063

Pursuant to this contract your PO must reflect the following contract:
Texas DIR-TSO-4167
Tax ID# 58-1667655; Size Business: Large; CAGE Code: OKD05; DUNS#15-405-0959; CEC 15-506005G
Credit: Net 30 days (all credit terms subject to prior Presidio credit department approval)
Delivery: FOB Terms Dictated by individual PO details

Customer hereby authorizes and agrees to make timely payment for products delivered and services rendered, including payments for partial shipments

Customer Signature

Date

3/8/2021

Agenda Item No. H)

Presenter/Contact

*Sandy Paulos, Assistant Chief Financial Officer
(830) 221-4387 - spaulos@nbtexas.org*

SUBJECT:

Approval of the City of New Braunfels FY 2021 First Quarter Investment Report.

BACKGROUND / RATIONALE:

State of Texas statutes require quarterly investment reports be presented to the governing body of a municipality. In addition, the Investment Policy adopted annually by the City Council requires quarterly reporting to the City Council. Attached for Council consideration is the FY 2021 First Quarter Investment Report to meet these statutory requirements. As of December 31, 2020, the City had \$195,404,868 (market value) invested in different investment instruments including cash, as shown below. The portfolio decreased by \$5,886,176 in the first fiscal quarter. This was due to capital project expenditures during the quarter.

Investment Type:	Amount Invested (\$ in Millions)
Money Market/Cash	\$ 4
Pools	177
CD's	12
US T-Note	2
Total Investments	\$ 195
Weighted Average Maturity of Portfolio	14 Days
Weighted Average Yield for Portfolio	0.12%
Earned Income QTR	\$ 72,542
Earned Income YTD	\$ 72,542

For the first quarter, the weighted average yield of the City's investments was 0.12 percent, a decrease of 0.01 percent when compared to the FY 2020 fourth quarter yield of 0.13 percent. Local Government Investment Pools (LGIP's) yields continue to decrease and averaged a yield of 0.11 percent during the quarter. Since the majority of the City's funds are in LGIP's, these lower yields resulted in a decrease in the City's portfolio yield.

The weighted average maturity of the City's portfolio decreased in comparison to the fourth quarter of FY 2020 due to the maturity of an investment during the quarter resulting in the funds transferring to a more liquid LGIP, along with the upcoming maturity of another investment (March 2021).

We continue to work on diversifying the City's portfolio in this challenging rate environment by taking steps such as moving funds into an additional LGIP and looking for other secure investment options, such as CD's. An additional CD was purchased in October to lock in a relatively competitive rate as the yields on LGIP's continue to decrease.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<input checked="" type="checkbox"/>	Yes	City Plan/ Council Priority:	Strategic Priorities: 8 - Maintain fiscal stability of City operations
-------------------------------------	-----	-------------------------------------	--

FISCAL IMPACT:

N/A

COMMITTEE RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff recommends approval of the attached investment report.

City of New Braunfels



For the Quarter Ended

December 31, 2020

Report Name

Certification Page

Executive Summary

Benchmark Comparison

Detail of Security Holdings

Change in Value

Earned Income

Investment Transactions

Amortization and Accretion

Projected Fixed Income Cash Flows

MARKET RECAP - DECEMBER 2020:

The fourth quarter story was multifaceted, with a global resurgence of the virus, FDA approval of two extremely effective vaccines, a contested election that will presumably result in a Biden presidency, and signs of a slowdown in economic growth. During the quarter, Covid-19 hospitalizations quadrupled and the total number of Covid deaths jumped by 70%. Because the broad economy remained open for the most part during the holidays, experts are bracing for another rise in cases in January.

Economic data released during December confirmed prior signals that the economic recovery was slipping. The ISM manufacturing index fell from 59.3 to a still solid 56.7, but the employment index was more concerning as it fell from 53.2 into contraction territory at 48.4. November's employment report confirmed that signal and was clear in its depiction of moderating job growth with nonfarm payrolls increasing just 245k, well below the 460k median forecast. Payrolls are still down more than 10 million from the pre-pandemic period early in the year. The sidelined workers primarily represent the service sector, with restaurants, bars, gyms, conferences and sporting events still far from normal. The unemployment rate dropped from 6.9% to 6.7% last month, although this improvement is a little deceptive as it was driven by a decline in the labor force participation rate which, at 61.5%, is now within one tenth of a 45-year low. First time filings for unemployment benefits spiked to a three-month high of 892k in mid-December and stubbornly remain nearly 4x pre-pandemic norms. Some 20 million Americans continue to receive unemployment benefits in combined state and federal programs. Consumer spending has slowed as well, with overall retail sales for November down -1.1% following a downwardly revised -0.1% October decline. Inflation remains on the backburner with overall CPI holding steady at +1.6% year-over-year, while core CPI runs at a +1.2% pace. The 2020 housing boom finally moderated with existing home sales slipping by -2.5% in November, breaking a five-month string of advances. However, the 6.7 million unit annualized sales pace was still +25.8% above the same period a year ago. New home sales dropped -11.0% in November but are still up more than +20% year-over-year.

It's important to note that the recovery thus far has been wildly uneven. Census data revealed in early December that nearly 83 million adults in the U.S. are finding it "somewhat" or "very difficult" to cover basic monthly expenses such as food, rent or mortgage, car payments, medical expenses, or student loans. This is in sharp contrast to the surge in overall wealth that has driven household net worth to a new record high. Congress did finally pass an aid package by the end of the year, offering another month of eviction protection, an extension of federal jobless benefits and a \$600 stimulus check for individuals, in addition to a replenishing of the Paycheck Protection Program.

The forward-looking stock markets focused on the vaccine rollout and the additional aid package rather than the rapid spread of the virus and the weakening economic numbers. Both the DOW and the S&P 500 closed the year at fresh record highs. First quarter GDP growth is likely to be relatively weak, but should improve in subsequent quarters as an increasing number of Americans are vaccinated and begin a return to pre-pandemic normality.

For the Quarter Ended
December 31, 2020

This report is prepared for the **City of New Braunfels** (the "Entity") in accordance with Chapter 2256 of the Texas Public Funds Investment Act ("PFIA"). Section 2256.023(a) of the PFIA states that: "Not less than quarterly, the investment officer shall prepare and submit to the governing body of the entity a written report of the investment transactions for all funds covered by this chapter for the preceding reporting period." This report is signed by the Entity's investment officers and includes the disclosures required in the PFIA. To the extent possible, market prices have been obtained from independent pricing sources.

The investment portfolio complied with the PFIA and the Entity's approved Investment Policy and Strategy throughout the period. All investment transactions made in the portfolio during this period were made on behalf of the Entity and were made in full compliance with the PFIA and the approved Investment Policy.

Officer Names and Titles:

Sandy Paulos

Name: Sandy Paulos

Title: Asst. Chief Financial Officer

Jared Werner

Name: Jared Werner

Title: Chief Financial Officer

Melinda Slusser

Senior Accountant

Name: Melinda Slusser

Title: Senior Accountant / Finance

Account Summary

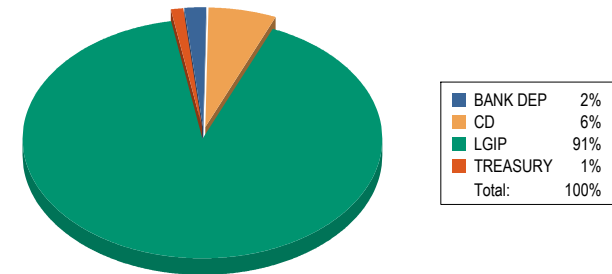
Allocation by Security Type

Beginning Values as of 09/30/20

Ending Values as of 12/31/20

Par Value	201,260,184.37	195,386,586.53
Market Value	201,291,043.77	195,404,867.73
Book Value	201,272,082.05	195,393,675.35
Unrealized Gain/(Loss)	18,961.72	11,192.38
Market Value %	100.01%	100.01%

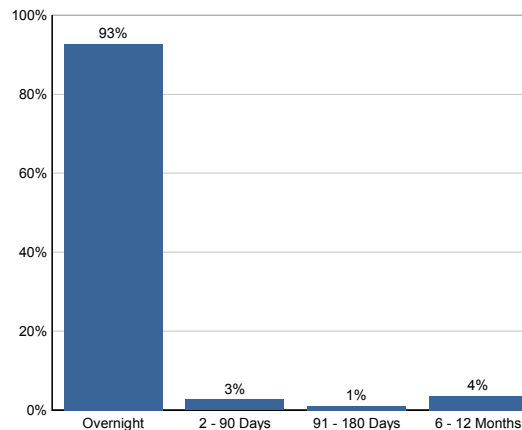
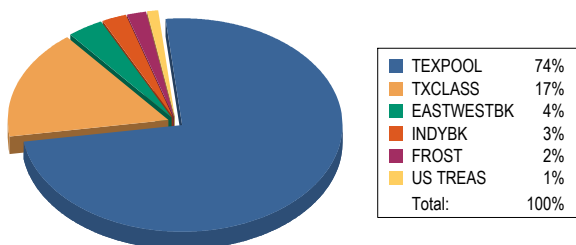
Weighted Avg. YTW	0.132%	0.124%
Weighted Avg. YTM	0.132%	0.124%



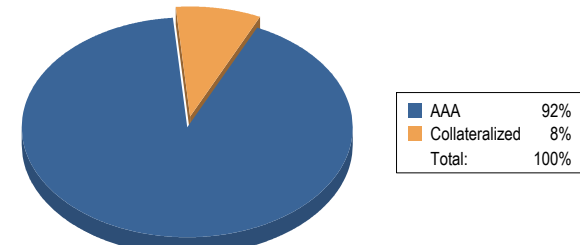
Allocation by Issuer

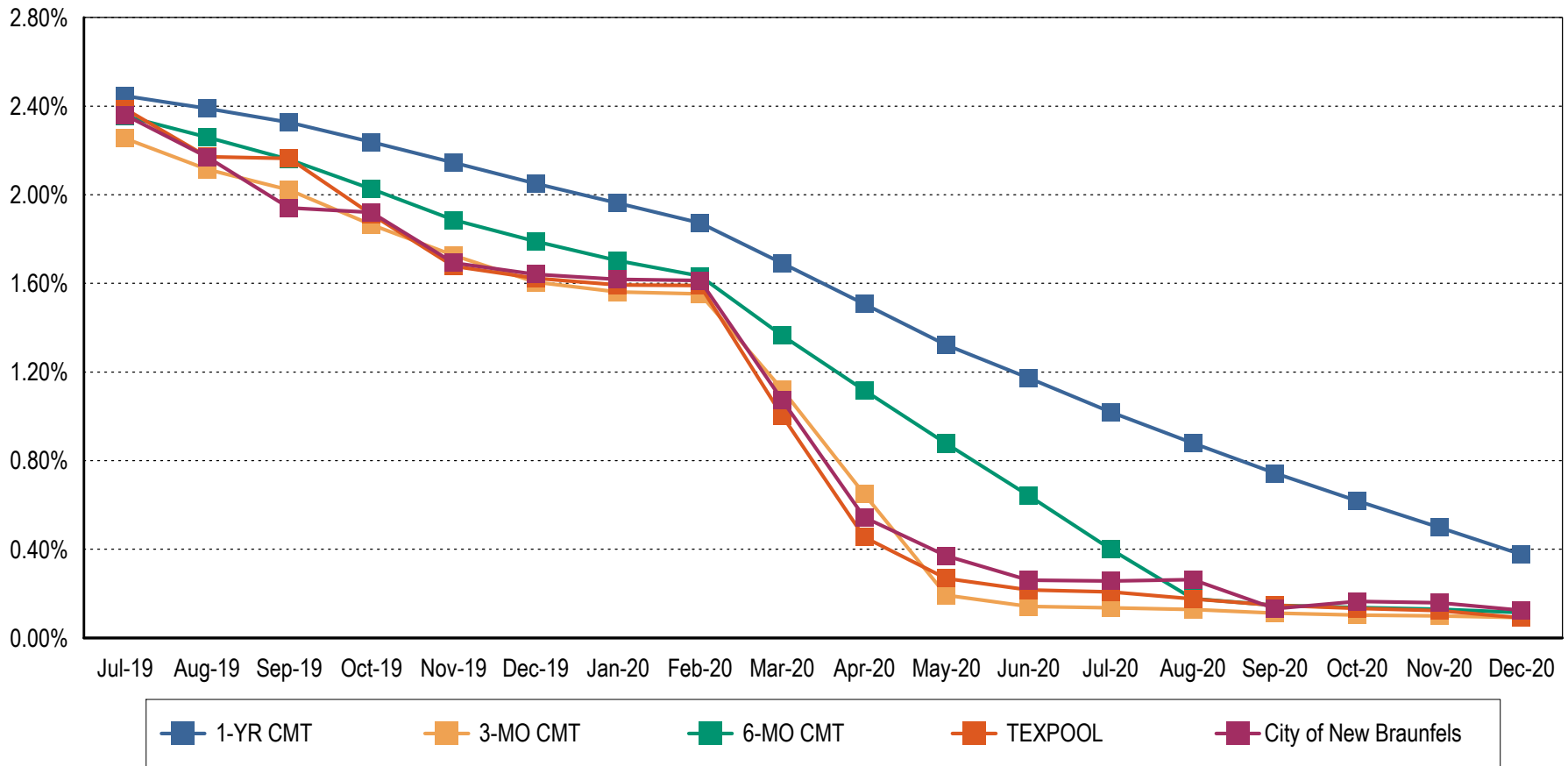
Maturity Distribution %

Credit Quality



Weighted Average Days to Maturity: 14





Note 1: CMT stands for Constant Maturity Treasury. This data is published in Federal Reserve Statistical Release H.15 and represents an average of all actively traded Treasury securities having that time remaining until maturity. This is a standard industry benchmark for Treasury securities. The CMT benchmarks are moving averages. The 3-month CMT is the daily average for the previous 3 months, the 6-month CMT is the daily average for the previous 6 months, and the 1-year and 2-year CMT's are the daily averages for the previous 12-months.

Note 2: Benchmark data for TexPool is the monthly average yield.

CUSIP	Settle Date	Sec. Type	Sec. Description	CPN	Mty Date	Next Call	Call Type	Par Value	Purch Price	Orig Cost	Book Value	Mkt Price	Market Value	Days to Mty	Days to Call	YTM	YTW
101 - General Fund																	
FROST-NBR		BANK DEP	Frost Bk					3,869,818.74	100.000	3,869,818.74	3,869,818.74	100.000	3,869,818.74	1		0.000	0.000
TEXPOOL		LGIP	TexPool					10,123,851.43	100.000	10,123,851.43	10,123,851.43	100.000	10,123,851.43	1		0.091	0.091
CD-7730-1	06/13/20	CD	Independent Bk CD	0.550	03/13/21			5,138,412.78	100.000	5,138,412.78	5,138,412.78	100.000	5,138,412.78	72		0.550	0.550
Total for 101 - General Fund								19,132,082.95	100.000	19,132,082.95	19,132,082.95	100.000	19,132,082.95	20		0.196	0.196
212 - NB Industrial Dev Corp																	
TXCLASS		LGIP	Texas CLASS					13,958,080.82	100.000	13,958,080.82	13,958,080.82	100.000	13,958,080.82	1		0.088	0.088
CD-7984	10/02/20	CD	East West Bk CD	0.300	10/04/21			5,003,741.12	100.000	5,003,741.12	5,003,741.12	100.000	5,003,741.12	277		0.300	0.300
Total for 212 - NB Industrial Dev Corp								18,961,821.94	100.000	18,961,821.94	18,961,821.94	100.000	18,961,821.94	74		0.144	0.144
999 - Pooled Funds																	
TEXPOOL		LGIP	TexPool					134,733,430.22	100.000	134,733,430.22	134,733,430.22	100.000	134,733,430.22	1		0.091	0.091
TXCLASS		LGIP	Texas CLASS					18,557,754.97	100.000	18,557,754.97	18,557,754.97	100.000	18,557,754.97	1		0.088	0.088
9128284P2	11/22/19	TREAS NOTE	U.S. Treasury	2.625	05/15/21			2,000,000.00	101.406	2,028,125.00	2,007,088.82	100.914	2,018,281.20	135		1.660	1.660
CD-7984	10/02/20	CD	East West Bk CD	0.300	10/04/21			2,001,496.45	100.000	2,001,496.45	2,001,496.45	100.000	2,001,496.45	277		0.300	0.300
Total for 999 - Pooled Funds								157,292,681.64	100.018	157,320,806.64	157,299,770.46	100.012	157,310,962.84	6		0.113	0.113
Total for City of New Braunfels								195,386,586.53	100.014	195,414,711.53	195,393,675.35	100.009	195,404,867.73	14		0.124	0.124

CUSIP	Security Type	Security Description	09/30/20 Book Value	Cost of Purchases	Maturities / Calls / Sales	Amortization / Accretion	Realized Gain/(Loss)	12/31/20 Book Value	09/30/20 Market Value	12/31/20 Market Value	Change in Mkt Value
101 - General Fund											
FROST-NBR	BANK DEP	Frost Bk	74,765,916.60	316,116.78	(71,212,214.64)	0.00	0.00	3,869,818.74	74,765,916.60	3,869,818.74	(70,896,097.86)
JPM-NBRE	BANK DEP	JPM Chase Bk	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
JPM-NBRH	BANK DEP	JPM Chase Bk High Yield	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TEXPOOL	LGIP	TexPool	23,982,125.26	0.00	(13,858,273.83)	0.00	0.00	10,123,851.43	23,982,125.26	10,123,851.43	(13,858,273.83)
CD-7730-1	CD	Independent Bk CD 0.550 03/13/21	5,131,376.47	7,036.31	0.00	0.00	0.00	5,138,412.78	5,131,376.47	5,138,412.78	7,036.31
Total for 101 - General Fund			103,879,418.33	323,153.09	(85,070,488.47)	0.00	0.00	19,132,082.95	103,879,418.33	19,132,082.95	(84,747,335.38)
212 - NB Industrial Dev Corp											
TEXPOOL	LGIP	TexPool	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TXCLASS	LGIP	Texas CLASS	13,954,147.41	3,933.41	0.00	0.00	0.00	13,958,080.82	13,954,147.41	13,958,080.82	3,933.41
CD-7984	CD	East West Bk CD 0.300 10/04/21	0.00	5,003,741.12	0.00	0.00	0.00	5,003,741.12	0.00	5,003,741.12	5,003,741.12
Total for 212 - NB Industrial Dev Corp			13,954,147.41	5,007,674.53	0.00	0.00	0.00	18,961,821.94	13,954,147.41	18,961,821.94	5,007,674.53
999 - Pooled Funds											
TEXPOOL	LGIP	TexPool	60,874,093.09	73,859,337.13	0.00	0.00	0.00	134,733,430.22	60,874,093.09	134,733,430.22	73,859,337.13
TXCLASS	LGIP	Texas CLASS	18,552,525.54	5,229.43	0.00	0.00	0.00	18,557,754.97	18,552,525.54	18,557,754.97	5,229.43
3130AEWA4	AGCY BULET	FHLB 2.625 10/01/20	2,000,000.00	0.00	(2,000,000.00)	0.00	0.00	0.00	2,000,000.00	0.00	(2,000,000.00)
9128284P2	TREAS NOTE	U.S. Treasury 2.625 05/15/21	2,011,897.68	0.00	0.00	(4,808.86)	0.00	2,007,088.82	2,030,859.40	2,018,281.20	(12,578.20)
CD-7984	CD	East West Bk CD 0.300 10/04/21	0.00	2,001,496.45	0.00	0.00	0.00	2,001,496.45	0.00	2,001,496.45	2,001,496.45
Total for 999 - Pooled Funds			83,438,516.31	75,866,063.01	(2,000,000.00)	(4,808.86)	0.00	157,299,770.46	83,457,478.03	157,310,962.84	73,853,484.81
Total for City of New Braunfels			201,272,082.05	81,196,890.63	(87,070,488.47)	(4,808.86)	0.00	195,393,675.35	201,291,043.77	195,404,867.73	(5,886,176.04)

CUSIP	Security Type	Security Description	Beg. Accrued	Interest Earned	Interest Rec'd / Sold / Matured	Interest Purchased	Ending Accrued	Disc Accr / Prem Amort	Net Income
101 - General Fund									
FROST-NBR	BANK DEP	Frost Bk	0.00	141.51	141.51	0.00	0.00	0.00	141.51
TEXPOOL	LGIP	TexPool	0.00	4,069.60	4,069.60	0.00	0.00	0.00	4,069.60
CD-7730-1	CD	Independent Bk CD 0.550 03/13/21	1,391.80	7,115.64	7,036.31	0.00	1,471.13	0.00	7,115.64
Total for 101 - General Fund			1,391.80	11,326.75	11,247.42	0.00	1,471.13	0.00	11,326.75
212 - NB Industrial Dev Corp									
TXCLASS	LGIP	Texas CLASS	0.00	3,933.41	3,933.41	0.00	0.00	0.00	3,933.41
CD-7984	CD	East West Bk CD 0.300 10/04/21	0.00	3,782.25	3,741.12	0.00	41.13	0.00	3,782.25
Total for 212 - NB Industrial Dev Corp			0.00	7,715.66	7,674.53	0.00	41.13	0.00	7,715.66
999 - Pooled Funds									
TEXPOOL	LGIP	TexPool	0.00	38,329.52	38,329.52	0.00	0.00	0.00	38,329.52
TXCLASS	LGIP	Texas CLASS	0.00	5,229.43	5,229.43	0.00	0.00	0.00	5,229.43
3130AEWA4	AGCY BULET	FHLB 2.625 10/01/20	26,250.00	0.00	26,250.00	0.00	0.00	0.00	0.00
9128284P2	TREAS NOTE	U.S. Treasury 2.625 05/15/21	19,830.16	13,236.14	26,250.00	0.00	6,816.30	(4,808.86)	8,427.28
CD-7984	CD	East West Bk CD 0.300 10/04/21	0.00	1,512.90	1,496.45	0.00	16.45	0.00	1,512.90
Total for 999 - Pooled Funds			46,080.16	58,307.99	97,555.40	0.00	6,832.75	(4,808.86)	53,499.13
Total for City of New Braunfels			47,471.96	77,350.40	116,477.35	0.00	8,345.01	(4,808.86)	72,541.54

Trade Date	Settle Date	CUSIP	Security Type	Security Description	Coupon	Mty Date	Call Date	Par Value	Price	Principal Amount	Int Purchased / Received	Total Amount	Realized Gain / Loss	YTM	YTW
101 - General Fund															
Income Payments															
12/13/20	12/13/20	CD-7730-1	CD	Independent Bk CD	0.550	03/13/21				0.00	7,036.31	7,036.31			
Total for: Income Payments										0.00	7,036.31	7,036.31			
Capitalized Interest															
12/13/20	12/13/20	CD-7730-1	CD	Independent Bk CD	0.550	03/13/21		7,036.31	100.000	7,036.31	0.00	7,036.31			
Total for: Capitalized Interest								7,036.31		7,036.31	0.00	7,036.31			
212 - NB Industrial Dev Corp															
Purchases															
10/02/20	10/02/20	CD-7984	CD	East West Bk CD	0.300	10/04/21		5,000,000.00	100.000	5,000,000.00	0.00	5,000,000.00		0.300	0.300
Total for: Purchases								5,000,000.00		5,000,000.00	0.00	5,000,000.00		0.300	0.300
Income Payments															
10/31/20	10/31/20	CD-7984	CD	East West Bk CD	0.300	10/04/21				0.00	1,233.03	1,233.03			
11/30/20	11/30/20	CD-7984	CD	East West Bk CD	0.300	10/04/21				0.00	1,233.33	1,233.33			
12/31/20	12/31/20	CD-7984	CD	East West Bk CD	0.300	10/04/21				0.00	1,274.76	1,274.76			
Total for: Income Payments										0.00	3,741.12	3,741.12			
Capitalized Interest															
10/31/20	10/31/20	CD-7984	CD	East West Bk CD	0.300	10/04/21		1,233.03	100.000	1,233.03	0.00	1,233.03			
11/30/20	11/30/20	CD-7984	CD	East West Bk CD	0.300	10/04/21		1,233.33	100.000	1,233.33	0.00	1,233.33			
12/31/20	12/31/20	CD-7984	CD	East West Bk CD	0.300	10/04/21		1,274.76	100.000	1,274.76	0.00	1,274.76			
Total for: Capitalized Interest								3,741.12		3,741.12	0.00	3,741.12			

Trade Date	Settle Date	CUSIP	Security Type	Security Description	Coupon	Mty Date	Call Date	Par Value	Price	Principal Amount	Int Purchased / Received	Total Amount	Realized Gain / Loss	YTM	YTW
999 - Pooled Funds															
Maturities															
10/01/20	10/01/20	3130AEWA4	AGCY BULET	FHLB	2.625	10/01/20		2,000,000.00	100.000	2,000,000.00	0.00	2,000,000.00		1.621	
Total for: Maturities								2,000,000.00		2,000,000.00	0.00	2,000,000.00		1.621	
Purchases															
10/02/20	10/02/20	CD-7984	CD	East West Bk CD	0.300	10/04/21		2,000,000.00	100.000	2,000,000.00	0.00	2,000,000.00		0.300	0.300
Total for: Purchases								2,000,000.00		2,000,000.00	0.00	2,000,000.00		0.300	0.300
Income Payments															
10/01/20	10/01/20	3130AEWA4	AGCY BULET	FHLB	2.625	10/01/20				0.00	26,250.00	26,250.00			
10/31/20	10/31/20	CD-7984	CD	East West Bk CD	0.300	10/04/21				0.00	493.21	493.21			
11/16/20	11/15/20	9128284P2	TREAS NOTE	U.S. Treasury	2.625	05/15/21				0.00	26,250.00	26,250.00			
11/30/20	11/30/20	CD-7984	CD	East West Bk CD	0.300	10/04/21				0.00	493.33	493.33			
12/31/20	12/31/20	CD-7984	CD	East West Bk CD	0.300	10/04/21				0.00	509.91	509.91			
Total for: Income Payments										0.00	53,996.45	53,996.45			
Capitalized Interest															
10/31/20	10/31/20	CD-7984	CD	East West Bk CD	0.300	10/04/21		493.21	100.000	493.21	0.00	493.21			
11/30/20	11/30/20	CD-7984	CD	East West Bk CD	0.300	10/04/21		493.33	100.000	493.33	0.00	493.33			
12/31/20	12/31/20	CD-7984	CD	East West Bk CD	0.300	10/04/21		509.91	100.000	509.91	0.00	509.91			
Total for: Capitalized Interest								1,496.45		1,496.45	0.00	1,496.45			

Trade Date	Settle Date	CUSIP	Security Type	Security Description	Coupon	Mty Date	Call Date	Par Value	Price	Principal Amount	Int Purchased / Received	Total Amount	Realized Gain / Loss	YTM	YTW
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Total for All Portfolios

Transaction Type	Quantity	Total Amount	Realized G/L	YTM	YTW
Total Maturities	2,000,000.00	2,000,000.00		1.621	
Total Purchases	7,000,000.00	7,000,000.00		0.300	0.300
Total Income Payments	0.00	64,773.88			
Total Capitalized Interest	12,273.88	12,273.88			

CUSIP	Settle Date	Security Type	Security Description	Next Call Date	Purchase Qty	Orig Price	Original Cost	Amrt/Accr for Period	Total Amrt/Accr Since Purch	Remaining Disc / Prem	Book Value
101 - General Fund											
CD-7730-1	06/13/20	CD	Independent Bk CD 0.550 03/13/21		5,138,412.78	100.000	5,138,412.78	0.00	0.00	0.00	5,138,412.78
Total for 101 - General Fund					5,138,412.78		5,138,412.78	0.00	0.00	0.00	5,138,412.78
212 - NB Industrial Dev Corp											
CD-7984	10/02/20	CD	East West Bk CD 0.300 10/04/21		5,003,741.12	100.000	5,003,741.12	0.00	0.00	0.00	5,003,741.12
Total for 212 - NB Industrial Dev Corp					5,003,741.12		5,003,741.12	0.00	0.00	0.00	5,003,741.12
999 - Pooled Funds											
3130AEWA4	11/22/19	AGCY BULET	FHLB 2.625 10/01/20		0.00	100.851	0.00	0.00	0.00	0.00	0.00
9128284P2	11/22/19	TREAS NOTE	U.S. Treasury 2.625 05/15/21		2,000,000.00	101.406	2,028,125.00	(4,808.86)	(21,036.18)	(7,088.82)	2,007,088.82
CD-7984	10/02/20	CD	East West Bk CD 0.300 10/04/21		2,001,496.45	100.000	2,001,496.45	0.00	0.00	0.00	2,001,496.45
Total for 999 - Pooled Funds					4,001,496.45		4,029,621.45	(4,808.86)	(21,036.18)	(7,088.82)	4,008,585.27
Total for City of New Braunfels					14,143,650.35		14,171,775.35	(4,808.86)	(21,036.18)	(7,088.82)	14,150,739.17

CUSIP	Security Type	Security Description	Pay Date	Interest	Principal	Total Amount
101 - General Fund						
CD-7730-1	CD	Independent Bk CD 0.550 03/13/21	03/13/21	7,065.31	5,138,412.78	5,145,478.09
Total for 101 - General Fund				7,065.31	5,138,412.78	5,145,478.09
212 - NB Industrial Dev Corp						
CD-7984	CD	East West Bk CD 0.300 10/04/21	01/31/21	1,250.93	0.00	1,250.93
CD-7984	CD	East West Bk CD 0.300 10/04/21	02/28/21	1,250.93	0.00	1,250.93
CD-7984	CD	East West Bk CD 0.300 10/04/21	03/31/21	1,250.93	0.00	1,250.93
CD-7984	CD	East West Bk CD 0.300 10/04/21	04/30/21	1,250.93	0.00	1,250.93
CD-7984	CD	East West Bk CD 0.300 10/04/21	05/31/21	1,250.93	0.00	1,250.93
Total for 212 - NB Industrial Dev Corp				6,254.65	0.00	6,254.65
999 - Pooled Funds						
CD-7984	CD	East West Bk CD 0.300 10/04/21	01/31/21	500.37	0.00	500.37
CD-7984	CD	East West Bk CD 0.300 10/04/21	02/28/21	500.37	0.00	500.37
CD-7984	CD	East West Bk CD 0.300 10/04/21	03/31/21	500.37	0.00	500.37
CD-7984	CD	East West Bk CD 0.300 10/04/21	04/30/21	500.37	0.00	500.37
9128284P2	TREAS NOTE	U.S. Treasury 2.625 05/15/21	05/15/21	26,250.00	2,000,000.00	2,026,250.00
CD-7984	CD	East West Bk CD 0.300 10/04/21	05/31/21	500.37	0.00	500.37
Total for 999 - Pooled Funds				28,751.85	2,000,000.00	2,028,751.85

CUSIP	Security Type	Security Description	Pay Date	Interest	Principal	Total Amount
Total for All Portfolios						
			January 2021	1,751.30	0.00	1,751.30
			February 2021	1,751.30	0.00	1,751.30
			March 2021	8,816.61	5,138,412.78	5,147,229.39
			April 2021	1,751.30	0.00	1,751.30
			May 2021	28,001.30	2,000,000.00	2,028,001.30
Total Projected Cash Flows for City of New Braunfels				42,071.81	7,138,412.78	7,180,484.59

3/8/2021

Agenda Item No. I)

Presenter/Contact
Caitlin Krobot, City Secretary
ckrobot@nbtexas.org

SUBJECT:

Approval to authorize the City Manager to enter into a joint election agreement between the City of New Braunfels, the New Braunfels Independent School District, the Comal Independent School District, the City of Garden Ridge, and the City of Bulverde regarding the May 1, 2021 election.

BACKGROUND / RATIONALE:

The Texas Election Code and the Texas Education Code provide provisions for School Districts to enter into agreements with municipalities to hold elections jointly to serve affected voters adequately and conveniently by providing common polling locations.

The attached agreement will allow for the City, the School Districts, the City of Garden Ridge, and the City of Bulverde to share common early voting polling locations for the May 1, 2021 Elections. Additionally, the agreement will provide for common election day polling locations.

The attached agreement specifically provides that all other election processes related to the elections will be kept separate by the City and School Districts including the preparation and/or publication of election ballots, forms, orders, resolutions, notices, pre-clearance submissions, and the appointment of election judges, alternate judges and clerks, and any costs associated with the election.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

N/A

FISCAL IMPACT:

The City will see some cost savings depending on the nature of each school district's election.

COMMITTEE RECOMMENDATION:

This item is for Council consideration.

STAFF RECOMMENDATION:

Staff recommends approval of the item.

**AGREEMENT TO CONDUCT JOINT ELECTIONS BETWEEN
NEW BRAUNFELS INDEPENDENT SCHOOL DISTRICT,
COMAL INDEPENDENT SCHOOL DISTRICT,
THE CITY OF NEW BRAUNFELS,
THE CITY OF BULVERDE,
THE CITY OF GARDEN RIDGE**

FOR MAY 1, 2021 ELECTIONS

WHEREAS:

1. The Comal Independent School District, the New Braunfels Independent School District, the City of New Braunfels, the City of Garden Ridge, and the City of Bulverde will hold elections on May 1, 2021, a uniform election date under Texas Election Code (“TEC”) Section 41.001(a)(1); and
2. TEC § 271.002 authorizes political subdivisions of the State of Texas to hold elections jointly in voting precincts that can be served by common polling places if elections are ordered by the authorities of two or more political subdivisions to be held on the same day in all or part of the same territory; and
3. TEC § 43.007 authorizes Comal County, now approved by Commissioners Court, to participate in a program to eliminate county election precinct polling places and establish countywide polling places for elections held on the uniform election date in May in odd-numbered years; and
4. Texas Education Code, Section 11.0581, requires an election for trustees of an independent school district to be held on the same date as the election for the members of the governing body of a municipality located in the school district; and
5. Holding joint elections will encourage greater voter participation and be convenient to the voters for the school districts and the cities, (collectively referred to hereinafter as the Entities or Participating Entities), so that voting may take place at any Vote Center and Early Voting location used for the joint election.

NOW, THEREFORE, pursuant to Sections 271.002, and 271.003, Texas Election Code, and Section 11.0581, Texas Education Code, the Joint Election Agreement set forth below is entered into by and between the Participating Entities, acting by and through their respective governing bodies, which agree as follows:

I. Scope of the Election Agreement:

- A. The Entities will share common Election Day polling locations for the May 1, 2021, joint election at the following vote centers, to wit:
 1. Westside Comm. Ctr, 2932 S. IH 35 Frontage Rd, New Braunfels, TX 78130
 2. Grace Church, 3240 FM 725 (Guadalupe Cnty), New Braunfels, TX 78130
 3. Comal County Senior Citizens Ctr, 655 Landa, New Braunfels, TX 78130
 4. Christ Presbyterian Church, 1620 Common, New Braunfels, TX 78130
 5. Comal Cnty. Office-Goodwin Annex, 1297 Church Hill, New Braunfels, TX 78130
 6. New Braunfels Municipal Building, 424 Castell, New Braunfels, TX 78130

7. Tye Preston Memorial Library, 16311 S. Access Rd., Canyon Lake, TX 78133
8. Bulverde City Hall, 30360 Cougar Bend, Bulverde, TX 78163
9. ** Garden Ridge Comm. & Event Ctr., 9500 Mun. Pkwy, San Antonio, TX 78266
****In the event that Garden Ridge cancels its election, this site shall not be used as vote center under this joint election agreement.]*

- B. The Entities shall use a single ballot at each Vote Center for Election Day and Early Voting. Each Entity shall provide the Comal County Elections Office with its respective ballot information, as required under their contracts for election services with Comal County.
- C. Each Entity, individually, shall be legally responsible for the preparation and/or publication of election ballots, orders, resolutions, notices and other pertinent documents for adoption or execution by its own respective governing board as required by law.
- D. Each Entity, individually, shall be responsible for posting and publishing its election notices as required by law and for posting such notices as otherwise desired and permitted by law.

II. **Contract for Election Services, Vote Centers, Judges and Clerks, and Administration:**

- A. Each Entity shall enter into a contract for election services with the Comal County Clerk for the joint election that will include voting at vote centers, appointment of election judges and clerks, and other requirements, and for the overall administration of the joint election on Election Day and for Early Voting as the County Clerk determines necessary and appropriate in consultation with the Entities.

III. **Early Voting:**

- A. The Entities will share common early voting polling locations for the May 1, 2021, joint election, as follows:

Comal County Elections Office

396 N. Seguin Avenue
New Braunfels, TX 78130

Grace Church (Guadalupe County)

3240 FM 725
New Braunfels, TX 78130

Comal County Offices-Goodwin Annex

1297 Church Hill
New Braunfels, TX 78130

Bulverde City Hall

30360 Cougar Bend
Bulverde, TX 78163

****Garden Ridge Community & Event Center**

9500 Municipal Parkway
San Antonio, TX 78266

****In the event that Garden Ridge cancels its election, this site shall not be used as an early voting location under this joint election agreement.]*

and such other additional locations as may be selected by the Early Voting Clerk in consultation with the Entities and as approved by each Entity in the Entity's contract for election services with the Comal County Clerk.

B. The Entities shall use a single ballot for early voting. Each Entity shall provide the Comal County Elections Office with its respective ballot information, as required under their contracts for election services with Comal County.

C. The 2021 dates and times for Early Voting shall be:

April 19, 20, 21 & 23	- 8:00 a.m. to 5:00 p.m.
April 22, 2021	- 7:00 a.m. to 7:00 p.m.
April 24 (<i>Saturday</i>)	- 9:00 a.m. to 4:00 p.m.
April 26	- 7:00 a.m. to 7:00 p.m.
April 27	- 8:00 a.m. to 5:00 p.m.

D. The Entities shall appoint the Comal County Clerk as the Early Voting Clerk for the Joint Election.

IV. Administration of Election

A. The Joint Election shall be administered by the Comal County Clerk and her Elections Department, who shall be empowered to make any and all decisions concerning the administration and conduct of the Joint Election. Each Entity shall be responsible for compliance with all state and federal laws applicable to the Entities' respective elections.

V. Joint Election Costs: Payment

A. Costs. The Participating Entities will each be responsible for all costs associated with their respective elections and as determined by their respective contracts with the Comal County Clerk.

All funds expended by each Entity will be from current revenues.

B. Cancellation. In the event any of the Participating Entities cancels their election because of unopposed candidates under Subchapter C of Title I of the Texas Election Code, the remaining Entities shall be responsible for 100% of the election costs incurred after the date of cancellation in accordance with the terms of their respective contract with the Comal County Clerk.

VII. General Provisions

A. Communications. Throughout the term of this Agreement, the Participating Entities will engage in ongoing communications together and with the County Elections Coordinator concerning the conduct of the Joint Election and discuss and resolve any problems which might arise regarding the Joint Election.

B. Effective Date. This Agreement takes effect upon the complete execution of this Agreement by all Participating Entities.

C. Custodian of Records. Each Participating Entity will serve as their individual custodian for purposes of election records as required by law. Each Participating Entity shall appoint a qualified person to act as Custodian of Records for the Entity to

perform the duties imposed by the Election Code on the custodian of records for its respective entity.

VIII. Miscellaneous Provisions

- A. Venue and Choice of Law. The Entities agree that venue for any dispute arising under this Agreement will lie in the appropriate courts of Comal County, Texas. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of Texas and the United States of America.
- B. Entire Agreement. This Agreement contains the entire agreement of the parties relating to the rights herein granted and the obligations herein assumed and supersede all prior agreements. Any prior agreements, promises, negotiations, or representations not expressly contained in this Agreement are of no force and effect. Any oral representations or modifications concerning this Agreement shall be of no force or effect, excepting a subsequent modification in writing as provided herein.
- C. Severability. If any provision of this Agreement is found to be invalid, illegal or unenforceable by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the remaining provisions of this Agreement; and, parties to this Agreement shall perform their obligations under this Agreement in accordance with the intent of the parties to this Agreement as expressed in the terms and provisions of this Agreement.
- D. Breach. In the event that any Participating Entity or County breaches any of its obligations under this Agreement, the non-breaching party shall be entitled to pursue any and all rights and remedies allowed by law. Nothing in this Agreement shall be construed as a waiver of any immunity or defense to which any Participating Entity is entitled under statutory or common law.
- E. Other Instruments. The Entities agree that they will execute other and further instruments or any documents as may become necessary or convenient to effectuate and carry out the purposes of this Agreement.
- F. Mediation. When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in Section 154.023 of the Texas Civil Practice and Remedies Code unless both parties agree, in writing, to waive the confidentiality. Notwithstanding the foregoing, the parties intend to fully comply with the Texas Open Meetings Act and the Texas Public Information Act whenever applicable. The term confidential as used in this Agreement has the same meanings as defined and construed under the Texas Public Information Act and the Texas Open Meetings Act.

- IN TESTIMONY WHEREOF**, the Participating Entities have executed this Agreement in multiple copies, each of equal dignity, effective for the Entity on the date approved by the Entity as indicated below.

Nancy Cain, City Administrator Date _____
on behalf of the City of Garden Ridge

DATE: _____

3/8/2021

Agenda Item No. J)

Presenter/Contact
Caitlin Krobot, City Secretary
ckrobot@nbtexas.org

SUBJECT:

Approval to authorize the City Manager to enter into an agreement between the City of New Braunfels and Comal County regarding election services for the May 1, 2021 elections.

BACKGROUND / RATIONALE:

This agreement allows for entities within Comal County to utilize the County's election equipment via uniformity of equipment and procedures.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

N/A

FISCAL IMPACT:

The cost estimate for an election is approximately \$18,968.40 for election workers, supplies, and training. (This amount is subject to change after the polling places are established).

COMMITTEE RECOMMENDATION:

This item is for Council consideration.

STAFF RECOMMENDATION:

Staff recommends approval of the item.



Cynthia Jaqua
Comal County Elections Coordinator
396 N. Seguin Ave. New Braunfels, Texas 78130
Phone: 830-221-1352 Fax: 830-608-2013
Email: jaquac@co.comal.tx.us

January 8, 2021

City of New Braunfels
CONTRACT FOR ELECTION SERVICES
May 1, 2021 General and Special Election

This contract for election services made by and between **City of New Braunfels** hereinafter called ENTITY and **Bobbie Koepp, Comal County Clerk**, hereinafter called CONTRACTING OFFICER is based on the following:

The ENTITY and CONTRACTING OFFICER have determined that it is in the public interest of the inhabitants of the ENTITY that the following contract be made and entered into for the purpose of having the CONTRACTING OFFICER furnish the ENTITY certain election services and equipment needed by the ENTITY for their May 1, 2021 General Election. Electronic voting equipment will be used, specifically the Hart DRE'S known as Verity Touch, Verity Access Touch, and Controller.

DUTIES AND SERVICES OF THE CONTRACTING OFFICER:

1. Bobbie Koepp, Comal County Clerk, shall be designated and agrees to act as the Election Administrator and the Early Voting Clerk for the election, and shall conduct early voting in person and by mail.
2. Forward all information to vendor (Hart) for the Coding and Audio files for Verity Touch, Verity Access Touch, and Controller
3. Advertise, prepare, and conduct the Logic and Accuracy Tests as required by State Law.
4. Conduct Early Voting for Ballot by Mail at main Early Voting location 396 N. Seguin, New Braunfels, Texas 78130.
5. Provide training on conducting an election, with Hart Verity Touch, Verity Access Touch, Controller, and Knowink Poll Pads for all Early Voting and Election Day workers.

6. Require HART to provide screen shot proofs for ENTITY's approval.
7. Procure and provide election supplies, including but not limited to the preparation, printing of ballots for Ballot by Mail requests, and distribution of sample ballots.
8. Prepare and provide adequate election equipment for the election (Hart Verity Touch, Verity Access Touch, Controller, and Knowink Poll Pads)
9. Prepare Early Voting and Election Day packets and supply bags for Early Voting and Election Day Polling Locations.
10. Provide the Official Registered Voter Lists from the applicable counties for City of New Braunfels for use on Knowink Poll Pad.
11. Deliver all voting equipment (Verity Touch, Verity Access Touch, Controller, and Knowink Poll Pads) and election supplies for Early Voting and Election Day to polling locations.
12. Pick up all voting equipment (Verity Touch and Verity Access Touch) and election supplies for Early Voting and Election Day and return to Comal County Elections Office, 396 N. Seguin Ave., New Braunfels.
13. Ensure Election Judges return specified voting equipment and supplies from Early Voting after polls close on April 27, 2021.
14. Ensure Election Judges return specified voting equipment and supplies from Election Day Polling Locations after polls close on May 1, 2021.
15. Recruit election judges and clerks for Early Voting and Election Day and provide direction to all election judges and clerks at all Election Day Vote Center and Early Voting Locations.
16. Election judges and clerks for Early Voting and Election Day will be compensated by CONTRACTING OFFICER and reimbursed by ENTITY.
17. Issue Writs of Election for election judges and notice of appointments to Presiding and Alternate Judges.
18. Procurement and payment of Early Voting Ballot Board personnel who will meet at the Comal County Elections Office, 396 N. Seguin Ave., New Braunfels, Texas 78130, on Election Day and other dates as prescribed by law to process Ballots by Mail and Provisional Ballots.
19. Set up the Central Accumulation Station and appoint personnel to tabulate the results of the Early and Election Day votes; provide Final Unofficial results for Canvass.
20. Provide overall administration and supervision of the election and advisory services including but not limited to the joint elections between the Entity and all other governmental entities holding elections on May 1, 2021.

21. Meet ADA requirements for the election, as the law relates to polling locations, voter assistance, and other ADA requirements, if any.
22. Reporting precinct results to the Secretary of State, if required.
23. Maintain election materials and paperwork in storage for the allotted time as prescribed by law.
24. Take proper precautions as may be recommended by Comal County Health District or other health authority due to the current COVID-19 pandemic.

DUTIES OF THE ENTITY:

1. Prepare all Election Orders, and Notice of Election as required by law and prepare and publish the Notice of Election.
2. Provide the County Elections Office with ENTITY's ballot information, etc. ENTITY shall conduct its ballot position drawing on or about, February 12, 2020, and send the CONTRACTING OFFICER the ballot order so that it may be forwarded for Coding and Audio to Hart. ENTITY will be responsible for approving the screen shot proofs from Hart.
3. ENTITY shall be responsible for any loss and/or physical damage to the equipment while it is in ENTITY's possession and control.
4. Only the actual expenses directly attributable to the Contract may be charged. (Section 31.100(b), Texas Election Code) The County Elections Officer will submit the actual costs for items contracted for pursuant to this Contract with the ENTITY as soon as all invoices are received from the vendors. The ENTITY agrees to pay costs of the election within ten (10) ENTITY workdays of receipt of the statement.

GENERAL PROVISIONS:

- A. **ENTIRE AGREEMENT:** This Agreement contains the entire agreement between the parties and correctly sets forth the rights, duties, and obligations of each to the other as of the Effective Date. Any oral representations or modifications concerning this Agreement will be of no force or effect excepting a subsequent written modification executed by both parties.
- B. **SEVERABILITY:** If a court of competent jurisdiction determines that any term of this contract is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement (and the application of this Agreement to other circumstances) shall not be affected thereby; and each remaining term shall be valid and enforceable to the fullest extent permitted by law.
- C. **CHOICE OF LAW AND VENUE:** This agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Texas, without regard to its conflict of laws principles. Exclusive venue shall be in a court of competent jurisdiction in Comal County, Texas.

D. RELATIONSHIP OF THE PARTIES: Each party to this contract, in the performance of this contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.

E. FORCE MAJEURE: In the event that CONTRACTING OFFICER shall be prevented from performing any of its obligations due under the terms of this contract by an act of God, by acts of war, riot, or civil commotion, by an act of State, by strikes, fire, flood, or by the occurrence of any other event beyond the control of the parties hereto. CONTRACTING OFFICER shall be excused from such obligations beyond its control and undertakings set forth under the terms of this agreement.

DATED this the _____ day of _____, 2021

ROBERT CAMARENO
City Manager

BOBBIE KOEPP
Comal County Clerk

SEE ATTACHED ESTIMATE OF EXPENSES

3/8/2021

Agenda Item No. K)

Presenter/Contact

Stacey Dicke, Parks and Recreation Director
(830) 221-4350 - sdicke@nbtexas.org

SUBJECT:

Approval of an expenditure with Fun Abounds of Southern Texas for the purchase of a shade structure for the Fischer Park Archeology Dig for \$42,000 utilizing a Buyboard contract 529-19.

BACKGROUND / RATIONALE:

The New Braunfels Parks Foundation has funding available for the Fischer Park Nature Center. The Foundation and staff agree that a shade structure over the Archeology Dig would be beneficial to children and parents who frequent the play feature. The shade will make the area more comfortable to use and protect families from harmful sun rays.

The cost to purchase and install the shade structure is \$42,000. Fun Abounds of Southern Texas is a member of the Texas BuyBoard cooperative, which satisfies the city's bidding requirement. The City will contract with the vendor and oversee the project. Once complete, the City will request full reimbursement from the New Braunfels Parks Foundation.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<input checked="" type="checkbox"/>	Yes	Strategic Priorities	Maintain Fiscal Stability of City Operations.
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FISCAL IMPACT:

The New Braunfels Parks Foundation has sufficient funds available to reimburse the city for the purchase and installation of the shade structure. Therefore, there is no direct fiscal impact to the City of New Braunfels.

COMMITTEE RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff recommends approval of a Buy Board Contract with Fun Abounds of Southern Texas for the purchase and installation of a shade structure in Fischer Park in the amount of \$42,000.

3/8/2021

Agenda Item No. L)

Presenter/Contact

Valeria Acevedo, City Attorney
(830) 221-4281 - vacevedo@nbtexas.org

SUBJECT:

Approval to authorize the City Manager to execute an amendment to the contract with the Law Offices of Ryan Henry, PLLC for legal representation in matters involving an administrative ADAA complaint, and for review and analysis of related City policies and procedures.

BACKGROUND / RATIONALE:

This firm was retained to represent the City on an administrative ADAA complaint which did not result in physical injury that was alleged to have occurred at Das Rec in 2019. The alleged basis of the complaint is that a nonverbal toddler age child with disabilities was treated differently by staff than other children at the childcare area of the facility. (ADA Complaint #20-DRS-06-15, 3TX1206, Thompson v. DAS Rec) In addition to mediation and ongoing negotiations with the mediator and the complainant, the City is also have this firm assist in revising applicable ADAA policies and procedures to improve the City's ability to meet the requirements of the law. The original contracted work is nearing the \$25,000 limit on the city manager's legal authority per the City Charter so at this time the contract requires City Council approve to continue with this agreement and finalize the complaint negotiations and other ADAA related services being provided by this legal team.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

N/A

FISCAL IMPACT:

There is currently funding allocated for outside legal services in the FY 2021 City Attorney's Office General Fund budget.

COMMITTEE RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff recommends approval of the contract.

3/8/2021

Agenda Item No. M)

Presenter/Contact

*Mark Enders, Watershed Program Manager
(830) 221-4639 - menders@nbtexas.org*

SUBJECT:

Approval of a contract amendment with Doucet and Associates for engineering design and bid support services for a stormwater treatment basin to be included as part of the Elizabeth Ave Realignment project.

BACKGROUND / RATIONALE:

The City of New Braunfels' 2020 and 2021 Edwards Aquifer Habitat Conservation Plan (EAHCP) Workplan includes engineering design for a stormwater treatment basin to be constructed as part of the City's Elizabeth Avenue Realignment project. This project is intended to help fulfill the water quality protection requirements set forth in the EAHCP. Funding for the design of the stormwater treatment facility has been approved by the EAHCP Implementing Committee and is available to the City to cover costs associated with engineering design in 2020 and 2021. Funding has also been approved by the EAHCP Implementing Committee to cover construction costs for the stormwater treatment basin in 2021.

The City issued Task Order 20-021 on August 26, 2020 to request Statement of Qualifications from firms included on the Indefinite Delivery and Indefinite Quantity (IDIQ) list under the Stormwater Engineering and Civil Engineering categories to perform engineering design work for the project. Doucet and Associates was selected to perform engineering design services for the project based upon relevant work experience and qualifications and was awarded a contract/ Professional Service Agreement in October 2020 in the amount of \$24,800.

Due to considerations regarding existing utility layouts and revisions to the adjacent Elizabeth Ave Realignment project, there is a need to re-design elements of the stormwater treatment basin. The re-design work is expected to cost approximately \$6,000 which would necessitate the need to increase the contract amount to \$30,800.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

City Plan/Council Priority	Strategic Priorities: Continue an ongoing program of infrastructure construction and maintenance.	
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FISCAL IMPACT:

The funding for design of the stormwater treatment project is supported through the EAHCP program. All project costs will be reimbursed to the City through the Edwards Aquifer Authority per the EAHCP

Funding and Management Agreement.

COMMITTEE RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff recommends approval of a contract amendment with Doucet and Associates for engineering design and bid support services for a stormwater treatment basin to be included as part of the Elizabeth Ave Realignment project.

3/8/2021

Agenda Item No. N)

Presenter/Contact

Barbara Coleman, Purchasing Manager
(830) 221-4389 - *BColeman @nbtexas.org*

SUBJECT:

Approval to authorize the City Manager to execute an Interlocal Cooperative Purchasing Agreement with Michigan Collegiate Telecommunications Association in accordance with the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code and Chapter 271, Texas Local Government Code for telecommunication products and services.

BACKGROUND / RATIONALE:

This item requests approval for the City Manager to enter into an interlocal cooperative purchasing agreement with Michigan Collegiate Telecommunications Association. This interlocal agreement offers shared procurement opportunities for telecommunication products and services. By utilizing this agreement, the Cooperative will handle all governmental procurement requirements including the competitive bidding process, so the City can immediately access contracts as we need, as opposed to completing a standalone bidding and purchasing process for these services.

The City of New Braunfels utilizes several similar cooperatives, which adds capacity to the purchasing process without the expense of additional staff resources. There is an annual membership fee of \$200.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

Yes	City Plan/Council Priority:	Strategic Priorities: 1. Use a variety of funding sources for operational and capital needs.
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FISCAL IMPACT:

The Annual membership fee will be paid by the Information Technology Department operating budget. Ultimately, utilizing this cooperative contract will result in annual operational cost savings.

COMMITTEE RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff recommends approval to authorize the City Manager to execute Interlocal Cooperative Purchasing Agreement with Michigan Collegiate Telecommunications Association in accordance with the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code and Chapter 271, Subchapter F of the Texas Local Government Code for telecommunication products and services.

3/8/2021

Agenda Item No. O)

Presenter/Contact

*John Cox, Streets & Drainage Manager/Public Works
(830) 221-4032 - JCox@nbtexas.org*

SUBJECT:

Approval to purchase a Commercial Paver for the City's Public Works Streets & Drainage Division staff, from Cooper Equipment Co. through a BuyBoard Cooperative contract and approval of the appropriate budget amendment.

BACKGROUND / RATIONALE:

The City identified a need to replace obsolete equipment to increase productivity of street repairs and maintenance performed by City's street and drainage crews. The public works commercial paver is a 2002 LeeBoy 8000R and is at the end of its life. It is no longer practical to continue investing in the costly repairs to keep this piece of equipment operational. The new Carlson CP130 Deluxe Paver is a larger paver and will increase productivity given the size and minimal down time.

The City will contract with Cooper Equipment utilizing a BuyBoard cooperative contract. The existing unit will be traded in as a component of this transaction, reducing the total cost of the new paver. The BuyBoard contract has been vetted thereby satisfying the city's competitive bidding requirements. The total cost of the paver is \$247,287

Budget Amendment

\$230,000 in funding was allocated in the recently issued tax note to support this equipment purchase. To establish the necessary funding to purchase the paver, the following budget amendment is recommended for council consideration. There is no direct impact from to the Video Storage System project as the cost came in under the budgeted amount.

Budget Amendment - 2020 Capital Improvements Projects Fund (tax note)

Increase: Expenditures - Street Paver Replacement \$17,287

Decrease: Expenditures - PD Video Storage System \$17,287

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

YES	Strategic Priorities:	8-Maintain Fiscal stability of City operations
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FISCAL IMPACT:

Funding for this project has been incorporated into the recently issued 2020 Tax Note. With the approval of the budget amendment, sufficient funds will be allocated and available.

COMMITTEE RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff recommends approval to purchase a Commercial Paver for the City's Public Works Streets & Drainage Division staff, from Cooper Equipment Co. through a BuyBoard Cooperative contract and approval of the appropriate budget amendment.

3/8/2021

Agenda Item No. P)

Presenter/Contact

Greg Malatek, Public Works Director
(830) 221-4020 - gmalatek@nbtexas.org

SUBJECT:

Approval of a resolution in support of Comal County urging the Texas Legislature to amend Section 502.402, Texas Transportation Code during the 87th legislative session.

BACKGROUND / RATIONALE:

The Texas Transportation Code allows for counties to impose an optional fee of up to \$10 to register a vehicle within the county. Citizens of New Braunfels benefit from the use of county maintained roads and bridges and state projects that receive right-of-way and utility relocation funds from the County. The purpose of such a fee is to fund long-term transportation projects in the county. Currently, the County is excluded from collecting the fee because it does not meet the population limits defined by state statute in the Transportation Code.

The requested change to the state statute would allow Comal County to propose the fee to qualified voters. If approved by voters, it would allow Comal County to proceed with needed transportation improvement projects on the State Highway System and Comal County roads.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

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FISCAL IMPACT:

None

COMMITTEE RECOMMENDATION:

[Enter Committee Recommendation Here]

STAFF RECOMMENDATION:

Staff recommends approval of this resolution of support, as well-maintained roadways within Comal County benefit the citizens of New Braunfels.

RESOLUTION #2021-07



STATE OF TEXAS § IN THE COMMISSIONERS COURT

COUNTY OF COMAL §

URGING THE TEXAS LEGISLATURE TO AMEND
SECTION 502.402, TRANSPORTATION CODE

WHEREAS, Section 502.401, Texas Transportation Code authorizes the commissioners court of all counties to impose an optional county fee, not to exceed \$10, for registering a vehicle in the county, to be deposited in the county road and bridge fund; and

WHEREAS, Section 502.402, Texas Transportation Code authorizes the commissioners court of certain counties to impose an additional, optional fee, not to exceed \$20, for registering a vehicle in the county, to be sent to a regional mobility authority located in the county to fund long-term transportation projects in the county; and

WHEREAS, the applicability of Section 502.402, Texas Transportation Code currently excludes Comal County; and

WHEREAS, Comal County is one of the fastest growing counties in the United States and the State of Texas; and

WHEREAS, Comal County is experiencing the need to make numerous improvements to its transportation system, on the State highway system as well as on the Comal County road system; and

WHEREAS, Comal County is required to participate financially for improvements to the Texas Department of Transportation highway system pertaining to right-of-way acquisition and utility relocations for numerous projects; and

WHEREAS, Comal County Commissioners Court is contemplating some large transportation improvement projects on the State highway system as well as on the Comal County road system; and

WHEREAS, Comal County requires additional funding sources for implementation and successful completion of these transportation projects; and

WHEREAS, the Comal County Commissioners Court desires the ability to allow its citizenry the option to vote to impose an additional vehicle registration fee assessment to provide funding for long-term transportation projects.

NOW, THEREFORE, BE IT RESOLVED THAT the Commissioners Court of Comal County, Texas does hereby urge the Texas Legislature to amend Section 502.402, Texas Transportation Code to revise the population applicability limits to allow Comal County to impose an additional fee for a vehicle registered in the county, with said fee being approved by a majority of the qualified voters of the county voting on the issue at a referendum election, which the commissioners court may order and hold for that purpose.

RESOLVED THIS 25TH DAY OF FEBRUARY, 2021.

SHERMAN KRAUSE, COUNTY JUDGE

DONNA ECCLESTON
COUNTY COMMISSIONER, PCT. #1

SCOTT HAAG
COUNTY COMMISSIONER, PCT. #2

KEVIN WEBB
COUNTY COMMISSIONER, PCT. #3

JEN CROWNOVER
COUNTY COMMISSIONER, PCT. #4

ATTEST: BOBBIE KOEPP, COUNTY CLERK

RESOLUTION No. 2021-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEW
BRAUNFELS, TEXAS, DECLARING ITS SUPPORT FOR COMAL
COUNTY COMMISSIONERS COURT RESOLUTION URGING
AMENDMENT TO THE TRANSPORTATION CODE**

WHEREAS, the Commissioners Court of Comal County, Texas wishes to urge the Texas State Legislature to amend section 502.402 of the Texas Transportation Code to reduce the population limit required for collection of an optional fee; and

WHEREAS, The Commissioners Court has passed a resolution outlining their request which is hereto attached as "Exhibit A"; and

WHEREAS, collection of the fee will allow the County to fund needed roadway improvements; and

WHEREAS, portions the Corporate limits of the City of New Braunfels lie within Comal County; and

WHEREAS, the City of New Braunfels acknowledges the benefit to its citizens of well-maintained County roadways and State highway system improvements; and

WHEREAS, approval of the amendment will allow voters in Comal County to choose whether or not to impose the fee.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS TEXAS TO support Comal County Commissioners in their efforts to amend the Transportation Code;

PASSED, ADOPTED AND APPROVED on this the 8th day of March, 2021.

City of New Braunfels, Texas

Rusty Brockman, Mayor

Attest:

Caitlin Krobot, City Secretary

3/8/2021

Agenda Item No. Q)

Presenter/Contact

*Bryan Ruiz, Neighborhood Services Manager
(830) 221-4073 - bruiz@nbtexas.org*

SUBJECT:

First reading on an ordinance regarding a request from the Humane Society of New Braunfels Area (HSNBA) to waive development related fees for their new spay and neuter building.

BACKGROUND / RATIONALE:

Council District: 1

Owner/Applicant: Humane Society of New Braunfels Area
Sarah Hammond - Executive Director
3353 Morningside Drive
New Braunfels, TX 78130
(830) 629-5287
generalinfo@hsnba.org

The Humane Society of New Braunfels Area (HSNBA) is requesting a waiver of fees associated with bringing a building onto their property. The building will provide a location to spay and neuter dogs and cats before adoption. The HSNBA is a not-for-profit organization that works with the City of New Braunfels to house stray animals brought in by the Animal Services Division of the City. The HSNBA also accepts stray pets brought in by citizens and, if space allows, pets whose owners can no longer care for them.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

Envision New Braunfels Comprehensive Plan	Action 3.6: Pro-actively provide a regulatory environment that remains business and resident friendly. Action 8.3: Foster opportunities for collaboration with local nonprofits.
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FISCAL IMPACT:

Application and plan review fees offset the costs associated with the City's examination of plans and processing of development applications, thereby reducing the impact to the taxpayer. If approved, this waiver would result in a reduction of application, and plan review revenue to the Development Services Fund.

- Type VB construction permitting fees for a 1500 square-foot structure, Occupancy Group B, is \$1,300.
- With plan review fees and inspection fees the total would be approximately \$1,800.

COMMITTEE RECOMMENDATION:

[NA]

STAFF RECOMMENDATION:

Approval. Staff supports permit fee relief or discounts for not-for-profit organizations. The City has provided reduced fees or discounts for such organizations for a variety of city permits such as street banners, special event permits, and health permits. The Humane Society of New Braunfels Area is a not-for-profit entity that provides services to the community and relies on local contributions and assistance for support.

City Council has approved similar fee waivers on individual projects for Hope Hospice (May 2015), The Food Bank (January 2016), NB Housing Partners (December 2016) and Habitat for Humanity (March 2018).

Attachments:

1. Applicant's Request for fee waiver.
2. Building drawing and location of proposed structure.
3. Ordinance

January 22, 2021

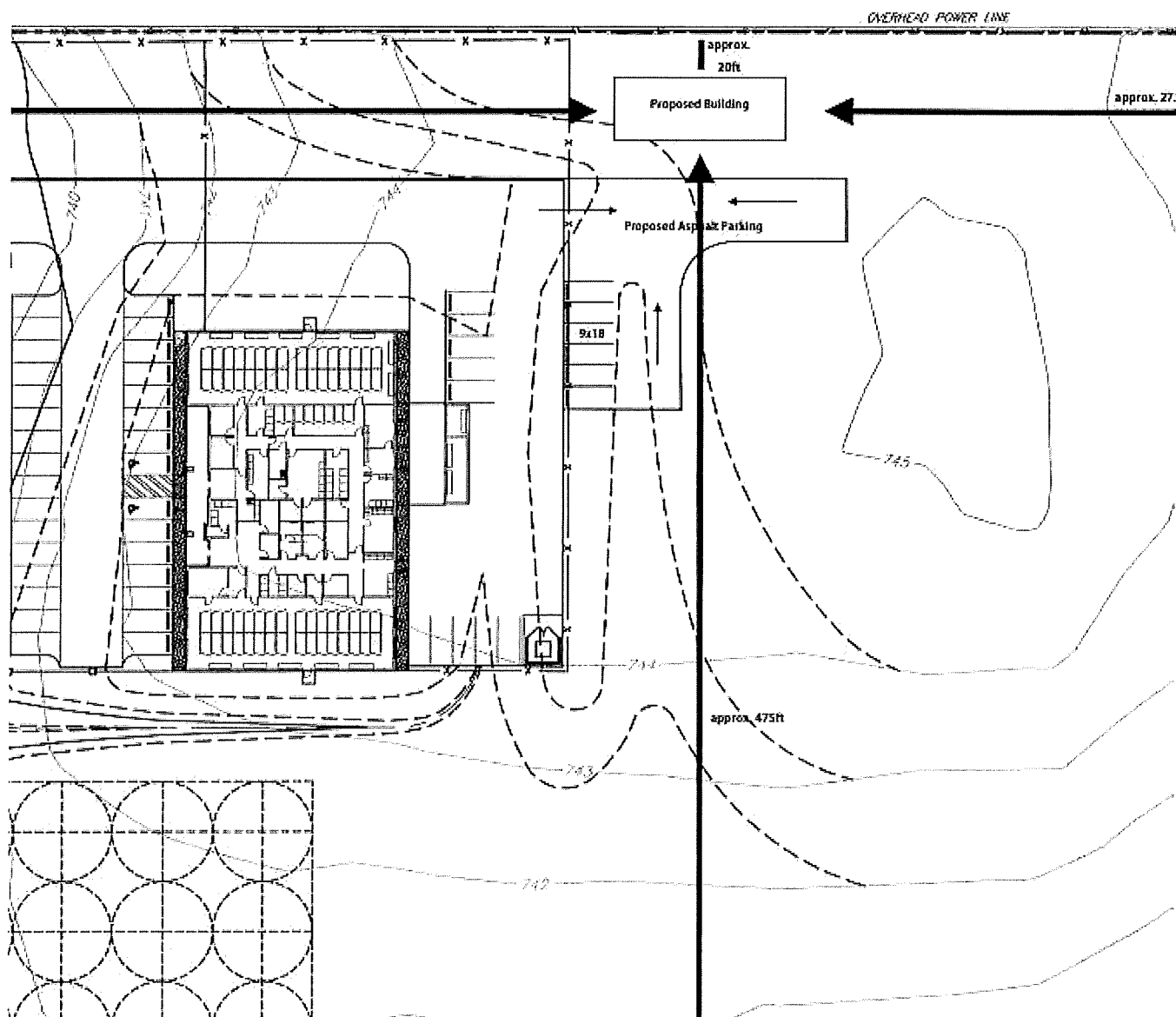
Chris,

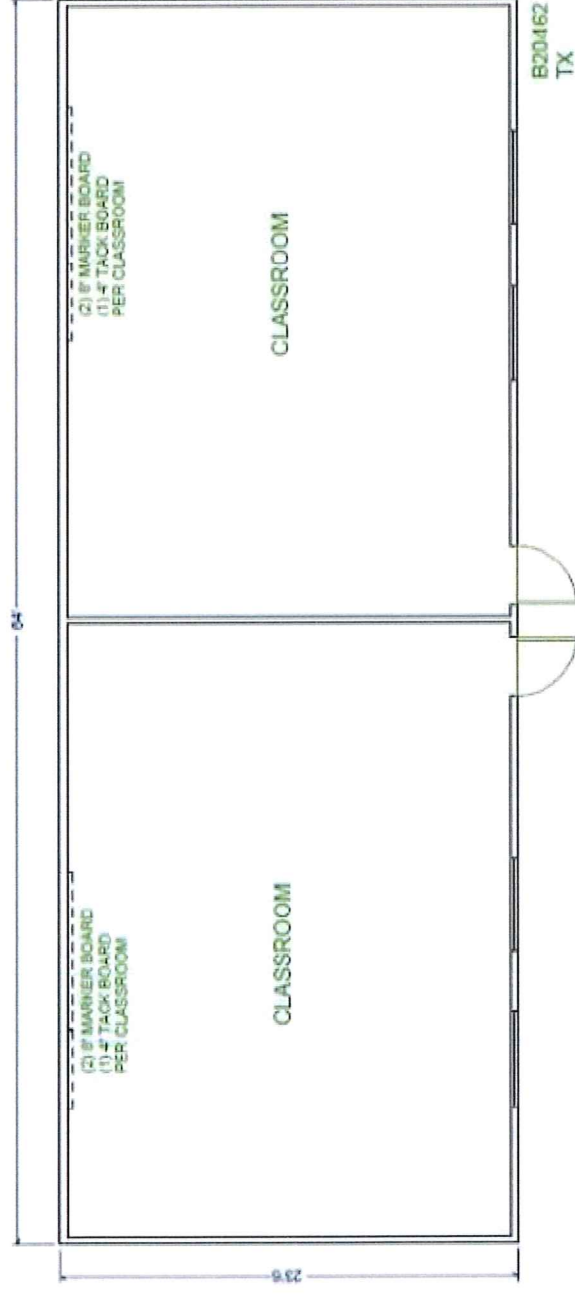
I'd like to submit a formal request for consideration of waiving the City of New Braunfels fees for permitting, platting and other development related fees for our project to build a new building on our property for the purpose of spaying and neutering dogs and cats prior to their adoption from our facility. Any little bit of help we can get would be much appreciated! Let me know what information I can provide to submit this request.

Have a great weekend!

Until there are no more homeless pets,

Sarah Hammond
Executive Director
HSNBA
830-629-5287
www.hsnba.org





ORDINANCE NO. 2021-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS AUTHORIZING THE WAIVER OF DEVELOPMENT RELATED FEES ASSOCIATED WITH THE HUMANE SOCIETY OF NEW BRAUNFELS' BUILDING TO BE USED FOR A SPAY AND NEUTER CLINIC.

WHEREAS, Humane Society of New Braunfels Area is a not-for-profit corporation with a commitment to improving the well-being of the citizens and pets of our community; and

WHEREAS, the Envision New Braunfels Comprehensive Plan encourages collaboration with not-for-profits, and that the City maintain its friendly business and resident regulatory climate; and

WHEREAS, the Humane Society of New Braunfels Area is planning to move a structure onto its site and develop it as a facility for the spaying and neutering of pets; and

WHEREAS, the City Council of the City of New Braunfels wishes to provide support to Humane Society of New Braunfels Area because of their ongoing efforts to make New Braunfels a better place to live by increasing the quality of life for our pets.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

SECTION 1

THAT the City of New Braunfels City Council hereby waives and suspends all development related fees (including application fees for permits, plan review, platting and inspections) for the Humane Society of New Braunfels' spay and neuter facility. The fees waived are those development-related fees specifically enumerated in Appendix D of the City's Code of Ordinances. Further, the City of New Braunfels City Council adopts the above-mentioned findings and finds a valid public purpose exists for the waiver of the above described fees.

SECTION 2

THAT all provisions of the Code of Ordinances of the City of New Braunfels not herein amended or repealed shall remain in full force and effect.

SECTION 3

THAT all other ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent that they are in conflict.

SECTION 4

THAT if any provisions of this ordinance shall be held void or unconstitutional, it is hereby provided that all other parts of the same which are not held void or unconstitutional shall remain in full force and effect.

SECTION 5

THIS ordinance will take effect upon the second and final reading in accordance with the provisions of the Charter of the City of New Braunfels.

PASSED AND APPROVED: First reading this 8th day of March, 2021.

PASSED AND APPROVED: Second reading this 22nd day of March, 2021.

CITY OF NEW BRAUNFELS

RUSTY BROCKMAN, Mayor

ATTEST:

CAITLIN KROBOT, City Secretary

APPROVED AS TO FORM:

VALERIA M. ACEVEDO, City Attorney

3/8/2021

Agenda Item No. R)

Presenter*Caleb Gasperek, Historic Preservation Officer*
*cgasperek@nbtexas.org***Subject:**

Approval of the second and final reading of an ordinance to designate the property currently addressed as 210 South Castell Avenue as a historic landmark to be known as the Producer's Co-Op.

Background:**Case No:** HST20-302**Council District:** 5**Applicants/Owners:** Ronald B. Snider, Fredrick Heimer and Michael Meyer
(210) 273-8118
ronsnider28@gmail.com**Staff Contact:** Caleb Gasperek, Historic Preservation Officer
(830)221-4086
CGasperek@nbtexas.org

City Council held a public hearing on February 22, 2021 and unanimously approved the first reading of the applicant's requested landmark designation rezoning ordinance.

The subject property is an irregularly shaped through-lot with frontage on South Castell Avenue, West Coll Street, and Hill Avenue. The property is directly adjacent to the Downtown Historic District and directly north of the Sophienburg Hill Historic District.

Designating the property as a historic landmark, per the applicants' request, will not alter the underlying C-2 zoning of the property. If approved, the property would have a Historic Landmark (HL) zoning overlay district, though with regards to site plans, uses, setbacks, and other development land use regulations, such property shall be governed by its C-2 base zoning district.

Surrounding Zoning and Land Use:***North - C-2 / Downtown Commercial District & Downtown Historic District******South - SND-1 & C-1A / Special Neighborhood District 1, Neighborhood Business District, & Sophienburg Hill Historic District******East - M-1 / Light Industrial District******West - C-2 / Downtown Commercial District & Downtown Historic District***

Historic Context:

The Producer's Co-Op of New Braunfels was established on November 1st, 1944 to provide agricultural products to Comal and other surrounding counties. The Co-Op experienced rapid growth following its establishment, and by 1946 required additional space for its operations.

Sanborn maps from 1907 to 1922 indicate that the site was previously occupied by the Dittlinger Cotton Gin. A railroad track led directly to the cotton gin for the loading and unloading of products. By 1922 only a small portion of the Dittlinger Cotton Gin remained, though a timber frame warehouse owned by local contractor A.C. Moeller had been erected in the rear of the lot adjacent to the railroad track. The Producer's Co-Op purchased the warehouse building in 1946. That same year the Co-Op hired local architect Jeremiah Schmidt to design an 80-foot x 80-foot warehouse to meet their growing needs. A building permit issued on August 9th, 1946 indicates that the building was originally valued at \$29,000, and was built by local contractor Edwin Hanz. The Schmidt building was added on to in the rear several times after it was constructed in 1947, though the primary structure on Castell designed by Schmidt remains unchanged. The Producer's Co-Op remains in business to this day.

Architecturally, the Producer's Co-Op building is one of the few intact late Art Deco/Moderne style buildings in New Braunfels. Identifying characteristics include glass-block windows, stucco exterior, flat roof, and horizontal grooves or lines on the façade.

Request:

The applicants/owners applied for/requested this landmark designation for the subject property. The applicants/owners are, therefore, in support of this rezoning.

Staff Analysis:

According to Chapter 66 of the New Braunfels Code of Ordinances, a historic landmark may be designated if it meets at least 1 of the 6 criteria as established in subsection 56 "Criteria for the designation of historic landmarks and districts."

- 1) Possesses significance in history, architecture, archaeology, or culture.
The Producer's Co-Op has significance in its association with the agricultural history of the community following WWII. Architecturally, the Schmidt building is indicative of the late Art Deco/Moderne style.
- 2) Is associated with events that have made a significant contribution to the broad patterns of local, regional, state, or national history.
The Producer's Co-Op is significant in its contribution to local agricultural history.
- 3) Is associated with the lives of persons significant in our past.
While the site is mostly associated with the Co-Op itself, founding members of the Co-Op include prominent members of the community.
- 4) Embodies the distinctive characteristics of a type, period, or method of construction.
N/A
- 5) Represents the work of a master designer, builder, or craftsman.
Associated with locally renowned architect Jeremiah Schmidt and contractor Edwin Hanz.

-
- 6) Represents an established and familiar visual feature of the neighborhood or city.
The Producer's Co-Op is a familiar feature along Castell Ave. and the downtown area.

Recommendation:

The proposed Landmark Designation was reviewed by both the Historic Landmark Commission and the Planning Commission at their regularly scheduled meetings in January and February, 2021. Both Commissions voted unanimously to recommend approval to City Council.

Staff concurs with the recommendation of both Commissions. The Producer's Co-Op is a staple of Downtown and not only is a good example of the late Art Deco/Moderne style, but is also significant in its association with local architect Jeremiah Schmidt and the development of agriculture following WWII.

Notification:

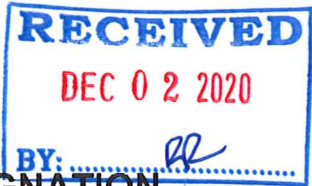
Public hearing notices were sent to 17 owners of property within 200 feet of the request. The City has received one response in favor at this time.

Resource Links:

- Chapter 66, Sec. 54 "[Designation of Historic Landmarks](https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?_ga=2.182111111.1611111111.1611111111-161111111.1611111111)"
<[https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?](https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?_ga=2.182111111.1611111111.1611111111-161111111.1611111111)
- Chapter 66, Sec. 56 "[Criteria for the Designation of Historic Landmarks and Districts](https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?_ga=2.182111111.1611111111.1611111111-161111111.1611111111)"
<[https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?](https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?_ga=2.182111111.1611111111.1611111111-161111111.1611111111)

Attachments:

1. Application
2. Location Map
3. Land Use Maps (Zoning, Existing, and Future Land Use)
4. Sanborn Maps
5. Photographs
6. Notification List and Map
7. Producer's Co-Op Ordinance



APPLICATION FOR HISTORIC DESIGNATION

City of New Braunfels, Planning and Environmental Department
424 S. Castell Avenue, New Braunfels TX 78130 (830) 221-4057

1. Name of proposed Landmark: The Producer's Co-Op
2. Address of Landmark: 210 S Castell Ave
3. Legal Description: CITY BLOCK 1003, LOT 204-205 & W 21.06 LT 203 & S 13 LT 206 & N 83 W 40, LT206 & PT LTS 195-196 & NE PT LT 197-198-199 & PT LT 200
4. Owner Name: Ronald B Snider, Fredrick Heimer, Michael Meyer
5. Owner Address: 186 S. Castell Ave., New Braunfels, TX, 78130
6. Contact phone numbers: 210-273-8118
7. HISTORY: a brief history is required and should be attached to this application. The following information should be included, if known:

- Original owner/builder/architect/bibliography and footnotes
- Subsequent owners
- Original and subsequent uses of significance
- Dates of the above
- Any anecdotes concerning the landmark and/or its owners
- Photographs of facades
- General description of the structure

10. I hereby request consideration of the above described structure/site as a historic landmark according to the provisions of the New Braunfels Historic Landmark Preservation Ordinance. I have read this Ordinance and fully understand its effect on my property. This application shall be considered as my written permission as owner of the above described property for historic designation by the New Braunfels City Council.

A handwritten signature in black ink, appearing to read "Ron B Snider", written over a horizontal line.

Owner Signature

A handwritten date "12-2-20" in black ink, written over a horizontal line.

Date

FOR OFFICE USE ONLY

Application received by: _____

Date: _____

RECOMMENDATIONS FOR APPROVAL

HISTORIC LANDMARK COMMISSION: Date: _____

PLANNING COMMISSION: Date: _____

The Producers Cooperative (Brief Building History)

Established in 1944, The Producers Co-Op experienced rapid growth and found themselves in need of a larger warehouse. In spring of 1946, the property adjacent to the "Herald Building" (188 South Castell) was placed under contract and an architect from San Antonio, Jeremiah Schmidt, was hired to begin working on the 80x80 concrete and steel structure.

In early 1947, The Producers Co-Op had completed their new building and have remained the sole occupants until 2021. Through out the years, additions have been made but the primary structure has remained unchanged.



LAYING THE CORNER-STONE on the Producer's Co-Op new warehouse are President Willard Hill, with pick; Vice-President and chairman of building committee E. E. Voigt handles shovel; From left to right looking at blue-print: Leslie Ehlers, Mgr., and Otto Timmermann, Jr., Secy. Extreme left is friend Ro's Pent. Other directors looking on are John Classen, A. Weidner, Ben Wolle and H. Laubach.

Spring - 1946

Producers Co-Op Lets Contract for New Building on South Castell St.; Remarkable 18 Months Growth

Contract for erection of a new warehouse, office building and display space for the Producers Co-Op on South Castell Street adjacent to the new Herald Building, was revealed this week.

Contract was let to Edwin Hanz, local contractor. Construction will begin this week and the building is expected to be ready for occupancy by about next January 1. Jeremiah Schmidt is architect andillard Simpson of San Antonio is consulting engineer. The new building will be 80x20 feet, or about 6,400 square feet of floor space. It will be a fireproof building of steel and concrete with steel windows and concrete floor and roof.

Offices, display rooms and reception rooms will take up the front part of the building with warehouse space in the back.

The new building, besides affording considerably increased storage space for the organization, affords a front on a main street. The original site was the former wool and mohair warehouse on Hill Street; today, besides the real estate on Castell Street, a large warehouse adjacent to the railroad tracks has been purchased and a 40x40 cement tile building is already under construction which, when completed, will house a feed grinder and a feed and molasses mixer.

The Producers Cooperative Marketing Association, familiarly known as the Producers Co-Op, was organized on November 1, 1944, with 142 members and \$18,000 capital stock which today has risen to 283 members with \$50,000 in stock subscribed and paid in. Over 1,200 patrons were served in 1945.

The organization is owned and operated solely by producers of agricultural products, serving Comal and surrounding counties, and sets out to do four distinctive aims and purposes, according to E. E. Voigt, publicity chairman:

1. To sell and buy in line with other competitive business;

2. To see that producers of agricultural products receive the highest possible prices for their commodities thru the method of returning to each individual the savings which have accumulated thru the years, — the so-called patronage dividend. In so doing, members and non-members are on an equal footing.

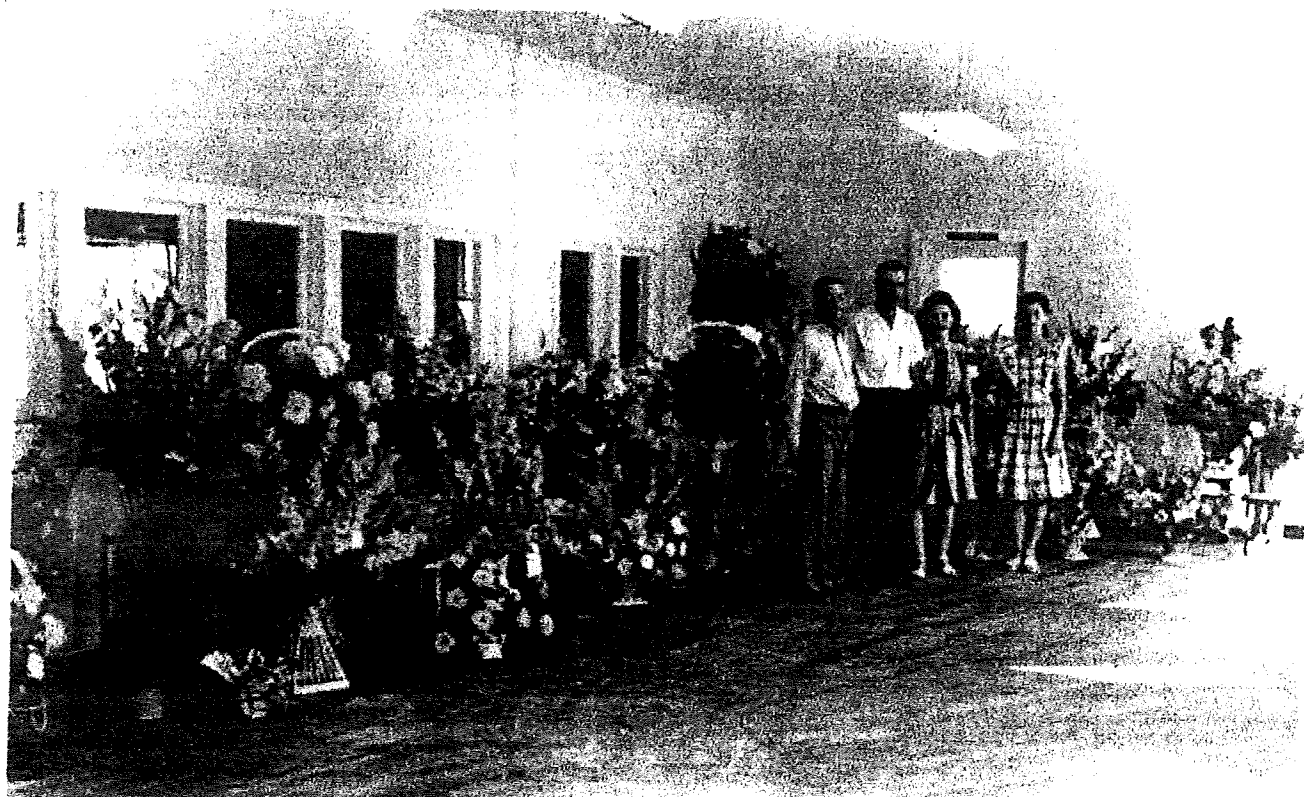
3. To get in closer contact the people of the rural districts in order to have a better understanding, so they can be served to their best advantage.

4. To render special service to rural residents, by having to rent or loan implements and machinery when needed.

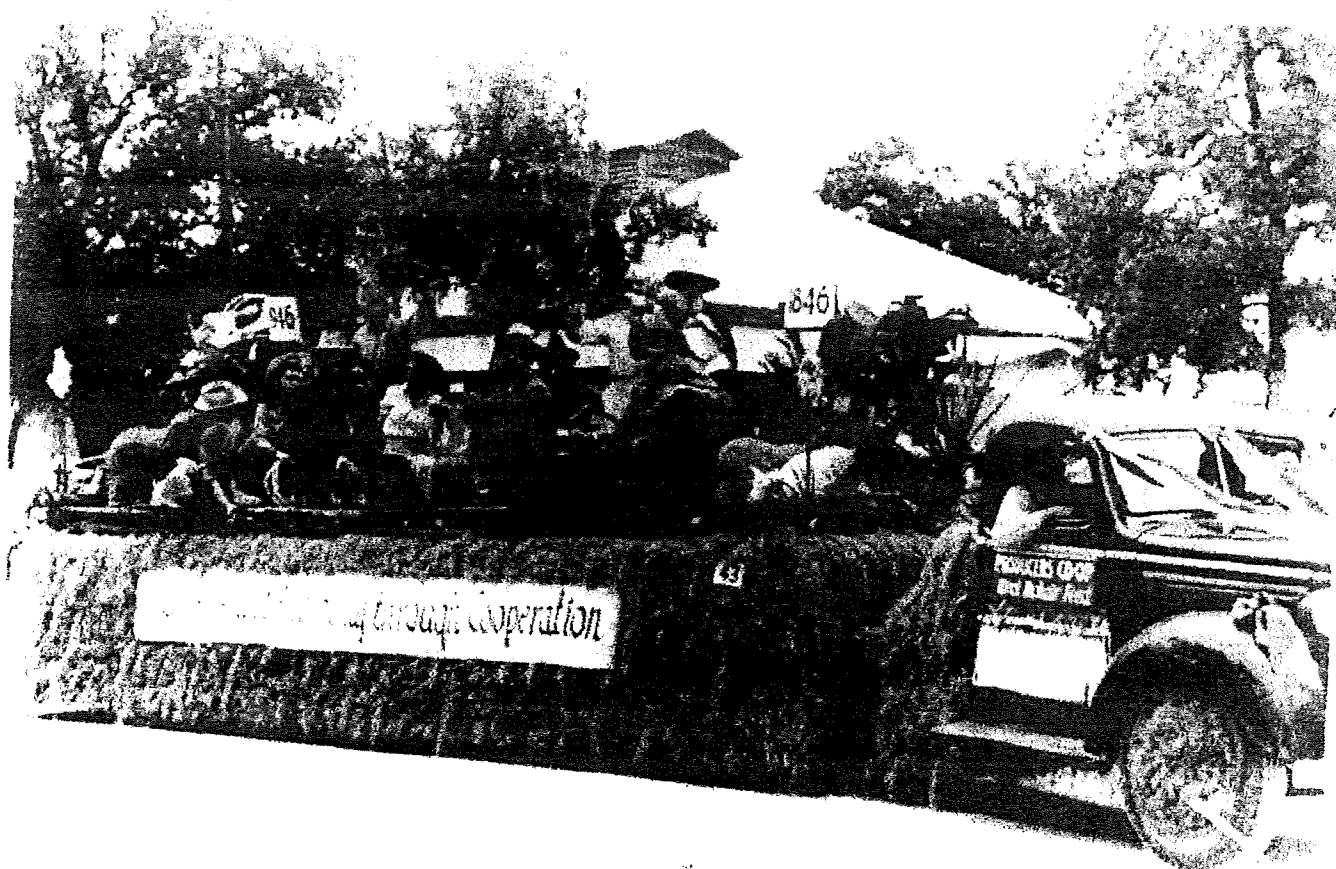
The business specializes in handling wool, mohair, feeds, seeds, and veterinarian supplies. During the first year in business it handled three-quarters of a million pounds of wool and mohair and this spring was credited with making one of the highest sales of mohair of the season, netting the producers 58½ to 59½ cents per pound for grown and 75½ to 79½ cents for kid.

On completion of the new building a grand opening is planned to further acquaint members and patrons with the services offered by the organization.

Officers include Willard Hill, president. E. E. Voigt, vice-president, Otto Timmermann, Secretary and Leslie Ehlers, treasurer-manager. Other directors are C. L. Mezore, John P. Classen, Herman Laubach, Gus Schaefer, Herman Blank, John Karbach, Arthur Weidner, R. R. Coreth, Herman Hitzfelder, D. L. Knillbe, Gus Krause and Ben Wolle.



1947 - Grand opening of office and warehouse building



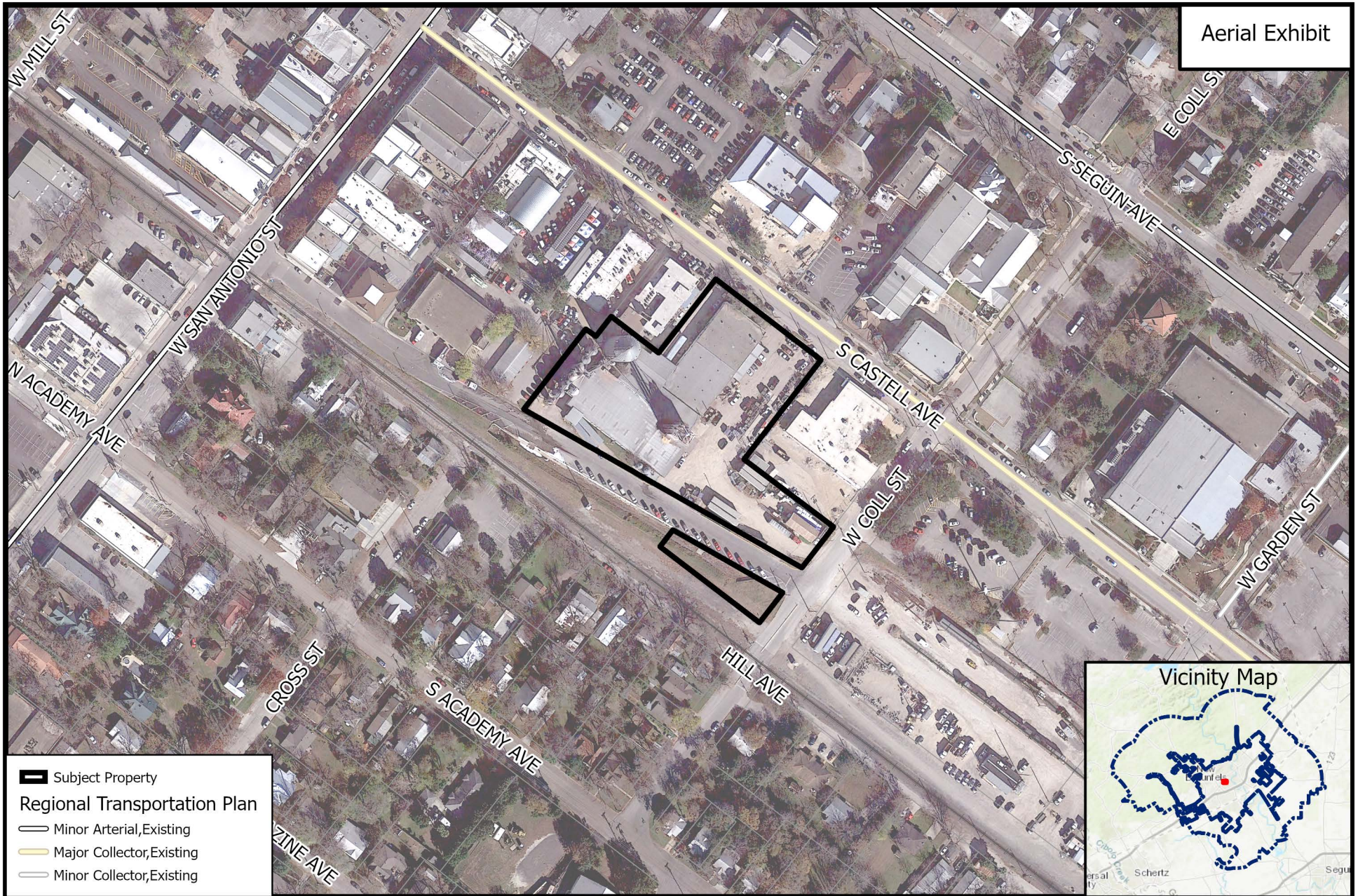
1946 - New Principle Commercial Parade



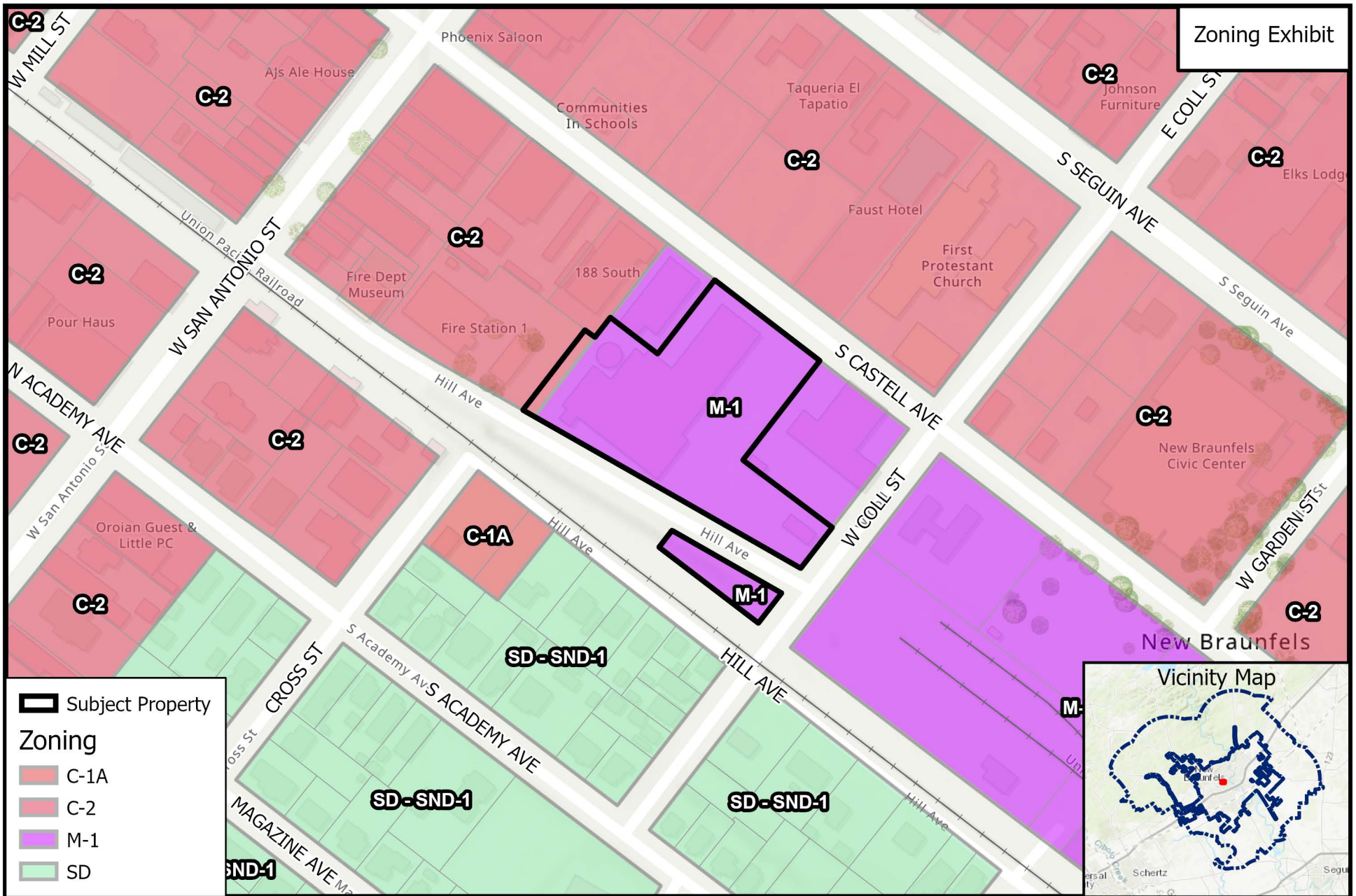
1947

Seated: Otto Timmermann, Ben Wolle, Herman Blank, R.R. Coreth, Leslie Ehlers, John Classen, Sr., John Karbach, W.D. Hill, C.L. Maserole, Gus Schaefer
 Standing: Arthur Weidner, H.J. Laubach, Ervin Voigt, Herman Hitzfelder, D.L. Knibbe





HIST20-302 **Landmark Designation of 210 S. Castell Ave.**

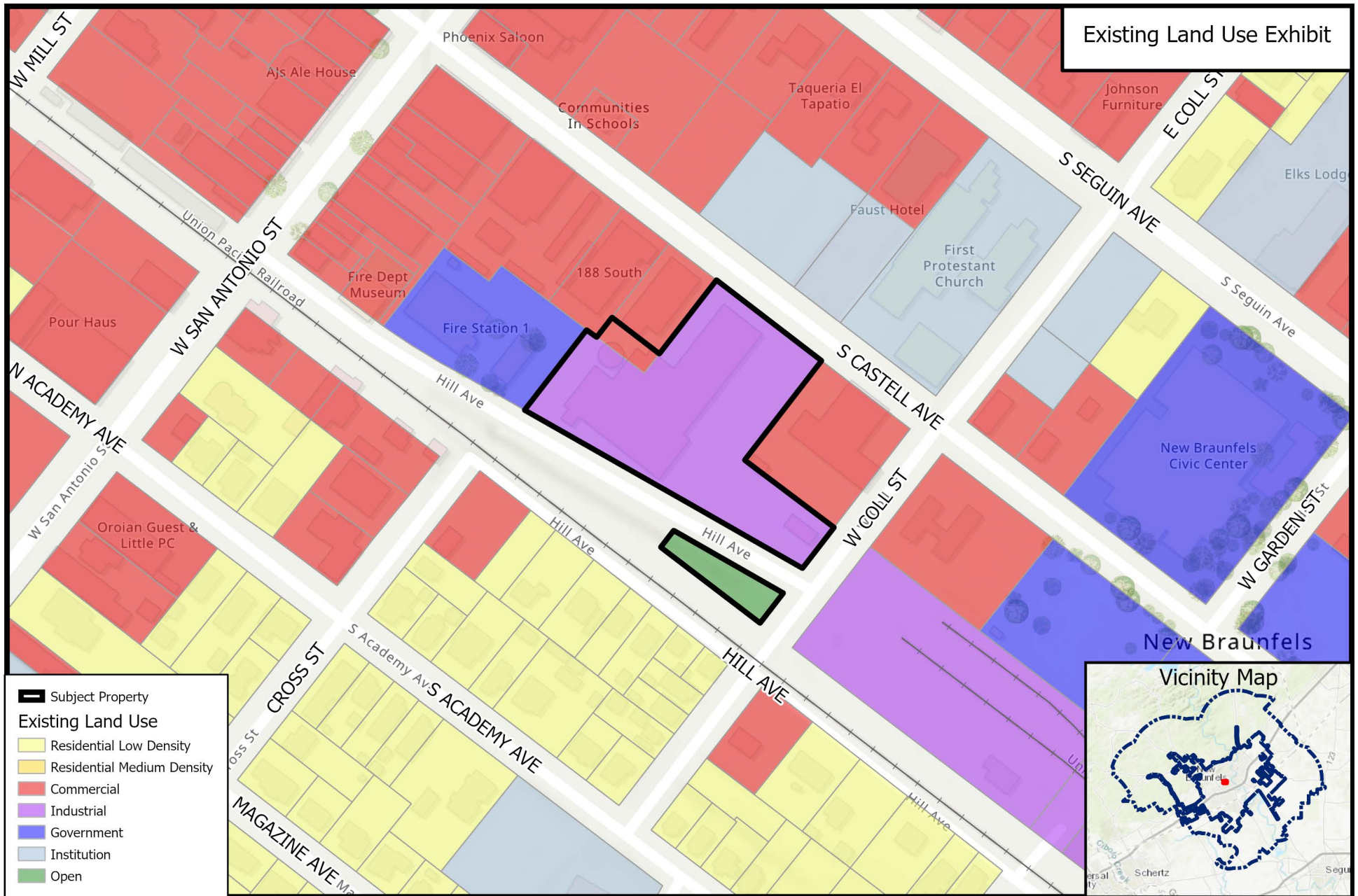


HIST20-302

Landmark Designation of 210 S. Castell Ave.

0 120 240 Feet





HIST20-302 **Landmark Designation of 210 S. Castell Ave.**

EXISTING CENTERS

Centers are the middle, core or heart of an area. It is a point of activity and vitality. Centers come in many sizes and have different purposes or activities within. They may have endangered species habitat or aquifer recharge areas that require additional standards and consideration relating to future growth. It is envisioned that all centers be walkable, connected, and have a mix of uses. These centers must provide adequate infrastructure to support the commercial development present especially mobility and access for pedestrians, bicycles, vehicles and transit. Given the mixed-use nature of these centers, parking should be shared and not detract from the aesthetic of the area.

EMPLOYMENT CENTER

Employment Centers are mixed-use areas centered around office or industrial uses that can support significant employment.

MARKET CENTER

Market Centers are mixed-use areas anchored by a retail destination where surrounding residents go to get daily goods and services.

MEDICAL CENTER

Medical Centers are mixed-use areas centered around a medical destination such as a hospital or clinic.

CIVIC CENTER

Civic Centers are mixed-use areas centered around a civic destination such as City Hall, a library or a recreation center.

OUTDOOR RECREATION CENTER

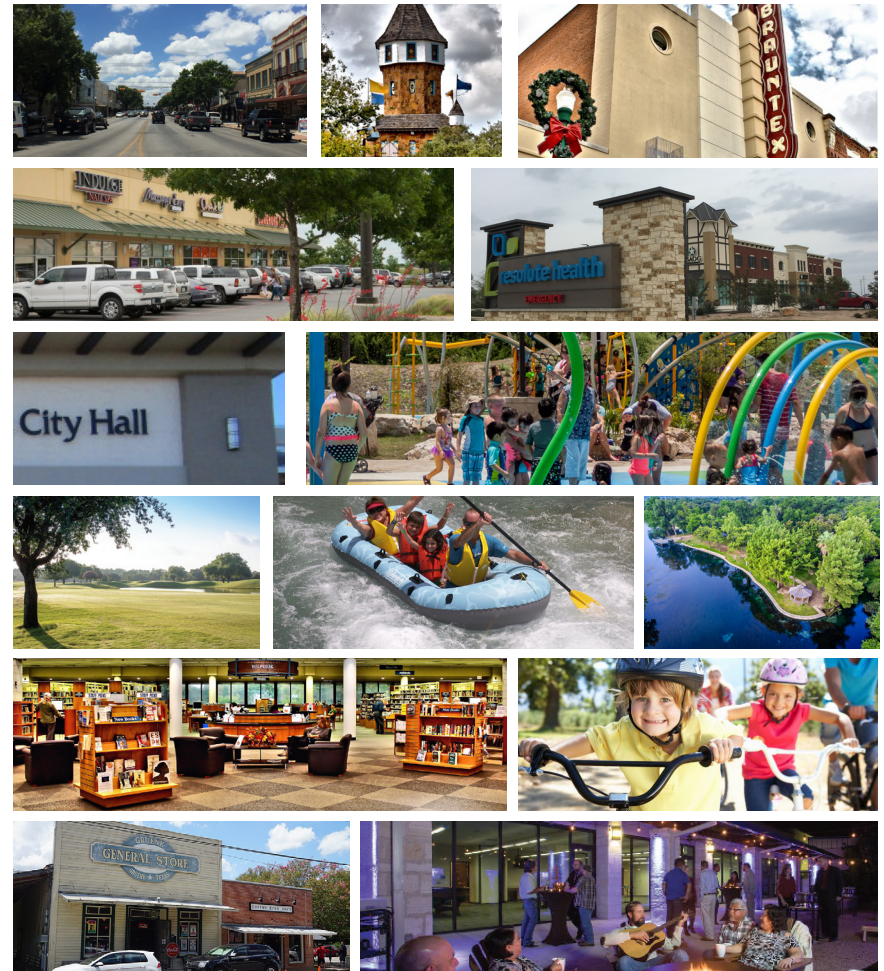
Outdoor Recreation Centers center around a public or private outdoor destination such as Landa Lake.

EDUCATION CENTER

Education Centers are mixed-use areas centered around an educational destination such as a K-12 school or university/college.

TOURIST/ENTERTAINMENT CENTER

Tourist/Entertainment Centers are mixed-use areas around an entertainment venue such as Gruene Hall or a tourist destination such as the Tube Chute.



FUTURE LAND USE PLAN

A future land use plan is how land is envisioned to be. It establishes priorities for more detailed plans (sub area plans) and for detailed topical plans (such as parks and open spaces, trails and roads). It cannot be interpreted without the goals and actions of Envision New Braunfels.

TRANSITIONAL MIXED-USE CORRIDOR

Transitional Mixed-Use Corridors express an aspiration to retrofit existing auto-dominated retail corridors with a mix of uses and a variety of travel modes over time.

OUTDOOR RECREATION CENTER

Outdoor Recreation Centers are centered around a public or private outdoor destination like Fischer Park.

EMPLOYMENT CENTER

Employment Centers are mixed-use areas centered around office or industrial uses that can support significant employment.

MARKET CENTER

Market Centers are mixed-use areas anchored by a retail destination where surrounding residents go to get daily goods and services.

CIVIC CENTER

Civic Centers are mixed-use areas centered around a civic destination such as City Hall, a library or a recreation center.

SUB AREA 1

Sub Area 1 includes the Downtown, Gruene and the Mid-Century or older neighborhoods that surround them. It is home to the natural springs and headwaters of flowing rivers that have attracted New Braunfelsers to the town for centuries.

SUB AREA 2

Sub Area 2 refers to the neighborhoods and residential enclaves that have grown alongside the Hill Country landscape.

SUB AREA 3

Sub Area 3 includes a planned community offering a diversity of housing, distinct community centers and preserved Hill Country landscape features.

SUB AREA 4

At the heart of Sub Area 4 is Fischer Park. Proximity to IH-35, downtown and neighboring communities like McQueeney makes this area highly desirable and accessible.

SUB AREA 5

Sub Area 5 bridges together many communities east of IH-35. It includes the scenic landscape along both banks of the Guadalupe River between Highway 46 and FM 725.

SUB AREA 6

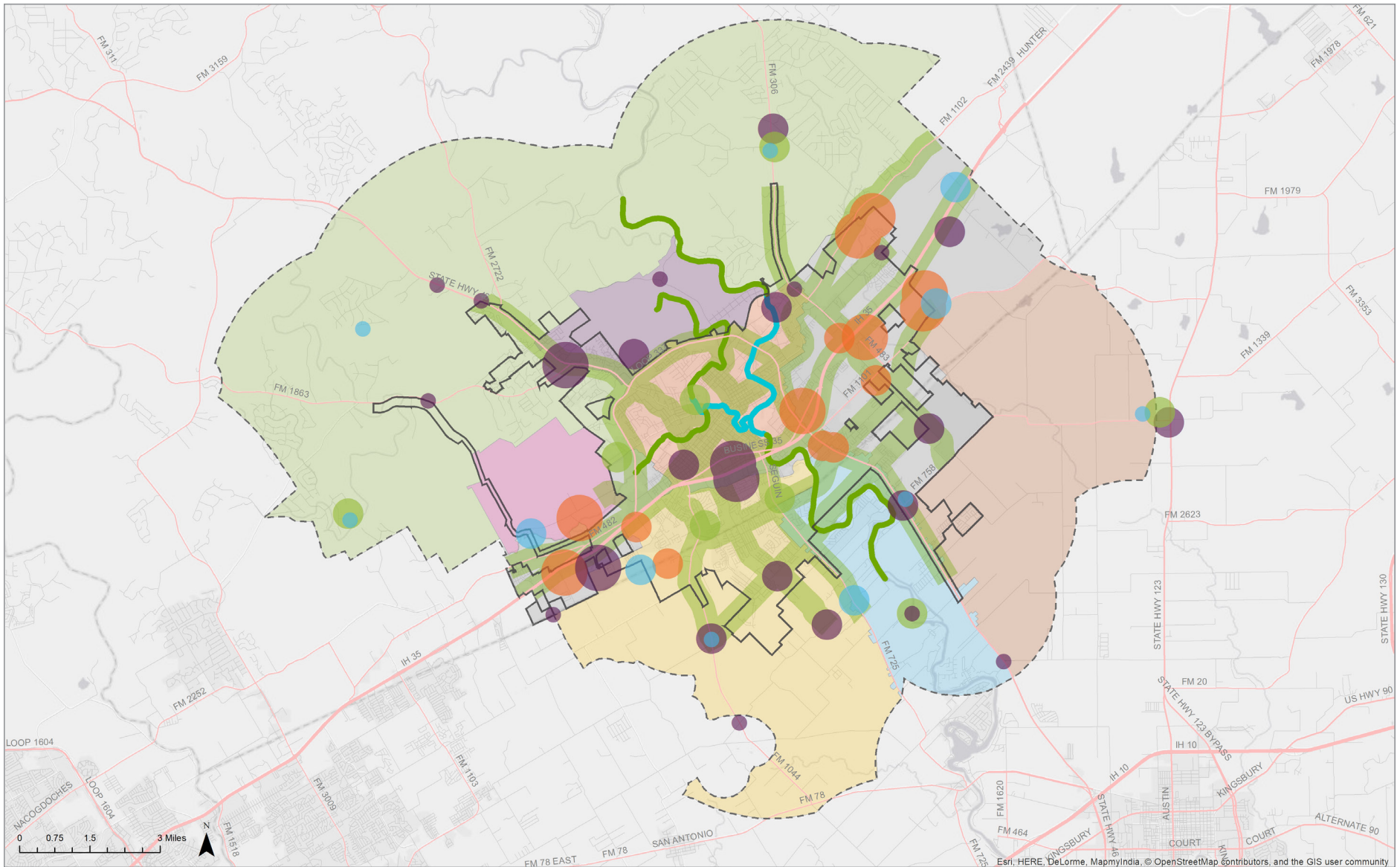
Sub Area 6 expresses an aspiration for conservation communities focused around maintaining and enhancing ecological integrity while allowing some level of development to occur.

SUB AREA 7

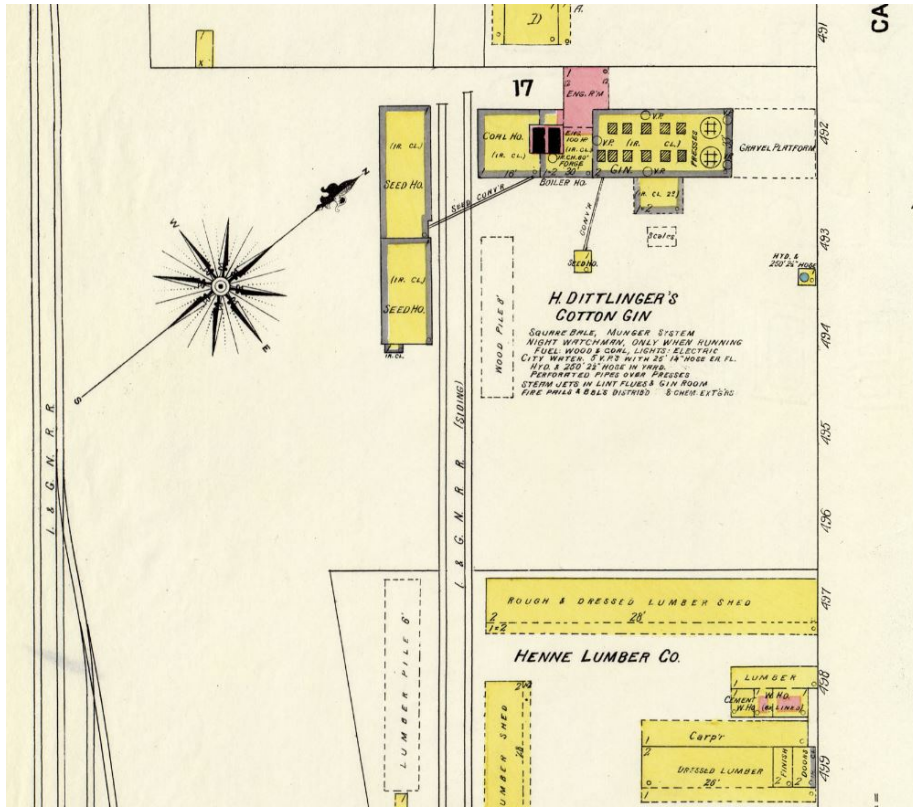
Sub Area 7 includes parts of the city currently being mined for natural resources. These sites may become parks and open space, mixed-use communities or new commercial or entertainment areas in the future.

SUB AREA 8

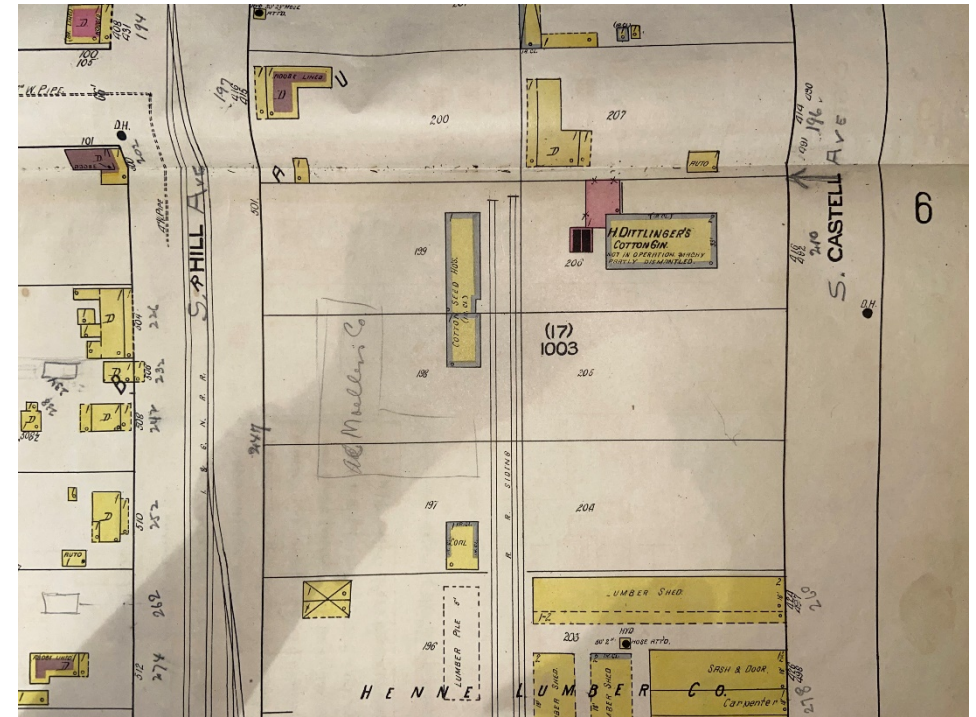
This fast-growing Sub Area includes many neighborhoods offering affordable places for young families to live.



A Comprehensive Plan shall not constitute zoning regulations or establish zoning district boundaries. Preferred future growth scenario combines Scenarios A and C per recommendations of the Envision New Braunfels Steering Committee (February 2018). Exact boundaries of sub areas, centers, and corridors may be [zoomed and viewed online](#).



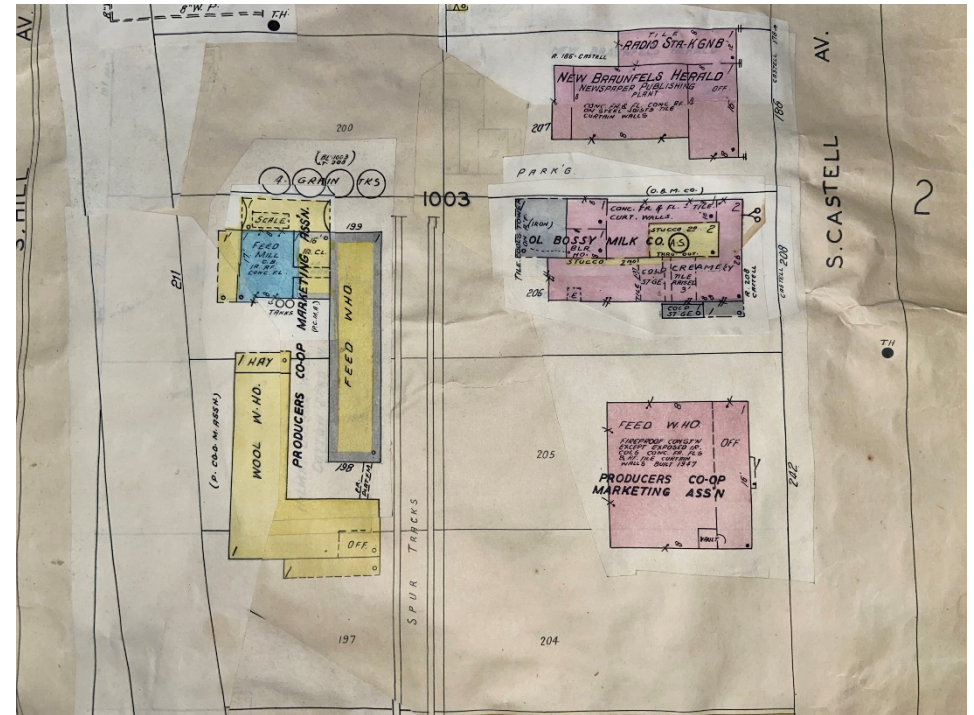
1907 Sanborn Map



1922 Sanborn Map (Note the A.C. Moeller Co. Building drawn in)



1930 Sanborn Map



1949 Sanborn updated through 1960's



SPEED
LIMIT
25

2
NO PARKING
MON - FRI
8AM - 5PM



P

SPEED LIMIT 25

PUBLIC TITLE

PAX

KRAUSE'S CAFE & BAR SOUTH PARKING

188 KRAUSE'S PARKING & UNLOADING ONLY

DOWNTOWN BUILDING

SCHOON LAM FIRM

LAW OFFICES

DANIEL PALMITER

677 TECH SERVICE

PHOTOGRAPHY





ST PROTESTANT SCHOOL
NEW BRAINEELS







HIST20-302 Landmark Designation of 210 S. Castell Ave.

PLANNING COMMISSION – February 2, 2021 – 6:00PM

Zoom Meeting

Applicant/Owner: Ron Snider

Address/Location: 220 S. Castell Ave.

PROPOSED LANDMARK DESIGNATION – CASE #HST20-302

The circled numbers on the map correspond to the property owners listed below. All information is from the Appraisal District Records. The property under consideration is marked as “Subject Property”.

- | | |
|--|--|
| 1. WEST SAN ANTONIO 111 LLC | 11. SNIDER RONALD B & CASTELL PROP LLC |
| 2. UNLISTED | 12. FORRES PARTNERSHIP |
| 3. NEW BRAUNFELS INDUSTRIAL DEVELOPMENT CORP | 13. VALENZUELA FELICIANO & JOSEFA |
| 4. SPRINGFED INVESTMENTS LLC | 14. MUELLER JOSHUA A & CASSIE A |
| 5. FIRST PROTESTANT CHURCH OF NEW BRAUNFELS | 15. LABOWSKI MARY ANN |
| 6. POWEROHM PROPERTIES LLC | 16. RODRIGUEZ MARIA L |
| 7. ROCKFIELD PROPERTIES LLC | 17. FORRES DONALD E & LYNN S |
| 8. SNIDER RONALD B & CAROL C | 18. POLK JOHN M & CATHRYN |
| 9. VOSIKA REBECCA | 19. NEW BRAUNFELS CITY OF |
| 10. WHITTENBURG STANLEY D & MARGIE H | |

SEE MAP



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT

NOTICE OF PUBLIC HEARING

The New Braunfels Planning Commission will hold a public hearing at the request of **Ron Snider, owner**, to consider the following Historic Landmark Designation:

Property: 210 S. Castell Ave. commonly known as the Producer's Co-Op

Request: An application for the property at 210 S. Castell Ave. to be designated as a historic landmark known as the Producer's Co-Op

Because your property is located within 200 feet of the request, State law requires that we notify you of the public hearing. **However, the zoning of your property will not be affected.** The public hearing process allows an opportunity to provide comments on the request. This aids the Commission in making a recommendation to City Council.

Public hearings for this request are scheduled before the Planning Commission on **Tuesday, February 2, 2021**, and tentatively before City Council on **Monday, February 22, 2021**. Both meetings begin at 6:00 p.m. and will be held virtually via **Zoom Meeting** and are open to the public. Additional information on how to join the meeting is included with this notice.

To submit written comments complete the information below, including your signature, and return to:

Mail: City of New Braunfels
Planning Commission
550 Landa Street
New Braunfels, TX 78130

Email: CGasparek@nbtexas.org

If you have questions, please call Caleb Gasperek at (830) 221-4086

Caleb Gasperek

Caleb Gasperek, Historic Preservation Officer

YOUR OPINION MATTERS - DETACH AND RETURN

Case: HST20-302 (CG)

Name: Thor Thornhill

I favor: X

Address: 290 S. Castell Ave. Suite, 100, New Braunfels, TX

Property number on map: 4

I object: _____

(State reason for objection)

Comments: (Use additional sheets if necessary)

Signature: *Thor Thornhill*

ORDINANCE NO. 2021 -

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, DESIGNATING THE PROPERTY CURRENTLY ADDRESSED AS 210 SOUTH CASTELL AVENUE, CITY BLOCK 1003, LOT 204-205 & W 21.06 LT 203 & S 13 LT 206 & N 83 W 40, LT206 & PT LTS 195-196 & NE PT LT 197-198-199 & PT LT 200-LAND ONLY, ACRES 2.502 AS A HISTORIC LANDMARK TO BE KNOWN AS THE PRODUCER’S CO-OP ACCORDING TO CHAPTER 66, ARTICLE III, AND AMENDING THE ZONING MAP; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SAVINGS CLAUSE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of New Braunfels has complied with all requirements of notice of public hearing as required by the Zoning Ordinance of the City of New Braunfels; and

WHEREAS, this property has been recommended for historic designation by the Historic Landmark Commission; and

WHEREAS, the City Council wishes to protect this structure as a part of the heritage of New Braunfels for future generations; and

WHEREAS, the City Council desires to amend the Zoning Map by designating the suffix “HL” in addition to the conventional zoning designation established by the zoning ordinance; **now, therefore**;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

SECTION 1

THAT the following described property is hereby designated as a Historic Landmark to be known as the Producer’s Co-Op in accord with the provisions of Chapter

66, Article III of the Code of Ordinances of the City of New Braunfels, Texas:

“The property currently addressed as 210 South Castell Avenue, as shown on the attached map, marked as Exhibit A”.

SECTION 2

THAT the above property is hereby restricted as to the amount or method of change, construction, or demolition that can take place in accord with Chapter 66, Article III of the Code of Ordinances of the City of New Braunfels.

SECTION 3

THAT the above described property is hereby entitled to all rights and privileges that are accorded to historically designated structures or sites, or which may be accorded those structures or sites in the future.

SECTION 4

THAT, the zoning map is amended by designating the tract the subject structure is located upon, to add “HL”.

SECTION 5

THAT all other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent that they are in conflict.

SECTION 6

THAT if any provisions of this ordinance shall be held void or unconstitutional, it is hereby provided that all other parts of the same which are not held void or unconstitutional shall remain in full force and effect.

SECTION 7

THIS ordinance will take effect upon the second and final reading of same.

PASSED AND APPROVED: First Reading this the 22nd day of February 2021.

PASSED AND APPROVED: Second Reading this the 8th day of March
2021.

CITY OF NEW BRAUNFELS

Rusty Brockman, Mayor

ATTEST:

Caitlin Krobot, City Secretary

APPROVED AS TO FORM:

Valeria M. Acevedo, City Attorney



3/8/2021

Agenda Item No. S)

Presenter

Christopher J. Looney, AICP, Planning and Development Services Director
clooney@nbtexas.org

SUBJECT:

Approval of the second and final reading of an ordinance regarding the proposed rezoning of approximately 14.608 acres out of the H. Foster Survey No. 34, Abstract No. 154, Comal County, Texas, located at the northwest corner of the intersection of IH 35 and FM 306, from "M-1" Light Industrial District to "MU-B" High Intensity Mixed Use District.

BACKGROUND / RATIONALE:

Case No.: PZ20-0330

Council District: 5

Applicant: Moeller & Associates (James Ingalls, P.E.)
2021 SH 46 W, Ste 105
New Braunfels, TX 78132
(830) 358-7127 - plats@ma-tx.com

Owner: Smithco Development (Matt Strange)
1400 Post Oak, Ste 900
Houston, TX 77056
(713) 622-4040 - matt@smithcodevelopment.com

Staff Contact: Matt Greene, Planner
(830) 221-4053 - mgreene@nbtexas.org

City Council held a public hearing on February 22, 2021 and unanimously approved the first reading of the applicant's requested rezoning ordinance.

The subject undeveloped 14-plus acres is out of a larger 18.88-acre parcel located on the northwest corner of the intersection of IH 35 and FM 306. It is currently zoned "M-1" Light Industrial District, while the remaining 4.272 acres of the parent tract fronting IH 35 is zoned "C-3" Commercial District. The applicant is making the request to accommodate mixed-use: allowing both commercial and multi-family.

Surrounding Zoning and Land Use:

North - M-1 / Hotel and light manufacturing

South - M1-A & M-1Ar69 / Manufactured home sales lot and auto transmission repair shop,

Convenience store with fuel sales (Buc-ee's)
 East - C-3 & M-1 / Convenience store with fuel sales, supermarket (HEB), shopping center and fast food restaurant
 West - C-3, M-1, M-1A & Post Road PD / Auto transmission repair shop, undeveloped lot approved for multifamily use through a PD, and a vacant parcel

Determination Factors:

In making a decision on zoning, the following factors are to be considered:

- Whether the permitted uses will be appropriate in the immediate area, and their relationship to the area and to the City as a whole (*MU-B is intended to provide for a mixture of retail, office, and industrial uses to enable people to live, work and shop in close proximity. The permitted uses in MU-B are consistent with the existing zoning and land uses in the vicinity adjacent to IH 35 and in the nearby Town Center at Creekside development and future Solms Landing PD*).
- Whether the change is in accord with any existing or proposed public schools, streets, water supply, sanitary sewers, and other utilities to the area (*The impact on existing streets will be reviewed through the platting process. The adequacy of public facilities and utilities to serve any additional demand is evaluated by each provider. CISD and utility providers have been notified of the proposed rezoning*).
- How other areas designated for similar development will be affected (*The proposed rezoning should not negatively affect other areas designated for similar development*).
- Any other factors that will substantially affect the public health, safety, morals, or general welfare (*None identified. Drainage, utility and traffic impact will be reviewed and addressed through the platting process*).
- Whether the request is consistent with the Comprehensive Plan: See below

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

City Plan/Council Priority: Envision New Braunfels	Consistent Actions Action 1.3: Encourage balanced and fiscally responsible land use patterns. Action 1.8: Concentrate future investment in industrial and employment centers near existing and emerging hubs, such as the airport; and along existing high capacity transportation networks, such as Interstate Highway 35. Future Land Use Plan: The property lies within the Oak Creek Sub Area on a Transitional Mixed-Use Corridor near existing and future Employment, Market, Medical, Outdoor Recreation, Education and Tourist/Entertainment Centers.
---	---

FISCAL IMPACT:

N/A

COMMITTEE RECOMMENDATION:

The Planning Commission held a public hearing on February 2, 2021 and recommended approval (9-0-0).

STAFF RECOMMENDATION:

Approval. MU-B allows uses consistent with the existing light industrial, commercial and residential development and zoning in the area, while offering the opportunity for mixed-use development as

encouraged in Envision New Braunfels. Mixed uses at this location would provide an appropriate intensity transition outward from the major node.

Notification:

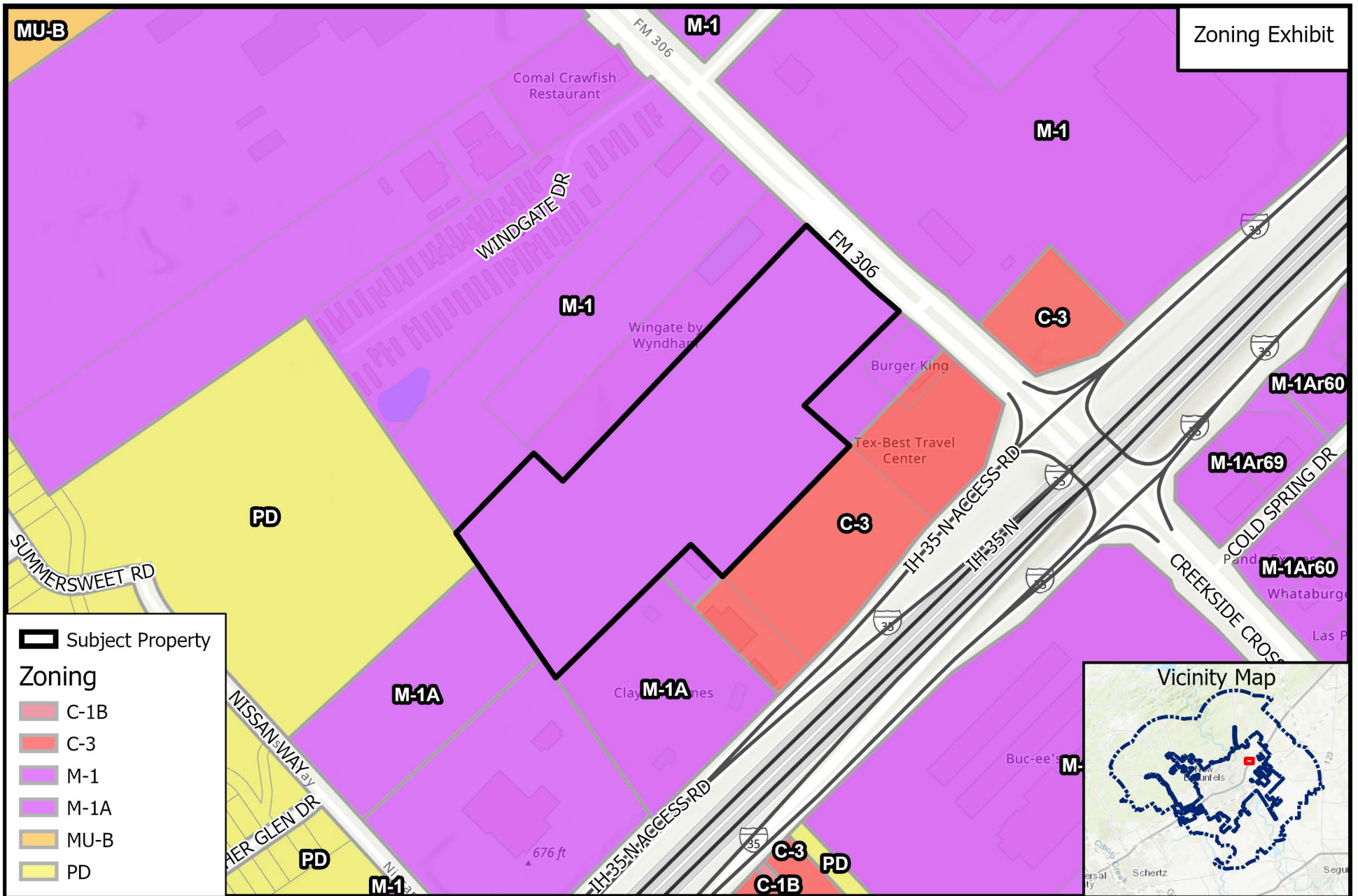
Public hearing notices were sent to 11 owners of property within 200 feet of the request. The City has received no responses at this time.

RESOURCE LINKS:

- Chapter 144, Sec. 3.3-11 “M-1” Light Industrial District, of the City’s Code of Ordinances:
https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?
- Chapter 144, Secs. 3.4-11 “MU-B” High Intensity Mixed Use District, of the City’s Code of Ordinances:
https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?

ATTACHMENTS:

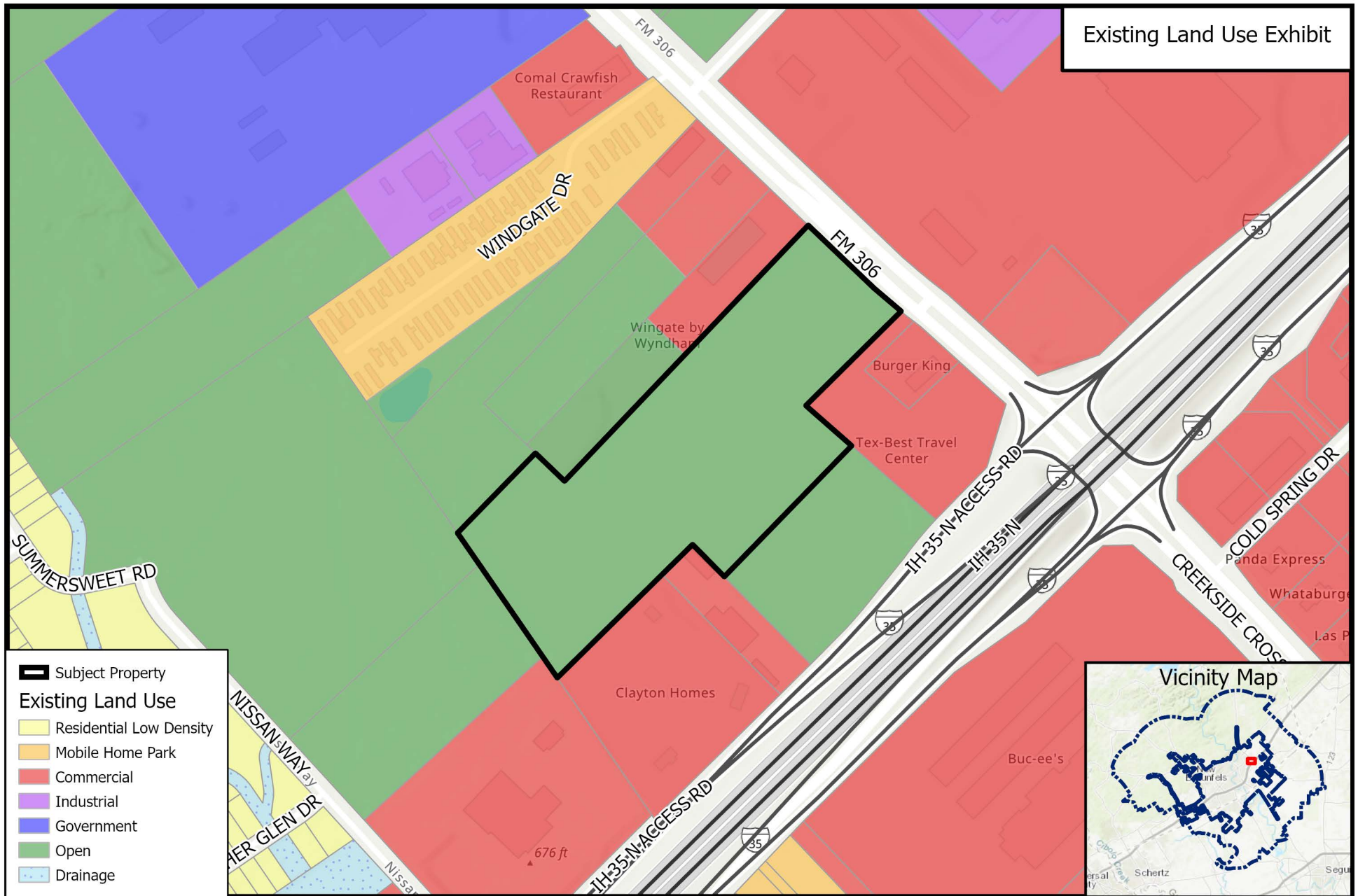
1. Aerial Map
2. Land Use Maps (Zoning, Existing and Future Land Use)
3. Zoning Exhibit
4. Notification List and Map
5. Excerpt of Minutes from the February 2, 2021 Planning Commission Regular Meeting
6. Ordinance



PZ20-0330
M-1 to MU-B



DISCLAIMER: This map and information contained in it were developed exclusively for use by the City of New Braunfels. Any use or reliance on this map by any other party is at that party's risk and without liability to the City of New Braunfels, its officials or employees for any discrepancies, errors, or variances which may exist.



EXISTING CENTERS

Centers are the middle, core or heart of an area. It is a point of activity and vitality. Centers come in many sizes and have different purposes or activities within. They may have endangered species habitat or aquifer recharge areas that require additional standards and consideration relating to future growth. It is envisioned that all centers be walkable, connected, and have a mix of uses. These centers must provide adequate infrastructure to support the commercial development present especially mobility and access for pedestrians, bicycles, vehicles and transit. Given the mixed-use nature of these centers, parking should be shared and not detract from the aesthetic of the area.

EMPLOYMENT CENTER

Employment Centers are mixed-use areas centered around office or industrial uses that can support significant employment.

MARKET CENTER

Market Centers are mixed-use areas anchored by a retail destination where surrounding residents go to get daily goods and services.

MEDICAL CENTER

Medical Centers are mixed-use areas centered around a medical destination such as a hospital or clinic.

CIVIC CENTER

Civic Centers are mixed-use areas centered around a civic destination such as City Hall, a library or a recreation center.

OUTDOOR RECREATION CENTER

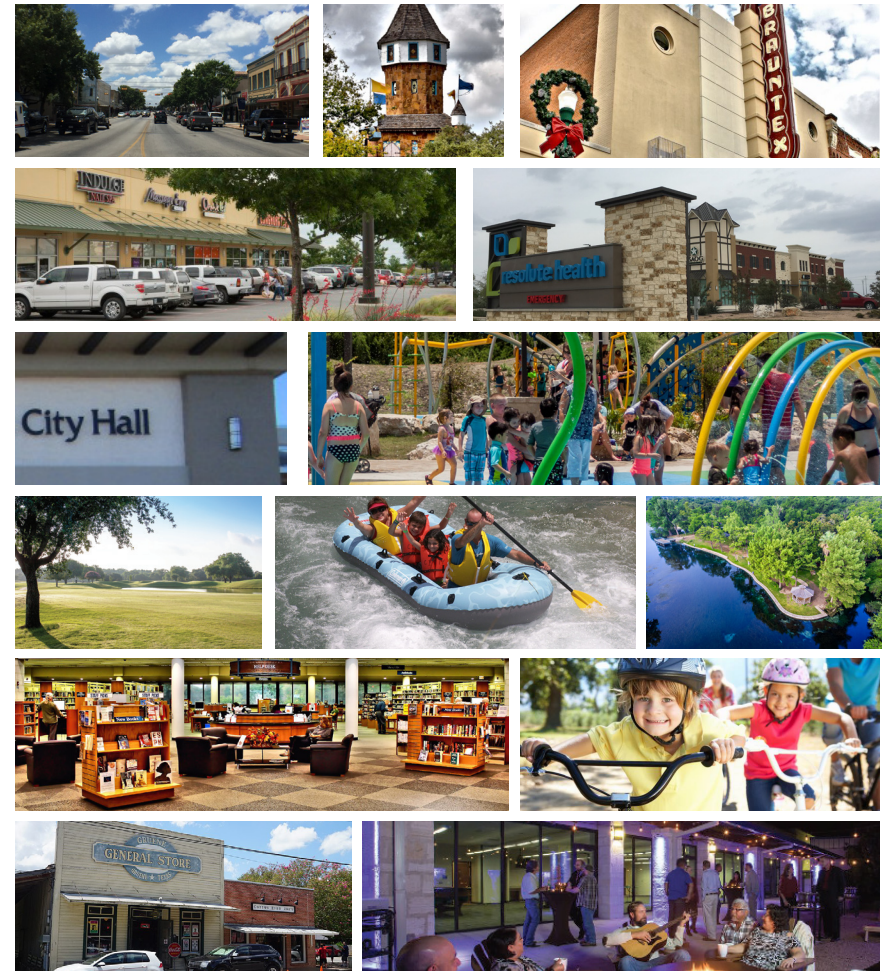
Outdoor Recreation Centers center around a public or private outdoor destination such as Landa Lake.

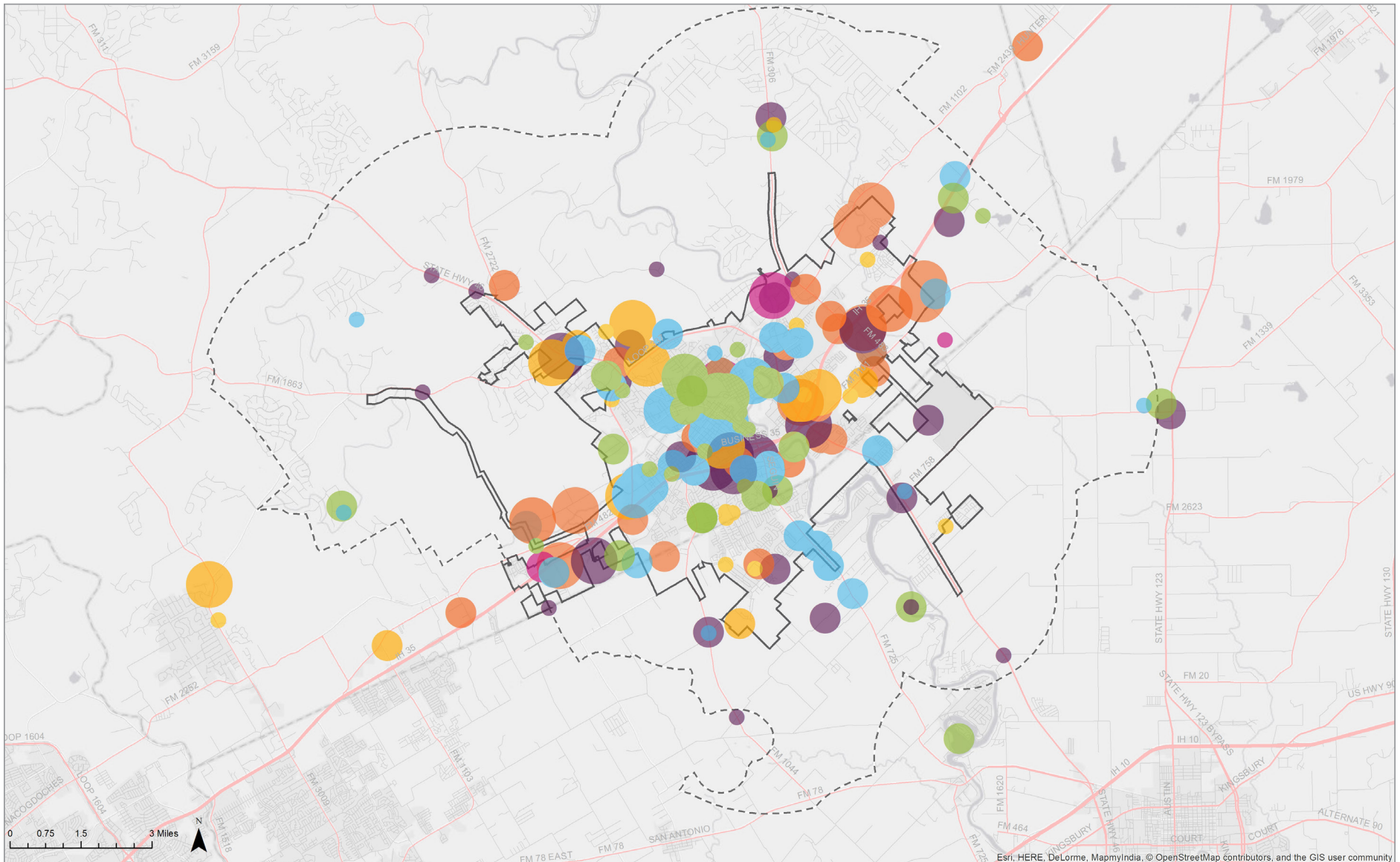
EDUCATION CENTER

Education Centers are mixed-use areas centered around an educational destination such as a K-12 school or university/college.

TOURIST/ENTERTAINMENT CENTER

Tourist/Entertainment Centers are mixed-use areas around an entertainment venue such as Gruene Hall or a tourist destination such as the Tube Chute.





The location of existing centers was determined through the analysis of previous studies and background documents, windshield surveys, and reviewed by City staff, Steering Committee members, and Plan Element Advisory Group members during a public workshop.

FUTURE LAND USE PLAN

A future land use plan is how land is envisioned to be. It establishes priorities for more detailed plans (sub area plans) and for detailed topical plans (such as parks and open spaces, trails and roads). It cannot be interpreted without the goals and actions of Envision New Braunfels.

TRANSITIONAL MIXED-USE CORRIDOR

Transitional Mixed-Use Corridors express an aspiration to retrofit existing auto-dominated retail corridors with a mix of uses and a variety of travel modes over time.

OUTDOOR RECREATION CENTER

Outdoor Recreation Centers are centered around a public or private outdoor destination like Fischer Park.

EMPLOYMENT CENTER

Employment Centers are mixed-use areas centered around office or industrial uses that can support significant employment.

MARKET CENTER

Market Centers are mixed-use areas anchored by a retail destination where surrounding residents go to get daily goods and services.

CIVIC CENTER

Civic Centers are mixed-use areas centered around a civic destination such as City Hall, a library or a recreation center.

SUB AREA 1

Sub Area 1 includes the Downtown, Gruene and the Mid-Century or older neighborhoods that surround them. It is home to the natural springs and headwaters of flowing rivers that have attracted New Braunfelsers to the town for centuries.

SUB AREA 2

Sub Area 2 refers to the neighborhoods and residential enclaves that have grown alongside the Hill Country landscape.

SUB AREA 3

Sub Area 3 includes a planned community offering a diversity of housing, distinct community centers and preserved Hill Country landscape features.

SUB AREA 4

At the heart of Sub Area 4 is Fischer Park. Proximity to IH-35, downtown and neighboring communities like McQueeney makes this area highly desirable and accessible.

SUB AREA 5

Sub Area 5 bridges together many communities east of IH-35. It includes the scenic landscape along both banks of the Guadalupe River between Highway 46 and FM 725.

SUB AREA 6

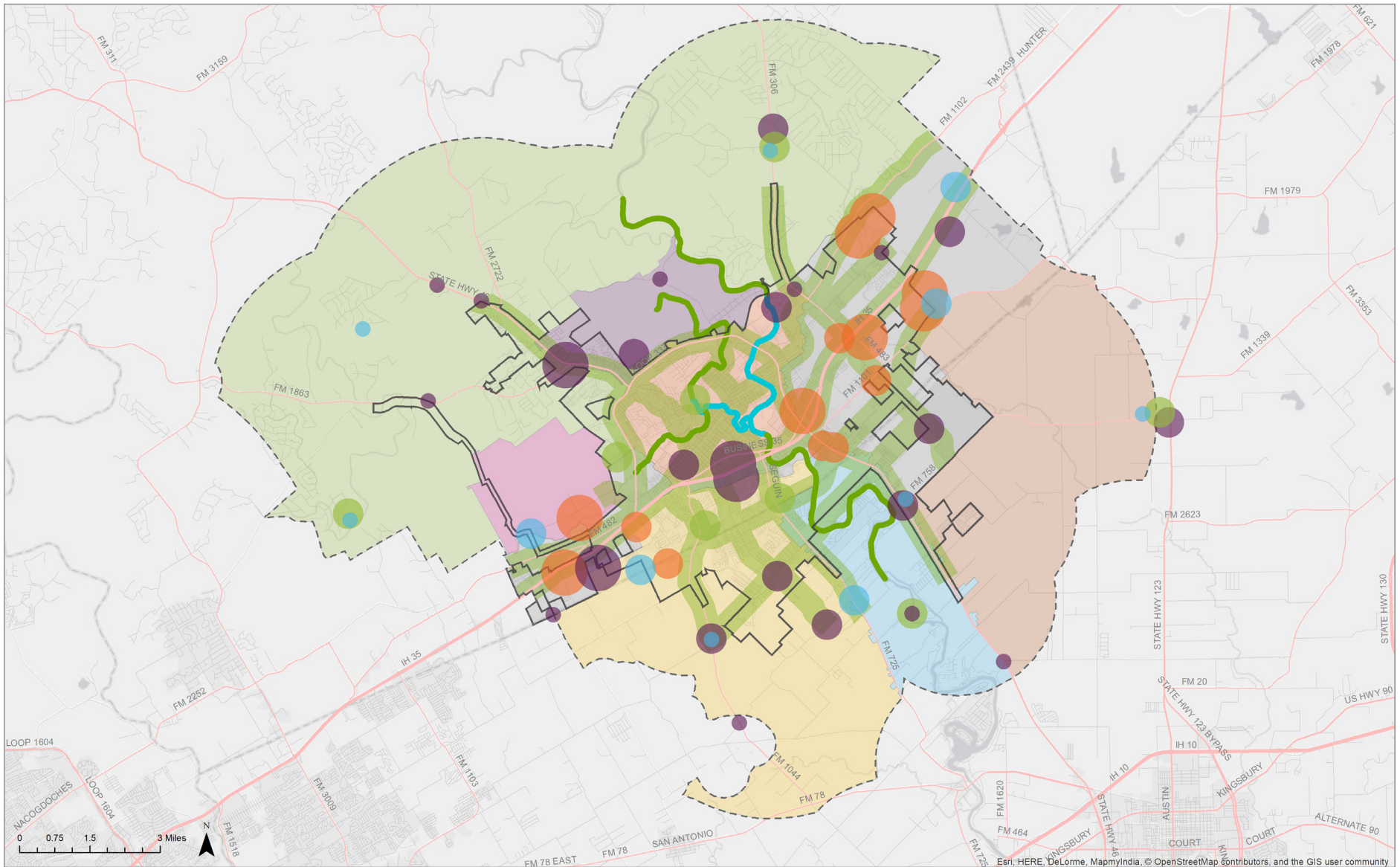
Sub Area 6 expresses an aspiration for conservation communities focused around maintaining and enhancing ecological integrity while allowing some level of development to occur.

SUB AREA 7

Sub Area 7 includes parts of the city currently being mined for natural resources. These sites may become parks and open space, mixed-use communities or new commercial or entertainment areas in the future.

SUB AREA 8

This fast-growing Sub Area includes many neighborhoods offering affordable places for young families to live.



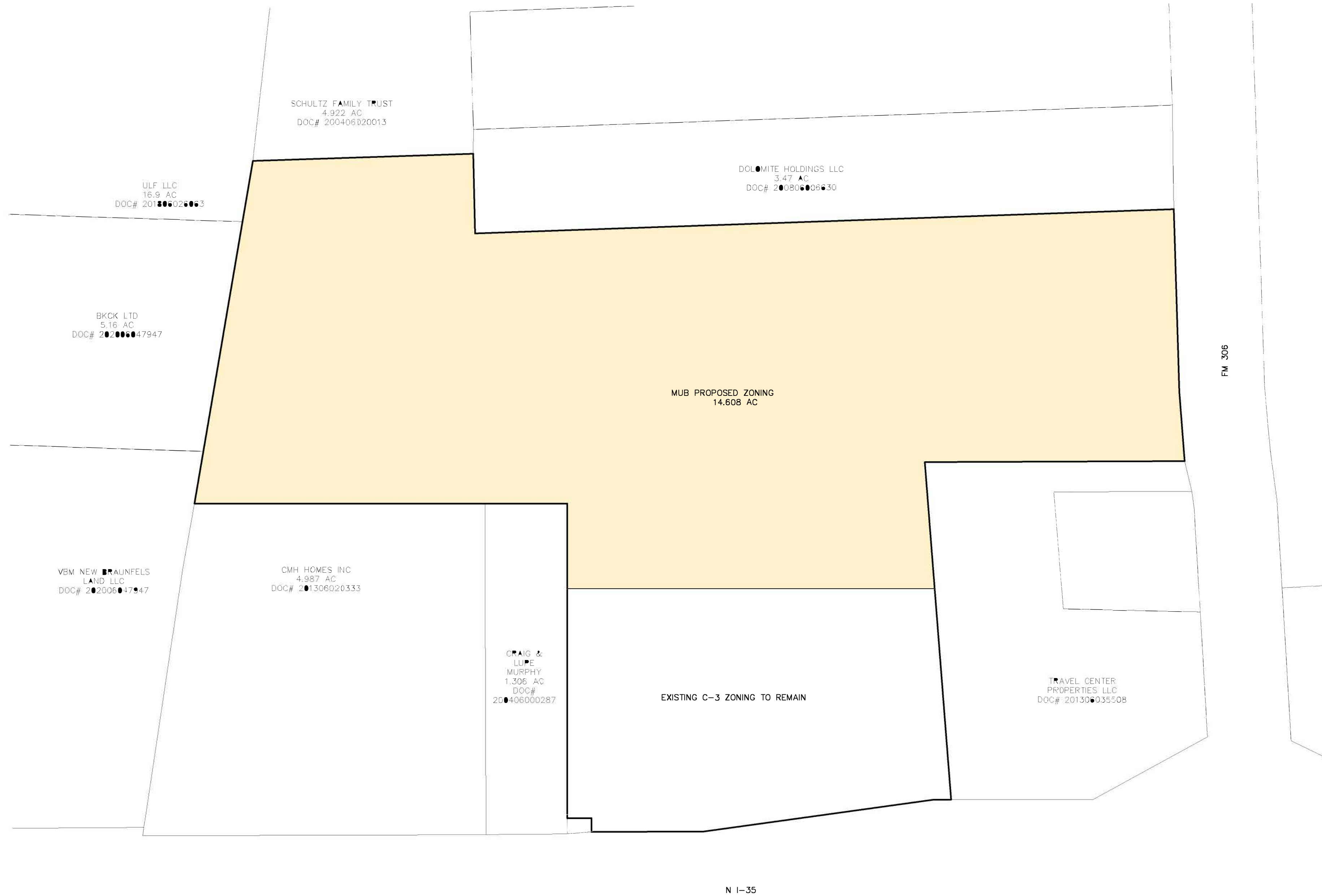
A Comprehensive Plan shall not constitute zoning regulations or establish zoning district boundaries. Preferred future growth scenario combines Scenarios A and C per recommendations of the Envision New Braunfels Steering Committee (February 2018). Exact boundaries of sub areas, centers, and corridors may be [zoomed and viewed online](#).



DOCUMENT IS RELEASED FOR THE PURPOSE OF INTERVIEW UNDER THE AUTHORITY OF THE ATTORNEY GENERAL IN CALLS, P.E. #10-00000000 ON FEBRUARY 28, 2020. IT IS TO BE USED FOR BIDDING AND CONTRACTING PURPOSES ONLY. IT IS NOT TO BE USED FOR CONSTRUCTION.



MU-B PROPOSED ZONING

[illegible]

**MOELLER
& ASSOCIATES**
Engineering Solutions

2021 W SH46, STE 105, NEW BRAUNFELS, TX 778132
713.261.0000

ZONING EXHIBIT

SMITHCO TRACT

NEW BRAUNFELS, TEXAS

SHEET

EX

OF 1

PLANNING COMMISSION – FEBRUARY 2, 2021 – 6:00PM

Zoom Meeting

Applicant/Owner: James Ingalls, P.E.

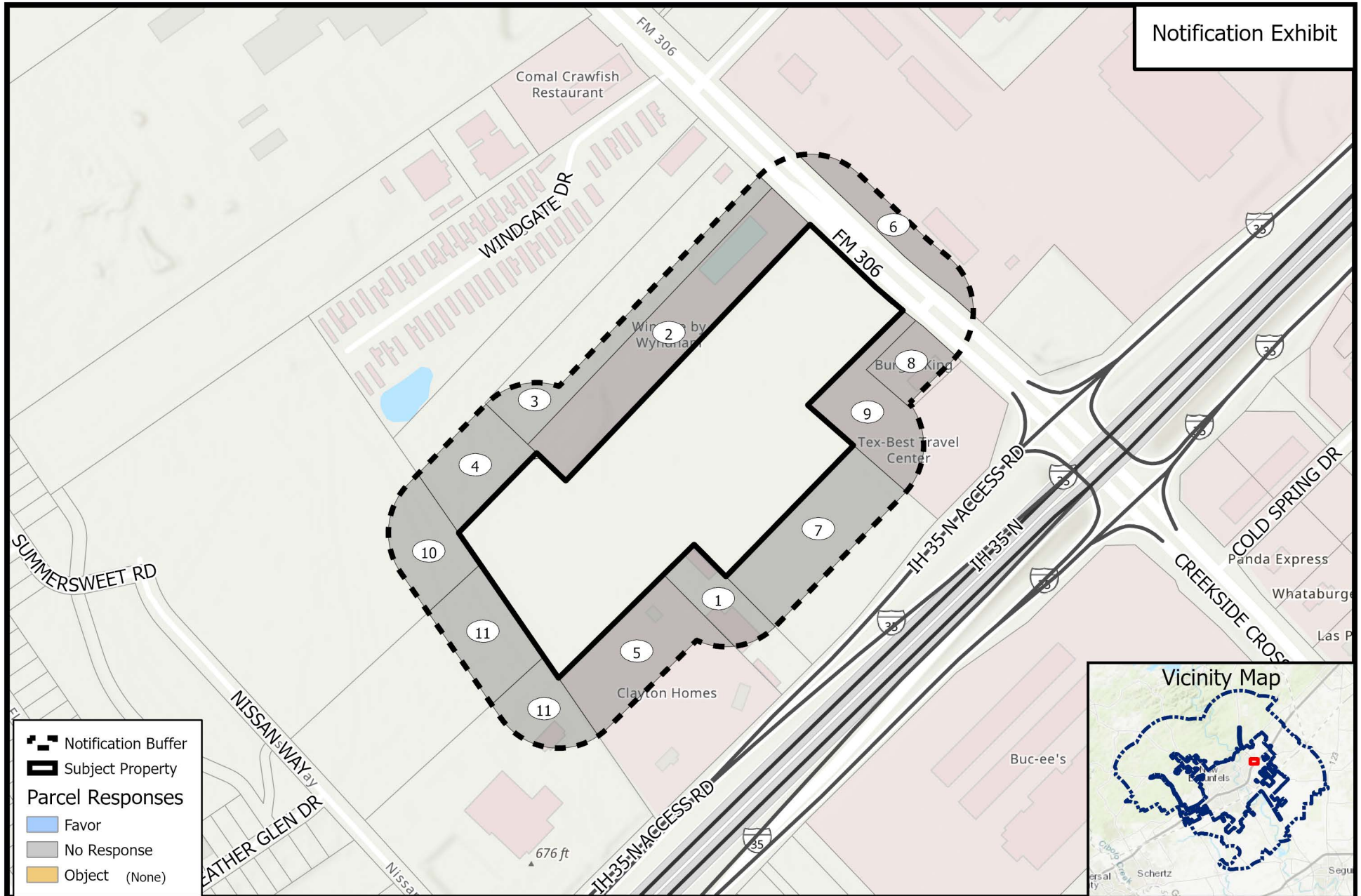
Address/Location: Intersection of FM 306 & IH 35 N

PROPOSED ZONE CHANGE – CASE #PZ20-0330

The circled numbers on the map correspond to the property owners listed below. All information is from the Appraisal District Records. The property under consideration is marked as “Subject Property”.

- | | |
|---------------------------------|---------------------------------|
| 1. SCHULTZ FAMILY TRUST | 7. HEB GROCERY CO LP |
| 2. MURPHY CRAIG & LUPE | 8. WRJ FINANCIAL LTD ET AL |
| 3. CMH HOMES INC | 9. TRAVEL CENTER PROPERTIES LLC |
| 4. DOLOMITE HOLDINGS LLC | 10. ULF LLC |
| 5. ORMOND LARRY G & JEANETTE | 11. VBM NEW BRAUNFELS LAND LLC |
| 6. VBM NEW BRAUNFELS LAND 2 LLC | |

SEE MAP



PZ20-0330
M-1 to MU-B



Draft Minutes for the February 2, 2021 Planning Commission Regular Meeting

F) PZ20-0330 Public hearing and recommendation to City Council regarding a proposed rezoning of approximately 14.608 acres out of the H. Foster Survey No. 34, Abstract No. 154, Comal County, Texas, located at the northwest corner of the intersection of IH 35 and FM 306, from “M-1” Light Industrial District to “MU-B” High Intensity Mixed Use District. Applicant: Moeller & Associates (James Ingalls, P.E.); Case Manager: Matt Greene.

Mr. Greene presented and recommended approval.

Chair Edwards asked if there were any questions for staff.

Chair Edwards asked if the applicant would like to speak.

James Ingalls, 2021 Hwy 46 S, stated he is able to answer any questions.

Chair Edwards opened the public hearing and asked if anyone wished to speak.

No one spoke.

Chair Edwards closed the public hearing.

Chair Edwards asked if there were any further questions or a motion.

Motion by Vice Chair Laskowski, seconded by Commissioner Gibson, to recommend approval to City Council of the proposed rezoning of approximately 14.608 acres out of the H. Foster Survey No. 34, Abstract No. 154, Comal County, Texas, located at the northwest corner of the intersection of IH 35 and FM 306, from “M-1” Light Industrial District to “MU-B” High Intensity Mixed Use District. Motion carried (9-0-0).

ORDINANCE NO. 2020-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS REZONING APPROXIMATELY 14.608 ACRES OUT OF THE H. FOSTER SURVEY NO. 34, ABSTRACT NO. 154, COMAL COUNTY, TEXAS, LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF IH 35 AND FM 306, FROM “M-1” LIGHT INDUSTRIAL DISTRICT TO “MU-B” HIGH INTENSITY MIXED USE DISTRICT; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SAVINGS CLAUSE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of New Braunfels has complied with all requirements of notice of public hearing as required by the Zoning Ordinance of the City of New Braunfels; and

WHEREAS, in keeping with the spirit and objectives of the “MU-B” High Intensity Mixed-Use District, the City Council has given due consideration to all components of said district; and

WHEREAS, it is the intent of the City Council to provide harmony between existing zoning districts and proposed land uses; and

WHEREAS, the requested rezoning is in accordance with Envision New Braunfels, the City’s Comprehensive Plan; and

WHEREAS, the City Council desires to amend the Zoning Map by rezoning approximately 14.608 acres out of the H. Foster Survey No. 34, Abstract No. 154, Comal County, Texas, located at the northwest corner of the intersection of IH 35 and FM 306, from “M-1” Light Industrial District to “MU-B” High Intensity Mixed-Use District, **now, therefore**;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

SECTION 1

THAT pursuant to Section 1.2-3, Chapter 144 of the New Braunfels Code of Ordinances, the Zoning Map of the City of New Braunfels is revised by rezoning the following described tract of land from “M-1” Light Industrial District to “MU-B” High Intensity Mixed-Use District:

Approximately 14.608 acres out of the H. Foster Survey No. 34, Abstract No. 154, Comal County, Texas, located at the northwest corner of the intersection of IH 35 and FM 306, as described in Exhibit “A” and delineated

in Exhibit "B" attached.

SECTION 2

THAT all provisions of the Code of Ordinances of the City of New Braunfels not herein amended or repealed shall remain in full force and effect.

SECTION 3

THAT all other ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent that they are in conflict.

SECTION 4

THAT if any provisions of this ordinance shall be held void or unconstitutional, it is hereby provided that all other parts of the same which are not held void or unconstitutional shall remain in full force and effect.

SECTION 5

THIS ordinance will take effect upon the second and final reading in accordance with the provisions of the Charter of the City of New Braunfels.

PASSED AND APPROVED: First reading this 22nd day of February, 2021.

PASSED AND APPROVED: Second reading this 18th day of March, 2021.

CITY OF NEW BRAUNFELS

RUSTY BROCKMAN, Mayor

ATTEST:

CAITLIN KROBOT, City Secretary

APPROVED AS TO FORM:

VALERIA M. ACEVEDO, City Attorney

METES AND BOUNDS DESCRIPTION
FOR A
14.608 ACRE TRACT OF LAND
"ZONING"

BEING a 14.608 acre tract of land situated in the H. Foster Survey No. 34, Abstract No. 154, in Comal County, Texas, being all of the remaining portion of a called 22.89 acre tract of land (Tract 18), as conveyed to the Estate of Hanno Guenther, Deceased, and recorded in Volume 795, Page 211, of the Deed Records of Comal County, Texas, and said 14.608 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a ½" iron pin with cap stamped "RPLS 4907" found in the Southwesterly Right-of-Way (R.O.W.) line of F.M. Highway 306 (a 120' wide R.O.W.), being the most Easterly Northeast corner of a called 3.488 acre tract of land, as conveyed to Dolomite Holdings, and recorded in Document No. 200806006630, of the Official Public Records of Comal County, Texas, and being the most Northerly corner of the remaining portion of said 22.89 acre tract of land and this herein described tract of land;

THENCE with the Southwesterly R.O.W. line of said F.M. Highway 306, and with the Northeasterly line of the remaining portion of said 22.89 acre tract of land, S 46° 08' 12" E, a distance of 264.00 feet to a point in the Southwesterly R.O.W. line of said F.M. Highway 306, and being a Northeasterly corner of the remaining portion of said 22.89 acre tract of land and this herein described tract of land;

THENCE continuing with the Southwesterly R.O.W. line of said F.M. Highway 306, and with the Northeasterly line of the remaining portion of said 22.89 acre tract of land, S 48° 47' 11" E, a distance of 99.85 feet to a point in the Southwesterly R.O.W. line of said F.M. Highway 306, being the most Northerly corner of a called 3.244 acre tract of land, as conveyed to Bexar County Metro Investments, Inc., and recorded in Document No. 201306035508, of the Official Public Records of Comal County, Texas, and being a Northeasterly corner of the remaining portion of said 22.89 acre tract of land and this herein described tract of land;

THENCE departing the Southwesterly R.O.W. line of said F.M. Highway 306, and with the common line between said 3.244 acre tract of land and the remaining portion of said 22.89 acre tract of land, S 45° 23' 39" W, a distance of 374.88 feet to a point for the most Westerly corner of said 3.244 acre tract of land, and being a Northeasterly corner of the remaining portion of said 22.89 acre tract of land and this herein described tract of land;

THENCE continuing with the common line between said 3.244 acre tract of land and the remaining portion of said 22.89 acre tract of land, S 48° 52' 50" E, a distance of 183.12 feet to a point in the common line between said 3.244 acre tract of land and the remaining portion of said 22.89 acre tract of land, and being a Northeasterly corner of this herein described tract of land;

THENCE departing the common line between said 3.244 acre tract of land and the remaining portion of said 22.89 acre tract of land, and across and through the remaining portion of said 22.89 acre tract of land, S 45° 34' 37" W, a distance of 530.28 feet to a point in the Northeasterly line of a called 0.480 of an acre tract of land (Tract 2), as conveyed to Craig Murphy, and recorded in Document No. 200406000287, of the Official Public Records of Comal County, Texas, being in the Southeasterly line of the remaining portion of said 22.89 acre tract of land, and being a Southeasterly corner of this herein described tract of land;

THENCE with the common line between said 0.480 of an acre tract of land and the remaining portion of said 22.89 acre tract of land, N 44° 24' 19" W, a distance of 122.62 feet to a point for the most Northerly corner of said 0.480 of an acre tract of land, and being a Southerly interior corner of the remaining portion of said 22.89 acre tract of land and this herein described tract of land;

THENCE with the common line between said 0.480 of an acre tract of land and the remaining portion of said 22.89 acre tract of land, S 45° 29' 53" W, a distance of 120.04 feet to a point for the most Northerly corner of a called 4.987 acre tract of land, as conveyed to CMH Homes, Inc., and recorded in Document No. 201306020333, of the Official Public Records of Comal County, Texas, being the most Westerly corner of said 0.480 of an acre tract of land, and being a Southerly corner of the remaining portion of said 22.89 acre tract of land and this herein described tract of land;

THENCE with the common line between said 4.987 acre tract of land and the remaining portion of said 22.89 acre tract of land, S 45° 34' 26" W, a distance of 418.03 feet to a point for a Northeasterly corner of Lot 1, Block A, VBM New Braunfels Subdivision, as recorded in Document No. 201506039847, of the Map and Plat Records of Comal County, Texas, being the most Westerly corner of said 4.987 acre tract of land, and being the most Southerly Southwest corner of the remaining portion of said 22.89 acre tract of land and this herein described tract of land;

THENCE with the Northeasterly line of said Lot 1, the Northeasterly line of a called 5.16 acre tract of land (Tract 2), as conveyed to BKCK LTD, and recorded in Document No. 202006047947, of the Official Public Records of Comal County, Texas, the Northeast line of a called 16.9102 acre tract of land (Tract 1), as conveyed to ULF, LLC, and recorded in Document No. 201806026063, of the Official Public Records of Comal County, Texas, and with the Southwesterly line of the remaining portion of said 22.89 acre tract of land, N 34° 43' 48" W, a distance of 501.36 feet to a point in the Northeasterly line of said 16.9102 acre tract of land, being the most Southerly Southeast corner of a called 4.922 acre tract of land, as conveyed to Danelle Evelyn Russell Schultz, and recorded in Document No. 200406020013, of the Official Public Records of Comal County, Texas, and being the most Westerly Southwest corner of the remaining portion of said 22.89 acre tract of land and this herein described tract of land;

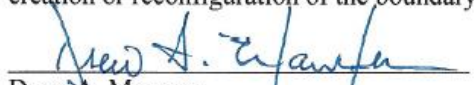
THENCE departing the Northeasterly line of said 16.9102 acre tract of land, and with the common line between said 4.922 acre tract of land and the remaining portion of said 22.89 acre tract of land, N 43° 43' 10" E, a distance of 318.27 feet to a point in the Southwesterly line of aforementioned 3.488 acre tract of land, and being a Southwesterly corner of the remaining portion of said 22.89 acre tract of land and this herein described tract of land;

THENCE with the common line between said 3.488 acre tract of land and the remaining portion of said 22.89 acre tract of land, S 45° 44' 20" E, a distance of 114.93 feet to a point for the most Southerly Southwest corner of said 3.488 acre tract of land, and being a Southwesterly interior corner of the remaining portion of said 22.89 acre tract of land and this herein described tract of land;

THENCE with the common line between said 3.488 acre tract of land and the remaining portion of said 22.89 acre tract of land, N 43° 34' 49" E, a distance of 1,008.93 feet to the POINT OF BEGINNING, and containing 14.608 acres of land, more or less.

Bearings based on the Texas State Plane Coordinate System, Texas South Central Zone (4204), North American Datum 1983.

"This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared."


Drew A. Mawyer
Registered Professional Land Surveyor No. 5348
TBPLS Firm Registration #10191500
5151 W SH 46, NEW BRAUNFELS, TX 78132
MOE421- SMITHCO IH 35- 14.608 AC- 122820



3/8/2021

Agenda Item No. A)

Presenter/Contact

Dawn Schriewer, NBU Chief Financial Officer
(830) 629-8468 - dschriewer@nbutexas.com

SUBJECT:

Discuss and consider an ordinance authorizing the issuance of short term obligations in the aggregate principal amount not to exceed \$100,000,000 to pay project costs for eligible projects for the City's utility systems, authorizing the execution of agreements to be entered into on connection therewith, approving and authorizing certain authorized officers and employees to act on behalf of the City and New Braunfels Utilities in the sale and delivery of such short term obligations and resolving other matters incident and related thereto and providing an effective date.

BACKGROUND / RATIONALE:

NBU is proposing the use of short term obligations, in the aggregate principal amount of not to exceed \$100 million. This financing mechanism will provide NBU additional liquidity and allow NBU to remain flexible and liquid with quick access to funds when needed. NBU is proposing J.P. Morgan Chase Bank, N.A., to serve as the initial liquidity provider for the short term obligations. The short term obligations will be structured similarly to NBU's existing Series B component of NBU's Series 2019A&B Commercial Paper Program.

The major components of the proposed short term obligations are as follows:

- Taxable obligations;
- Aggregate principal amount of not to exceed \$100 million;
- Allows for the purchase of power as a qualified use of proceeds;
- Two Year Program;
- Ability to refund the short term notes into long term financing if, and as, needed; and
- Optionality to end the program if no longer needed.

The NBU Board of Trustees, at its February 25, 2021 Board Meeting, authorized NBU staff to proceed with the necessary steps for the issuance of up to \$100 million in short term obligations, with an anticipated access to funding by mid-March 2021.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

N/A

FISCAL IMPACT:

There is no direct impact to the City of New Braunfels from the issuance of the obligations described above.

COMMITTEE RECOMMENDATION:

NBU Board approved on February 25, 2021.

STAFF RECOMMENDATION:

NBU staff recommends approval.

A RESOLUTION relating to the issuance of Short Term Obligations and resolving other matters incident and related thereto.

WHEREAS, pursuant to the authority contained in Texas Government Code, Section 1502.051 et seq. and by the Charter of the City of New Braunfels, Texas (the "City"), the complete management and control of the City's Waterworks, Sanitary Sewer and Electric Light and Power Systems (the "Systems"), during such time as the net revenues of the Systems may be encumbered pursuant to the ordinance authorizing the issuance of the City's proposed short term obligations, that could be in the form of a note purchase arrangement or other short term structure intended to provide financial flexibility and liquidity to the Systems (the "Short Term Obligations"), are vested in the Board of Trustees of the Systems (the "Board of Trustees"); and

WHEREAS, the Board of Trustees and the City intend that the Short Term Obligations should be issued for the purposes of providing funds for eligible projects for the Systems, in accordance with the provisions of Texas Government Code, Chapter 1371, as amended; and

WHEREAS, the Board of Trustees hereby finds and determines the best interest of the City and the Systems would be served by proceeding with the issuance and sale of Short Term Obligations as contemplated; now, therefore,

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF NEW BRAUNFELS UTILITIES:

SECTION 1: The President of the Board of Trustees, Secretary to the Board of Trustees, the CEO, and the Chief Financial Officer, any one or more of said officials, together with the Board's financial advisor, SAMCO Capital Markets and bond counsel, Norton Rose Fulbright US LLP, are hereby authorized and directed to proceed on behalf of New Braunfels Utilities with the offering and sale of Short Term Obligations hereinabove referenced in the aggregate principal amount of not to exceed \$100,000,000, and the CEO and Chief Financial Officer and other appropriate officials of the Board are hereby authorized and directed to assist and furnish said consultants with information and data needed in connection with the issuance of such Short Term Obligations.


SECTION 2: Any previous actions of such consultants related to the issuance of the Short Term Obligations are hereby confirmed and approved in all respects. The selection of JP Morgan Chase Bank, N.A., to serve as the initial liquidity provider for the Short Term Obligations is hereby confirmed and approved in all respects. The CEO and Chief Financial Officer are hereby authorized and directed to select a dealer and an issuing and paying agent, if needed, and any other consultants that may be needed in connection with the issuance of the Short Term Obligations.

SECTION 3: It is officially found, determined and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at said meeting, including this Resolution, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 4: This Resolution shall be in force and effect from and after its passage on the date shown below.

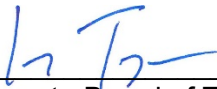
PASSED AND ADOPTED, this February 25, 2021.

NEW BRAUNFELS UTILITIES



President of the Board of Trustees

ATTEST:



Secretary to Board of Trustees



**ORDINANCE AUTHORIZING
\$100,000,000
CITY OF NEW BRAUNFELS, TEXAS
UTILITY SYSTEM PROGRAM NOTES
TAXABLE SERIES 2021
ORDINANCE NO. 2021-_____**

ORDINANCE NO. 2021-__

AN ORDINANCE AUTHORIZING THE ISSUANCE OF SHORT TERM OBLIGATIONS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$100,000,000 TO PROVIDE INTERIM FINANCING TO PAY PROJECT COSTS FOR ELIGIBLE PROJECTS FOR THE CITY'S UTILITY SYSTEMS; AUTHORIZING SUCH SHORT TERM NOTES TO BE ISSUED, SOLD, AND DELIVERED AS PROGRAM NOTES; PRESCRIBING THE TERMS, FEATURES, AND CHARACTERISTICS OF SUCH NOTES; APPROVING AND AUTHORIZING THE EXECUTION OF A NOTE PURCHASE AGREEMENT ENTERED INTO IN CONNECTION WITH THE FOREGOING; APPROVING AND AUTHORIZING CERTAIN AUTHORIZED OFFICERS AND EMPLOYEES TO ACT ON BEHALF OF THE CITY AND NEW BRAUNFELS UTILITIES IN THE SALE AND DELIVERY OF SUCH NOTES, WITHIN THE LIMITATIONS AND PROCEDURES SPECIFIED HEREIN AND IN ACCORDANCE WITH APPLICABLE LAW; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; RESOLVING OTHER MATTERS INCIDENT AND RELATED TO THE ISSUANCE, SALE, SECURITY, AND DELIVERY OF SUCH NOTES; ENACTING OTHER PROVISIONS INCIDENT AND RELATED TO THE SUBJECT AND PURPOSE OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of New Braunfels, Texas (the *City*) is a "Home-Rule City", acting as such under the Constitution and general laws of the State of Texas, has a population in excess of 50,000, and has outstanding long-term indebtedness that is rated by a nationally recognized rating agency for municipal securities in one of the four highest rating categories for a long-term obligation (without regard to credit enhancement); and

WHEREAS, the City Council (the *City Council*) of the City hereby determines to issue its short term obligations pursuant to the provisions of Texas Government Code, Chapter 1371, as amended (the *Act*), to provide interim financing for eligible projects as authorized by the Act for the City's Utilities System (the *System*) and to refund obligations issued in connection with such projects; and

WHEREAS, such short term obligations proposed to be issued pursuant to this Ordinance constitute obligations which the City intends to fund or refund through the issuance of obligations of the City payable from Net Revenues of the System, as permitted by Texas Government Code, Chapter 1502, as amended, including refunding bonds issued pursuant to and in accordance with the provisions of Texas Government Code, Chapter 1207, as amended; and

WHEREAS, the management and control of the System is conducted for the City by the Board of Trustees (the *Board*) of New Braunfels Utilities (*NBU*) established and created pursuant to the provisions of Section 1502.051 et seq., as amended, Texas Government Code; and

WHEREAS, Program Notes designated as “City of New Braunfels, Texas Utility System Program Notes, Taxable Series 2021” (the *Program Notes*) are hereby authorized to be issued in the principal amount at any one time outstanding of not to exceed \$100,000,000 (*the Program Capacity*); and

WHEREAS, the program notes proposed to be issued constitute bond anticipation notes which the City intends to refund through the issuance of its revenue bonds issued pursuant to Chapter 1207, as amended, Texas Government Code, as contemplated and permitted under Section 1371.057(c) of the Act; and

WHEREAS, arrangements relating to such interim financing have been settled and the City Council hereby finds and determines that the issuance of Program Notes in the form of one or more series, and related loan notes (executed in connection with a Credit Agreement) subject to the terms, conditions and limitations hereinafter prescribed, should be approved and authorized at this time; and

WHEREAS, the City Council hereby finds and determines that the authorization of the aforementioned series of Program Notes and the adoption of this Ordinance are in the best interests of the residents of the City and the ratepayers of the System; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

ARTICLE I

DEFINITIONS

SECTION 1.1 DEFINITIONS. Unless the context shall indicate a contrary meaning or intent, the terms below defined, for all purposes of this Ordinance or any ordinance amendatory or supplemental hereto, shall be construed, are used and are intended to have the following meanings, to-wit:

Act shall mean Chapter 1371, as amended, Texas Government Code.

Additional Senior Lien Obligations shall mean bonds, notes, warrants, certificates of obligations or other Debt which the City reserves the right to issue or enter into, as the case may be, in the future under the terms and conditions provided in the Senior Lien Obligations Ordinances and which obligations are equally and ratably secured solely by a first lien on and pledge of the Net Revenues on a parity with the currently outstanding Previously Issued Senior Lien Obligations and any Additional Senior Lien Obligations hereafter issued by the City.

Authorized Representative shall mean the person or persons designated from time to time as the Authorized Representative by the City, notice of which is delivered in writing to the Bank, and the Issuing and Paying Agent. The Authorized Representative of the City shall be, initially, the City Manager of the City, the President of the Board of Trustees of NBU, the Chief Executive Officer of NBU, the Chief Financial Officer of NBU, any party succeeding to substantially all or part of the responsibilities and duties of any of the foregoing regardless of title, or such other

officer or employee of the City designated by the City or the Board to act as an Authorized Representative.

Available Commitment shall mean the aggregate liquidity commitment available in support of Notes under the terms of a Credit Agreement at such time in effect relative to such Notes.

Bank shall mean (i) Program Bank, (ii) an obligated financial institution under a substitute or additional Credit Agreement entered into under Section 2.16 hereof, or (iii) in the event that the City has contracted with a syndicate of financial institutions under a single Credit Agreement (including the addition of a financial institution to any Credit Agreement), such syndicate of financial institutions, the financial institution identified as the representative or agent of such syndicate of financial institutions, or any individual financial institution that is a part of such syndicate, as applicable or as identified by an Authorized Representative.

Bank Rate shall mean net effective interest rate payable to the Bank pursuant to the terms of a Credit Agreement under which said Bank is obligated; provided, however, that the Bank Rate shall never exceed the Maximum Interest Rate.

Board shall mean the Board of Trustees of New Braunfels Utilities to which the City Council has delegated management and control of the System pursuant to the Senior Lien Obligations Ordinances and Chapter 1502, as amended, Texas Government Code.

Bond Counsel shall mean any firm or firms of nationally recognized bond counsel selected by the Board on behalf of the City.

Bond Ordinances shall mean collectively the ordinances authorizing the issuance of the Senior Lien Obligations or Subordinate Lien Obligations.

Bonds shall mean a series or issue of bonds, notes or similar obligations (other than the Notes or any Credit Agreement (including the Loan Note)) issued or entered into, respectively, by the City subsequent to the date of passage of this Ordinance, which bonds, notes, or similar obligations are payable from and secured solely by a lien on and pledge of the Pledged Revenues or Net Revenues, on a parity in rank and dignity, or subordinate in rank and dignity to the lien and pledge securing the payment of the currently outstanding Senior Lien Obligations.

Business Day shall mean any day (i) when banks are not required or authorized by law or executive order to be closed in New Braunfels, Texas or New York, New York, or (ii) when the New York Stock Exchange is not required or authorized by law or executive order to be closed.

Calculation Agent shall mean an entity serving the role of calculation agent for the purpose of calculating, from time to time, the applicable interest rate on Notes directly placed with a purchaser (which may include a Bank) under any Credit Agreement, including (initially) JPMorgan Chase Bank, National Association, as the “Calculation Agent” under the Note Purchase Agreement applicable to the Program Notes.

City shall mean the City of New Braunfels, Texas, or any successor thereto.

City Council shall mean the governing body of the City.

Commercial Paper Notes shall mean the Series 2019A Commercial Paper Notes and the Series 2019B Commercial Paper Notes.

Credit Agreement shall mean a loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, insurance contract, commitments to purchase Debt, purchase or sale agreements, interest rate swap agreements, or commitments or other contracts or agreements authorized, recognized and approved by the City as a Credit Agreement in connection with the authorization, issuance, security, or payment of Debt, including the Liquidity Agreement.

Credit Facility shall mean (i) a policy of insurance or a surety bond, issued by an issuer of policies of insurance insuring the timely payment of debt service on governmental obligations, provided that a rating agency having an outstanding rating on any Debt would rate such Debt fully insured by a standard policy issued by the insurer in its highest generic rating category for such obligations; or (ii) a letter or line of credit or other Credit Agreement issued by any financial institution, provided that a rating agency having an outstanding rating on any Debt would rate such Debt in one of its four highest generic rating categories for such obligations if the letter or line of credit or other Credit Agreement proposed to be issued by such financial institution secured the timely payment of the entire principal amount of such Debt and the interest thereon.

Debt shall mean

(1) all indebtedness payable from Pledged Revenues and/or Net Revenues incurred or assumed by the City for borrowed money (including indebtedness payable from Pledged Revenues and/or Net Revenues arising under Credit Agreements) and all other financing obligations of the System payable from Pledged Revenues and/or Net Revenues that, in accordance with generally accepted accounting principles, are shown on the liability side of a balance sheet; and

(2) all other indebtedness payable from Pledged Revenues and/or Net Revenues (other than indebtedness otherwise treated as Debt hereunder) for borrowed money or for the acquisition, construction, or improvement of property or capitalized lease obligations pertaining to the System that is guaranteed, directly or indirectly, in any manner by the City, or that is in effect guaranteed, directly or indirectly, by the City through an agreement, contingent or otherwise, to purchase any such indebtedness or to advance or supply funds for the payment or purchase of any such indebtedness or to purchase property or services primarily for the purpose of enabling the debtor or seller to make payment of such indebtedness, or to assure the owner of the indebtedness against loss, or to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether or not such property is delivered or such services are rendered) or otherwise.

For the purpose of determining “Debt”, there shall be excluded any particular Debt if, upon or prior to the maturity thereof, there shall have been deposited with the proper depository (a) in trust the necessary funds (or investments that will provide sufficient funds, if permitted by the instrument creating such Debt) for the payment, redemption, or satisfaction of such Debt or (b) evidence of such Debt deposited for cancellation; and thereafter it shall not be considered Debt unless such item constitutes indebtedness under generally accepted accounting principles applied on a basis consistent with the financial statements of the System in prior Fiscal Years.

Depository shall mean one or more official depository banks of the Board.

Eligible Investments shall mean any or all of the authorized investments described in the Public Funds Investment Act, as amended, Chapter 2256, Texas Government Code, in which the City or the Board may purchase, sell and invest its funds and funds under its control or any other authorized investments as provided by the laws of the State of Texas.

Eligible Project shall mean the any eligible project as defined in Section 1371.001(2)(A) of the Act, as the same may be amended from time to time.

Fee Letter shall have the meaning ascribed to such term in the Liquidity Agreement.

Fiscal Year shall mean the fiscal year used by the Board in connection with the operation of the System, now being the period of time beginning on August 1 and ending on July 31 of the same calendar year.

Government Securities shall mean (i) direct noncallable obligations of the United States, including obligations that are unconditionally guaranteed by, the United States of America; (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent; (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent; or (iv) any additional securities and obligations hereafter authorized by the laws of the State of Texas as eligible for use to accomplish the discharge of obligations such as the Notes.

Gross Revenues shall mean for any period all revenue during such period in respect or on account of the operation or ownership of the System, excluding (i) refundable meter deposits, (ii) restricted gifts, (iii) grants in aid of construction, (iv) any amounts payable to the United States as rebate pursuant to the provisions of the Senior Lien Obligations Ordinances, (v) any impact fees charged by the System pursuant to the provisions of Chapter 395, as amended, Texas Local Government Code and earnings and income derived from the investment or deposit of money in any project fund and, the Reserve Fund, but including earnings and income derived from the investment or deposit of money in the Bond Fund (as defined in, and created pursuant to, the Senior Lien Obligations Ordinances), the Reserve Fund after it contains the Required Reserve, and any earnings and income from any special fund or account created and established for the payment or security of any Senior Lien Obligations and Subordinate Lien Obligations of the City related to the System (unless the ordinance which authorizes the issuance of any such obligations specifically provides that any such earnings and income are to be deposited to another fund or account other than the System Fund).

Holder or *Noteholder* shall mean the registered owner of any Note as shown on the registration books maintained by the Registrar, but if a Note is not in registered form, such terms

shall mean any person, firm, association, or corporation who is in possession of any Note drawn, issued or endorsed to such person, firm, association or corporation or to the order of such person, firm, association or corporation or to bearer or in blank.

Issuing and Paying Agent or *Registrar* shall mean each agent appointed pursuant to Section 2.2 hereof, or any successor to such agent.

Issuing and Paying Agency Agreement shall mean each Issuing and Paying Agency Agreement between the City and the Issuing and Paying Agent, with respect to the Notes, approved and authorized to be entered into by Section 3.3 hereof, as from time to time amended or supplemented, or any subsequent agreement entered into with any Issuing and Paying Agent regarding the Notes.

Liquidity Agreement shall mean the Note Purchase Agreement.

Loan shall mean a loan made under and subject to the conditions set forth in any Credit Agreement, including loans made under the Liquidity Agreement.

Loan Note shall mean the promissory note or notes issued pursuant to any Credit Agreement as evidence of loans made pursuant to any such Credit Agreement, to the extent required thereunder and having the characteristics contained therein and issued in accordance therewith, including each Loan Note entered into with respect to the Liquidity Agreement.

Loan Note Rate shall mean the applicable rate of interest payable on a Loan pursuant to a Loan Note related thereto, as further described and provided in the Note Purchase Agreement.

Maintenance and Operating Expenses shall mean all current expenses of operating and maintaining the System not paid from the proceeds of any Debt, including (i) the cost of all salaries, labor, materials, repairs, and extensions necessary to render efficient service, but only if, in the case of repairs and extensions, they are, in the judgment of the Board (reasonably and fairly exercised), necessary to maintain operation of the System and render adequate service to the City and the inhabitants thereof and other customers of the System, or are necessary to meet some physical accident or condition which would otherwise impair the payment of Debt, (ii) payments to pension, retirement, health, hospitalization, and other employee benefit funds for employees of the City or the Board engaged in the operation or maintenance of the System, (iii) payments under contracts for the purchase of power and energy, water supply, treatment of sewage, or other materials, goods, or services for the System to the extent authorized by law and the provisions of such contract, (iv) payments to auditors, attorneys, and other consultants incurred in complying with the obligations of the City or the Board hereunder, (v) the payments made on or in respect of obtaining and maintaining any Credit Facility, and (vi) any legal liability of the City or the Board arising out of the operations, maintenance, or condition of the System, but excluding any allowance for depreciation, property retirement, depletion, obsolescence, and other items not requiring an outlay of cash and any interest on any Debt.

Maximum Interest Rate shall mean the maximum net effective interest rate permitted by law to be paid on obligations issued or incurred by the City in the exercise of its borrowing powers (currently prescribed by Chapter 1204, as amended, Texas Government Code, or any successor provision);

Maximum Maturity Date shall mean the fortieth anniversary of the date of passage of this Ordinance.

Net Revenues shall mean the Gross Revenues of the System, less current Maintenance and Operating Expenses.

Note or *Notes* shall mean the Program Notes issued pursuant to the terms of this Ordinance.

Note Construction Fund shall mean the fund so designated in Section 2.12 hereof, inclusive of all accounts and subaccounts therein established and maintained.

Note Payment Fund shall mean the fund so designated in Section 2.9 hereof, inclusive of all accounts and subaccounts therein established and maintained.

Note Purchase Agreement shall mean the Note Purchase Agreement between the City and the Program Bank, relating to the Program Notes approved and authorized pursuant to Section 2.15 hereof, as from time to time amended or supplemented, or a substitute Credit Agreement provided in lieu thereof in accordance with the provisions of Section 2.16 hereof.

Pledged Revenues shall mean (i) the Net Revenues, plus (ii) any additional revenues, income, receipts, or other resources, including, without limitation, any grants, donations, or income received or to be received from the United States Government, or any other public or private source, whether pursuant to an agreement or otherwise, which hereafter are pledged to the payment of any Senior Lien Obligations, and excluding those revenues excluded from Gross Revenues.

Previously Issued Senior Lien Obligations shall mean (i) the outstanding and unpaid obligations of the City that are payable solely from and equally and ratably secured by a first lien on and pledge of the Net Revenues of the System, identified as follows:

- (1) "City of New Braunfels, Texas, Utility System Revenue Bonds, Series 2004", dated January 15, 2004, and issued in the original principal amount of \$10,337,595.90,
- (2) "City of New Braunfels, Texas, Utility System Revenue and Refunding Bonds, Series 2012," dated October 1, 2012, and issued in the original principal amount of \$23,940,000,
- (3) "City of New Braunfels, Texas, Utility System Revenue Bonds, Series 2015," dated January 15, 2015, and issued in the original principal amount of \$26,870,000,
- (4) "City of New Braunfels, Texas, Utility System Revenue and Refunding Bonds, Series 2016," dated March 1, 2016, and issued in the original principal amount of \$62,235,000,
- (5) "City of New Braunfels, Texas, Utility System Revenue Bonds, Series 2018," dated April 1, 2018, and issued in the original principal amount of \$45,200,000, and

- (6) “City of New Braunfels, Texas, Utility System Revenue Refunding Bonds, Series 2020,” dated May 1, 2020, and issued in the original principal amount of \$88,100,000,

and (ii) obligations hereafter issued to refund any of the foregoing if issued in a manner so as to be payable from and equally and ratably secured by a first lien on and pledge of the Pledged Revenues and/or Net Revenues of the System as determined by the City Council in accordance with any applicable law.

Program Bank shall mean the party that from time to time provides liquidity support for the Program Notes.

Program Capacity shall mean the principal amount of the Notes to be outstanding at any one time, which initially shall be a principal amount not to exceed \$100,000,000 plus the requisite interest coverage provided in the Note Purchase Agreement.

Program Notes shall mean the “City of New Braunfels, Texas, Utility System Program Notes, Taxable Series 2021, which Notes are issued pursuant to the provisions of this Ordinance and have the terms and characteristics specified herein.

Project Costs shall mean all costs and expenses incurred in relation to Eligible Projects, including without limitation design, planning, engineering and legal costs, acquisition costs of land, interests in land, right-of-way and easements, construction costs, costs of machinery, equipment, and other capital assets incident and related to the operation, maintenance, and administration of an Eligible Project, financing costs, including interest during construction and thereafter, underwriter’s discount and/or fees, legal, financial, and other professional services, and reimbursement for such Project Costs attributable to Eligible Projects incurred prior to the issuance of any Notes.

Senior Lien Obligations shall mean, collectively, the currently outstanding Previously Issued Senior Lien Obligations, and any Additional Senior Lien Obligations hereafter issued by the City.

Senior Lien Obligations Ordinances shall mean the City ordinances authorizing the currently outstanding Previously Issued Senior Lien Obligations, and any Additional Senior Lien Obligations hereafter issued by the City.

Series A Commercial Paper Notes shall mean the “City of New Braunfels, Texas Utility System Commercial Paper Notes, Series 2019A.”

Series B Commercial Paper Notes shall mean the “City of New Braunfels, Texas Utility System Commercial Paper Notes, Series 2019B,” which note or notes are issued pursuant to the provisions of this Ordinance and have the terms and characteristics specified in Section 2.3 hereof and in the form described in Section 2.5 hereof.

Special Project shall mean to the extent permitted by law, any water, sanitary sewer, wastewater or electric light and power system property, improvement, or facility declared by the City, upon the recommendation of the Board, not to be part of the System, for which the costs or

acquisition, construction, and installation are paid from proceed of a financing transaction other than the issuance of bonds payable from ad valorem taxes, Pledged Revenues, or Net Revenues and for which all maintenance and operation expenses are payable from sources other than ad valorem taxes, Pledged Revenues, or Net Revenues, but only to the extent that and for so long as all or any part of the revenues or proceeds of which are or will be pledged to secure the payment or repayment of such costs of acquisition, construction and installation under such financing transaction.

Subordinate Lien Obligations shall mean any bonds, notes, warrants, certificates of obligation, or other Debt issued from time to time by the City that are payable, in whole or in part, from and equally and ratably secured by a lien on and pledge of the Net Revenues, such pledge being subordinate and inferior to the lien on and pledge of the Net Revenues that are or will be pledged to the payment of the outstanding Senior Lien Obligations issued from time to time by the City and which obligations are on a parity with the Commercial Paper Notes and the Loan Notes.

System shall mean the City's waterworks, sanitary sewer and electric light and power systems and all properties, real, personal, mixed or otherwise now owned or hereafter acquired by the City through purchase, construction or otherwise and used in connection with said System and in any wise appertaining thereto, whether situated within or without the limits of the City.

Taxable Bank Note Fund shall have the meaning given to such term in Section 4.4(b) hereof.

Term Loans shall mean the unpaid principal amount of the Loan that is converted to a "term loan" pursuant to a Note Purchase Agreement.

SECTION 1.2 CONSTRUCTION OF TERMS UTILIZED IN THIS ORDINANCE.

If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

ARTICLE II

AUTHORIZATION OF NOTES

SECTION 2.1 GENERAL AUTHORIZATION. Pursuant to authority conferred by and in accordance with the provisions of the Constitution and general laws of the State of Texas, particularly the Act and Chapter 1502, as amended, Texas Government Code, Program Notes shall be and are hereby authorized to be issued in an aggregate principal amount at any one time outstanding not to exceed ONE HUNDRED MILLION DOLLARS (\$100,000,000), to be designated and bear the title of "CITY OF NEW BRAUNFELS, TEXAS UTILITY SYSTEM PROGRAM NOTES, TAXABLE SERIES 2021", and in the applicable form provided in Section 2.05 hereof, for the purpose of financing Project Costs of Eligible Projects; to refinance, renew, or refund Notes issued pursuant to the provisions hereof and any Loan Notes issued pursuant to a Credit Agreement; and the Loan Notes shall be and are hereby authorized to be issued in the aggregate principal amount of ONE HUNDRED MILLION DOLLARS (\$100,000,000) plus requisite interest coverage (the *Program Capacity*) at any one time outstanding from time to time

for the purpose of evidencing Loans to pay the principal of and (as applicable) interest on the Notes; all in accordance with and subject to the terms, conditions and limitations contained herein and in any Credit Agreement in effect. For purposes of this Section 2.1, any portion of outstanding Notes to be paid from money on deposit in the Taxable Note Payment Fund (from the appropriate account or subaccount therein), the Taxable Bank Note Fund, and from the available proceeds of Notes or Bonds on the day of calculation shall not be considered outstanding. The authority to issue Notes from time to time under the provisions of this Ordinance shall exist until the Maximum Maturity Date, regardless of whether prior to the Maximum Maturity Date there are at any time no Notes outstanding. The designation of the Notes shall be made in accordance with the requirements of Section 2.5 and the instructions to the Issuing and Paying Agent as described in Section 3.1 hereof.

So long as any Notes remain outstanding, each Authorized Representative is hereby appointed to act for and on behalf of the City, and authorized to carry out and discharge the purposes, duties, and obligations set forth in the Ordinance and any Issuing and Paying Agency Agreement and Credit Agreement, and for the purpose of renewing, extending, modifying, or substituting any such agreement.

SECTION 2.2 TERMS APPLICABLE TO NOTES - GENERAL. Subject to the limitations contained herein, Notes herein authorized shall be dated as of their date of issuance or prior thereto, but within 30 days of the date of issuance (the *Note Date*), as determined by an Authorized Representative; shall bear no interest or bear interest at such rate or rates per annum computed on the basis of either actual days, and on a 365-day or 366-day year or a 360-day year (comprised of twelve 30-day months) , whichever is applicable (but in no event in any case to exceed the Maximum Interest Rate in effect on the date of issuance thereof) as may be determined by an Authorized Representative, and all Notes authorized herein shall mature on or prior to the Maximum Maturity Date.

Subject to the limitations contained herein, the City reserves the right and has delegated to the Authorized Representatives the ability to enter into any Credit Agreement, each with a single bank provider or a syndicate of banks acting through a single administrative agent. Such Credit Agreements may provide credit and/or liquidity support for Notes, whether directly purchased by a Bank, privately placed, or publically offered in the municipal capital markets, and shall be evidenced by the applicable Credit Agreement approved by City Council.

Subject to the Maximum Interest Rate limitation, Notes authorized to be issued hereunder without a fixed numerical rate of interest for the term thereof shall bear interest in accordance with a clearly stated formula or method of calculation as determined by an Authorized Representative, or by a Calculation Agent, if any, pursuant to the terms of a Credit Agreement, and such formula or method of calculation shall be set forth in each Note.

Notes issued hereunder may contain terms and provisions for the redemption or prepayment thereof prior to maturity, subject to any applicable limitations contained herein, as shall be determined by an Authorized Representative.

As determined from time to time by an Authorized Representative in accordance with Section 2.3 and Section 3.1 hereof for each issuance of Program Notes, Program Notes shall be

issued by series; provided, however, that, unless specifically determined otherwise by an Authorized Representative, Program Notes issued to refund outstanding Program Notes shall be of the same series, with no further action required by an Authorized Representative.

Subject to applicable terms, limitations and procedures contained herein, Notes may be sold in such manner through a direct purchase by a Bank or at public or private sale, each of the foregoing at a price and under terms (within the interest rate and yield restrictions provided herein) as an Authorized Representative shall approve at the time of the sale thereof; provided, however, that no price shall result in the realization of Note proceeds exceeding the lesser of the Available Commitment at such time in effect and the Program Capacity (or as otherwise may be limited from time to time pursuant to applicable law).

The Notes shall be issued in registered form, without coupons. The principal of, premium, if any, and interest on the Notes shall be payable in lawful money of the United States of America, without exchange or collection charges to the Holder of the Note; the principal thereof to be payable upon presentation and surrender of the Note at the corporate trust office of the Issuing and Paying Agent and interest thereon to be payable to the registered owner thereof either (i) by check sent by United States mail, first class, postage prepaid, to the address of the registered owner appearing on the Registration Books of the City maintained by the Issuing and Paying Agent or (ii) by such other method, acceptable to the Issuing and Paying Agent requested by the registered owner, but interest on a Note registered to bearer shall be payable only upon presentation of the Note at the designated corporate trust office of the Issuing and Paying Agent.

The selection and appointment of JPMorgan Chase Bank, National Association as the initial Issuing and Paying Agent and Registrar for the Notes is hereby confirmed. The City covenants to maintain and provide an Issuing and Paying Agent and Registrar at all times while the Notes are outstanding, which shall be a national or state banking association or corporation or trust company organized and doing business under the laws of the United States of America or of any State and authorized under such laws to exercise trust powers. The City may appoint separate Issuing and Paying Agents and Registrars for Notes, on the basis of series of Notes. Should a change in an Issuing and Paying Agent and Registrar for a series of Notes occur, the City, acting through the Authorized Representative, agrees to promptly cause a written notice thereof to be (i) sent to each registered owner of the Notes of such series then outstanding by United States mail, first class, postage prepaid, or (ii) published in a financial publication, newspaper, journal, or reporter of general circulation among securities dealers in the City of New York, New York (including, but not limited to, *The Bond Buyer* and *The Wall Street Journal*), or in the State of Texas (including, but not limited to, *The Texas Bond Reporter*), once during each calendar week for at least two calendar weeks. Such notice shall give the address of the successor Issuing and Paying Agent and Registrar. A successor Issuing and Paying Agent and Registrar may be appointed without the consent of the Holders.

The City, the Board, and the Issuing and Paying Agent and Registrar shall treat the registered owner thereof as the absolute owner of any Note for the purpose of receiving payment thereof and for all purposes, and the City, the Board, and the Issuing and Paying Agent and Registrar shall not be affected by any notice or knowledge to the contrary.

SECTION 2.3 PROGRAM NOTES. Under and pursuant to the authority granted hereby and subject to the limitations contained herein, (i) Notes in the form of short term obligations to be designated "City of New Braunfels, Texas Utility System Program Notes, Taxable Series 2021," are hereby authorized to be issued and sold and delivered from time to time in such principal amounts as determined by an Authorized Representative in denominations of \$1,000,000 and integral multiples of \$100,000 in excess thereof, and further designated in consecutive order in the order of their issuance and to mature and become due and payable on such dates as an Authorized Representative shall determine at the time of sale; provided, however, that no Program Note shall (i) mature after the Maximum Maturity Date, (ii) mature after the Business Day prior to the stated date of termination of any Credit Agreement then-relating to such series of Program Notes, or (iii) have a term in excess of three hundred sixty-four (364) days. Interest, if any, on Program Notes shall be payable at maturity with principal, or at such other times as set forth in a Credit Agreement approved by an Authorized Representative (which date or dates of payment of interest are herein defined as an *Interest Payment Date*).

SECTION 2.4 LOAN NOTE. Under and pursuant to authority granted hereby and subject to the limitations contained herein and in the Credit Agreement, one or more Loan Notes relating to a series of Program Notes, any such Loan Note to be designated "City of New Braunfels, Texas Utility System Taxable Liquidity Agreement Loan Note", and further designated by series to conform to the related Notes (and to reference the Bank under the applicable Credit Agreement), are hereby authorized and approved in accordance with the terms of this Ordinance and the applicable Credit Agreement. The form of such Loan Note shall be as set forth in each applicable Credit Agreement.

SECTION 2.5 FORMS OF NOTES. The Notes and the Certificate of Authentication to appear on each of the Notes shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions and other variations as are permitted or required by this Ordinance and may have such letters, numbers or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends (including insurance companies) and endorsements thereon as may, consistent herewith, be approved by an Authorized Representative. Any portion of the text of any Notes may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Notes.

The Notes shall be printed, lithographed, or engraved or produced in any other similar manner, or typewritten, all as determined and approved by an Authorized Representative.

(a) Form of Notes.

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF NEW BRAUNFELS, TEXAS
UTILITY SYSTEM PROGRAM NOTE
TAXABLE SERIES 2021__

No.: _____
Principal Amount: _____

Note Date: _____
Maturity Date: _____

[Interest to Maturity: _____]
Due at Maturity: _____

Number of Days: _____
Interest Rate¹ (%): _____

Owner: _____

The City of New Braunfels, Texas (the *City*), FOR VALUE RECEIVED, hereby promises to pay, solely from the sources hereinafter identified and as hereinafter stated, to the order of the Owner specified above on the Maturity Date specified above, the Principal Amount specified above and to pay interest, if any, on said Principal Amount [at said Maturity Date/on an Interest Payment Date], from the above specified Note Date to said Maturity Date at the per annum Interest Rate shown above (computed on the basis of [actual days elapsed and a 365-day or 366-day year, as may be applicable][a 360-day year (comprised of twelve 30-day months)]); both principal and interest on this Note (defined herein) being payable in lawful money of the United States of America at the principal corporate trust office of the Issuing and Paying Agent executing the “Certificate of Authentication” endorsed hereon and appearing below, or its successor. No interest will accrue on the Principal Amount hereof after said Maturity Date.

This Note is one of an issue of short term obligations of the indicated Series, which, together with other forms of short-term obligations, including the below referenced Loan Note², has been duly authorized and issued in accordance with the provisions of an ordinance passed by the City Council of the City on March 8, 2021 (the *Ordinance*), for the purpose of financing Project Costs of Eligible Projects for the City’s Utility System and to refinance, renew or refund certain obligations described in the Ordinance, all in accordance and in strict conformity with the provisions of Chapters 1371 and 1502, as amended, Texas Government Code.

This Note, together with the other Notes, is payable from and equally and ratably secured by a lien on and pledge of (i) the proceeds from (a) the sale of other Notes issued for such purpose and (b) the sale of a series or issue of Bonds to be issued by the City for such purpose, [(ii) Loans under and pursuant to a Note Purchase Agreement (the *Liquidity Agreement*), dated as of March 1, 2021, but effective as of March 18, 2021, between the City and JPMorgan Chase Bank, National Association (the *Bank*), as amended, revised, supplemented, or substituted, pursuant to which the Bank has agreed to provide credit or liquidity to the City under the terms and conditions set forth therein, which Loans are to be evidenced by a Loan Note; provided, however, that the proceeds of Loans may only be used to pay the principal of Notes (including this Note)³], (iii) a lien on and pledge of the Net Revenues of the System, such lien on and pledge of the Net Revenues, however, being subordinate to the lien and pledge securing the payment of any Senior Lien Obligations issued from time to time by the City and outstanding; and (iv) amounts in certain funds established pursuant to the Ordinance.

This Note, together with the other Notes authorized to be issued and from time to time outstanding under the Ordinance (including Notes of all series), is payable solely from the sources

¹ If rate of interest calculated pursuant to a formula, the word “Variable” is placed in the blank rather than a numeric interest rate and this footnote is completed with the applicable formula.

² Delete footnote if not applicable.

³ Information to be completed based on Credit Agreement in effect at the time Notes are issued and if Credit Agreement provides for open market liquidity (rather than direct placement of Notes to Bank thereunder). Renumber as applicable.

hereinabove identified securing the payment thereof, and the Notes do not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any other property of the City or the System. The holder hereof shall never have the right to demand payment of this obligation from any funds raised or to be raised by taxation or from any other sources or properties of the City or the System except as identified above.

The Ordinance reserves the right and permits the issuance of (i) Additional Senior Lien Obligations while the Notes are outstanding, (ii) the issuance of Subordinate Lien Obligations payable from the same sources, or any portion of such sources, securing the payment of the Notes and equally and ratably secured by a parity lien on and pledge of such sources, or any portion thereof, and (iii) inferior lien obligations, without, with respect to any of the foregoing, any limitation as to principal amount but subject to any terms, conditions, and limitations as may be applicable thereto.

Reference is hereby made to the Ordinance, a copy of which may be obtained upon request to the City, and to all of the terms and provisions the Holder hereof by acceptance of this Note hereby assents, including, but not limited to, provisions relating to definitions of capitalized terms used herein without definition, the description of and the nature of the security for the Notes, the Net Revenues and other sources pledged to the payment of the Notes, the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders of the Notes, and the right to issue obligations payable from and secured by the Net Revenues.

It is hereby certified and recited that all acts, conditions and things required by law and the Ordinance to exist, to have happened and to have been performed precedent to and in the issuance of this Note, do exist, have happened and have been performed in regular and in due time, form and manner as required by law and that the issuance of this Note, together with all other Notes, is not in excess of the principal amount of Notes permitted to be issued under the Ordinance.

This Note is, and has all the qualities and incidents of, a negotiable instrument under the laws of the State of Texas.

This Note shall not be entitled to any benefit under the Ordinance or be valid or become obligatory for any purpose until this Note shall have been authenticated by the execution by the Issuing and Paying Agent of the Certificate of Authentication hereon.

IN TESTIMONY WHEREOF, the City has authorized and caused this Note to be executed on its behalf by the manual or facsimile signature of the Mayor and countersigned by the manual or facsimile signature of the City Secretary and its official seal to be impressed or a facsimile thereof to be printed hereon.

COUNTERSIGNED:

City Secretary, City of New Braunfels, Texas

Mayor, City of New Braunfels, Texas

(SEAL)

ISSUING AND PAYING AGENT'S
CERTIFICATE OF AUTHENTICATION

This Note is one of the Notes delivered pursuant to the within mentioned Ordinance.

_____, as Issuing and Paying Agent

By _____
Authorized Signatory

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (print or typewrite name, address, and zip code of transferee): _____

(Social Security or other identifying number: _____)
the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints

attorney to transfer the within Note on the books kept for registration thereof, with full power of substitution in the premises.

DATED: _____

Signature Guaranteed:

NOTICE: The signature of the registered owner must be guaranteed by a member of the New York Stock Exchange or a commercial bank or trust company.

NOTICE: The signature on this Assignment must correspond with the name of the registered owner as it appears upon the face of the within Note in every particular.

SECTION 2.6 EXECUTION - AUTHENTICATION.

(a) The Notes shall be executed on behalf of the City by the Mayor and attested by the City Secretary under its seal reproduced or impressed thereon, all as provided in Section 2.5 hereof. The signature of said officers on the Notes may be manual or facsimile. Notes bearing the manual or facsimile signatures of individuals who are or were the proper officers of the City on the date of passage of this Ordinance shall be deemed to be duly executed on behalf of the City, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of the initial sale and delivery of Notes authorized to be issued hereunder and with respect to Notes delivered in subsequent sales, exchanges and transfers, all as authorized and provided in Chapter 1201, as amended, Texas Government Code.

(b) No Note shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Note a certificate of authentication substantially in the form provided in Section 2.5 hereof, executed by the Issuing and Paying Agent by manual signature, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly certified or registered and delivered.

SECTION 2.7 NOTES MUTILATED, LOST, DESTROYED OR STOLEN. If any Note shall become mutilated, the City, at the expense of the Holder of said Note, shall execute and deliver a new Note of like tenor and number in exchange and substitution for the Note so mutilated, but only upon surrender to the City of the Note so mutilated. If any Note shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the City and, if such evidence be satisfactory to it and indemnity satisfactory to it shall be given, the City, at the expense of the Holder, shall execute and deliver a new Note of like interest rate and tenor in lieu of and in substitution for the Note so lost, destroyed or stolen. Neither the City nor the Issuing and Paying Agent shall be required to treat both the original Note and any duplicate Note as being outstanding for the purpose of determining the principal amount of Notes which may be issued hereunder, but both the original and the duplicate Note shall be treated as one and the same instrument.

SECTION 2.8 NEGOTIABILITY, REGISTRATION AND EXCHANGEABILITY. The Notes issued hereunder shall be, and shall have all of the qualities and incidents of, a negotiable instrument under the laws of the State of Texas, and each successive Holder, in accepting any of the Notes, shall be conclusively deemed to have agreed that such Notes shall be and have all of the qualities and incidents of a negotiable instrument under the laws of the State of Texas. The books relating to the registration, payment and transfer or exchange of the Notes (the *Registration Books*) shall at all times be kept and maintained by the City at the designated corporate trust office of the Registrar, and the Registrar shall obtain, record and maintain in the Registration Books the name and address of each registered owner of the Notes, issued under and pursuant to the provisions of this Ordinance. Each Registrar shall provide the Board as agent of the City with a copy of the Registration Books and shall thereafter provide the Board as agent of the City (at the notice address for the City set forth in the Issuing and Paying Agent Agreement between the City and the Registrar, a Credit Agreement, or another agreement evidencing such relationship, as applicable) with copies of any changes in the Registration Books within one (1) Business Day after such change. Any Note may, in accordance with its terms and the terms hereof, be transferred or exchanged for Notes of like interest rate, tenor, series, and character and of other authorized denominations upon the Registration Books by the Holder in person or by his duly authorized agent, upon surrender of such Note to the applicable Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to such Registrar. Upon surrender for transfer of any Note at the designated corporate trust office of a Registrar, such Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Notes executed on behalf of, and furnished by, the City of like tenor, series, and character and of authorized denominations and having the same maturity, bearing interest at the same rate and of a like aggregate principal amount as the Note or Notes surrendered for transfer. Furthermore, Notes may be exchanged for other Notes of like tenor, series, and character and of authorized denominations and having the same maturity, bearing the same rate of interest and of like aggregate principal amount as the Notes surrendered for exchange, upon surrender of the Notes to be exchanged at the principal corporate trust office of the applicable Registrar. Whenever any Notes are so surrendered for exchange, the

applicable Registrar shall register and deliver new Notes of like tenor, series, and character as the Notes exchanged, executed on behalf of, and furnished by, the City to the Holder requesting the exchange. The City and the applicable Registrar may charge the Holder a sum sufficient to reimburse them for any expenses incurred in making any transfer or exchange after the first such transfer or exchange for such Holder. The applicable Registrar or the City may also require payment from the Holder of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto. Such charges and expenses shall be paid before any such new Note shall be delivered. The City and the applicable Issuing and Paying Agent and Registrar shall not be required (i) to issue, transfer or exchange any Note during a period beginning at the opening of business on the 15th day next preceding either any maturity date of such Note or any date of possible selection of such Note or parts thereof to be redeemed and ending at the close of business on the interest payment date or day on which the applicable notice of redemption is given, or (ii) to transfer or exchange any Note selected, called or being called for redemption in whole or in part. New Notes delivered upon any transfer or exchange shall be valid special obligations of the City, evidencing the same debt as the Notes surrendered by this Ordinance and shall be entitled to all of the security and benefits hereof to the same extent as the Notes surrendered. The City reserves the right to change the above registration and transferability provisions of the Notes at any time on or prior to the delivery thereof in order to comply with applicable laws and regulations of the United States in effect at the time of issuance thereof. No purchase, sale, or transfer of any Notes, as herein provided, nor the setting of interest rates in respect thereof, shall constitute or be construed to be the extinguishment of any security or the indebtedness represented thereby or the reissuance of any security or the refunding of any indebtedness represented thereby.

SECTION 2.9 TAXABLE NOTE PAYMENT FUND.

(a) There is hereby created and established by the City a separate and special fund to be designated as the “City of New Braunfels, Texas Utility System Taxable Note Payment Fund” (the *Taxable Note Payment Fund*), and within such Taxable Note Payment Fund, the “City of New Braunfels, Texas Utility System Taxable Note Payment Account.” Each account or subaccount within the Taxable Note Payment Fund shall be established and created with the Issuing and Paying Agent that serves in such capacity for the related series of Notes. Money on deposit within the applicable accounts and subaccounts in the Note Payment Fund shall be used to pay principal of, premium, if any, and interest on Notes at the respective Interest Payment Date, maturity date, or redemption date of each issue of such Notes as provided herein and, as applicable, the repayment of any Loans made pursuant to any Credit Agreement (evidenced by a Loan Note). Proceeds of Notes remaining in the applicable accounts and subaccounts of the Taxable Note Payment Fund not then necessary for the purposes thereof may be transferred to the corresponding account or subaccount of the Taxable Note Construction Fund (created pursuant to Section 2.12 hereof) upon request of an Authorized Representative (which request shall be made not later than one-year from the date of origination of the subject Note proceeds).

(b) Pursuant to Section 3.2(i) hereof, all proceeds of Notes issued to pay maturing principal of outstanding Notes, and pursuant to applicable provision of any Credit Agreement at such time effective, all proceeds of Loans (except proceeds of Loans retained by the Bank to repay all or any part of an outstanding Loan) shall be deposited into the applicable account or subaccount of the Taxable Note Payment Fund and used to pay the principal of, premium, if any and interest on such series of the Notes (provided, however, that the proceeds of Loans pursuant

to a Credit Agreement may only be used to pay principal of and (as and if applicable) interest on Notes of the series to which such Credit Agreement relates) and to pay the principal of and interest on any Loan coming due pursuant to the terms of the applicable Credit Agreement.

(c) Additionally, all Net Revenues which are to be transferred from the System Fund (as defined in Section 4.3 hereof) to pay principal of and/or interest on Notes pursuant to Section 4.4(b) hereof shall be deposited to the applicable accounts and subaccounts of the Taxable Note Payment Fund.

(d) Pending the expenditure of money in the Taxable Note Payment Fund for authorized purposes, money deposited in said Fund may be invested at the direction of an Authorized Representative in Eligible Investments. Any income received from such investments shall be deposited, as received, into the System Fund and shall not, for purposes of this Ordinance, be considered an amount held in the Taxable Note Payment Fund.

(e) In addition to the accounts and subaccounts created in Section 2.9(a) above, the City hereby authorizes, within the Taxable Note Payment Fund and at the direction of an Authorized Representative, the creation and establishment of one or more accounts and subaccounts to provide for one account or subaccount to relate each series of Notes with respect to which the City has entered into a particular Credit Agreement. Except as hereafter provided, all proceeds of borrowings under such Credit Agreement shall be deposited into the applicable account or subaccount of the Note Payment Fund and used to pay the principal of, premium, if any, and interest on the series of Notes to which such Credit Agreement relates (and will be unavailable for the payment of the principal of, premium (if any), and interest on any series of Notes to which it does not relate).

SECTION 2.10 PAYMENTS; PLEDGE.

(a) The Notes and the Loan Notes (and other obligations under any Credit Agreement) are special obligations of the City payable from and secured solely by the funds pledged therefor pursuant to this Section 2.10. The Board on behalf of the City shall make payments into the appropriate account or subaccount of the Taxable Note Payment Fund from proceeds of Notes or Loans or Bonds (or from Net Revenues on deposit in the System Fund which are transferred to the Taxable Note Payment Fund pursuant to Section 4.4 of this Ordinance in order to pay principal and/or interest on the Notes) at such times and in such amounts as are necessary to provide for the full payment of the principal of, premium, if any, and the interest on the Notes when due.

(b) To provide security for the payment of the principal of and interest on the Notes, the Loan Notes, and any other amounts due under any Credit Agreement relating to Notes, as the same shall become due and payable, there is hereby granted a lien on and pledge of, subject only if the provisions of this Ordinance permitting the application thereof for purposes and on the terms and conditions set forth herein:

(i) the proceeds from (a) the sale of Bonds issued for such purpose and (b) the sale of Notes issued pursuant to this Ordinance for such purpose;

(ii) the proceeds from Loans; provided, however, that such Loan proceeds pursuant to the applicable Credit Agreement may only be used to pay the principal of and interest on Notes (so long as any Credit Agreement so permits use of Loan proceeds to pay for interest on Notes); provided further, however, that proceeds attributable to and derived from borrowings under and pursuant to a Credit Agreement are pledged to, and shall be used to pay, the principal of, premium, if any, and interest on the Notes of the particular series to which such Credit Agreement relates;

(iii) the amounts held in the Taxable Note Payment Fund until the amounts deposited therein are used for authorized purposes; provided, however, that amounts in the respective accounts and subaccounts of the Taxable Note Payment Fund attributable to and derived from Loans shall be used only to pay, prior to any application to the payment of the Loan Note, the principal of (but no redemption premium) of the respective series of Notes in full;

(iv) the amounts remaining on deposit in the applicable account or subaccount of the Taxable Note Construction Fund relating to a series of Notes after the payment of all Project Costs;

and it is hereby resolved and declared that the principal of and interest on the Notes, the Loan Notes, and any other amounts due under any Credit Agreement related to Notes of such series shall be and are hereby equally and ratably secured by and payable from a lien on and pledge of the sources hereinabove identified in clauses (i), (ii), (iii), and (iv) subject and subordinate only to the exceptions noted therein.

(c) To provide additional security for the payment of the principal of and interest on the Notes, the Loan Notes, and other amounts due under any Credit Agreement as the same shall become due and payable, there is hereby granted a lien on and pledge of the Net Revenues, such lien on and pledge of Net Revenues to secure the Notes, Loan Notes, and other amounts due under any Credit Agreement, however, being (i) subordinate to the lien and pledge of the Pledged Revenues (which includes a first lien on and pledge of Net Revenues) securing the payment of any Senior Lien Obligations and (ii) on parity with the lien on and pledge of Net Revenues securing the payment of Subordinate Lien Obligations. The Notes, the Loan Notes, and amounts due under any Credit Agreement, secured by and payable from the lien on and pledge of Net Revenues as described in the preceding sentence, shall constitute Subordinate Lien Obligations.

(d) Unless Loan Notes or other borrowings made under any Credit Agreement are paid from the proceeds of Notes or Bonds issued for such purposes, or amounts available in the Taxable Note Payment Fund or the Taxable Note Construction Fund, all as described above, such payments are to be made from Net Revenues on deposit in the Taxable Bank Note Fund established in Section 4.4 hereof.

(e) Money in all funds, accounts, and subaccounts herein created and established, to the extent not invested as permitted hereunder, shall be secured in the manner prescribed by law for securing funds of the City. Chapter 1208, as amended, Texas Government Code, applies to the City's incurring Debt under this Ordinance and the pledge of the Net Revenues granted by the City under this Section as security therefor, and such pledge is therefore valid, effective and

perfected. If Texas law is amended at any time while the Debt remains outstanding under this Ordinance such that the pledge of the Net Revenues granted by the City under this Section is to be subject to the filing requirements of Chapter 9, as amended, Business and Commerce Code, then in order to preserve to the registered owners and holders of such Debt the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, as amended, Texas Business and Commerce Code and enable a filing to perfect the security interest in said pledge to occur.

SECTION 2.11 APPLICATION OF PRIOR COVENANTS. The covenants and agreements (to the extent the same are not inconsistent herewith) contained in the Senior Lien Obligations Ordinances are hereby incorporated herein and shall be deemed to be for the benefit and protection of the Notes, the Loan Notes and the respective Holders thereof in like manner as applicable to the Senior Lien Obligations; provided, however, that in the event of any conflict between the terms, covenants and agreements contained herein and the terms, covenants and agreements contained in the Senior Lien Obligations Ordinances, the provisions of the Senior Lien Obligations Ordinances shall control over the provisions hereof.

SECTION 2.12 TAXABLE NOTE CONSTRUCTION FUND.

(a) There is hereby created and established a separate fund hereby designated as the “City of New Braunfels, Texas Utility System Taxable Note Construction Fund” (the *Taxable Note Construction Fund*), and within such Taxable Note Construction Fund, the “City of New Braunfels, Texas Utility System Taxable Note Construction Account” to which shall be deposited the proceeds of Notes of the corresponding series issued to pay Project Costs of Eligible Projects. The accounts and subaccounts of the Taxable Note Construction Fund shall be held by a Depository. Money deposited in the Taxable Note Construction Fund shall remain therein until from time to time expended to pay for Project Costs of Eligible Projects, and shall not be used for any other purposes whatsoever, except as otherwise provided below, and pending such expenditure, money in the Taxable Note Construction Fund may be invested at the direction of an Authorized Representative in Eligible Investments. Any income received from such investments shall be deposited into the Taxable Note Construction Fund for further deposit to the account or subaccount from which such investment earnings were derived.

(b) Any amounts on deposit in the Taxable Note Construction Fund may be designated by an Authorized Representative as eligible to pay interest during construction and thereafter may be transferred from time to time at the direction of an Authorized Representative to the credit of the appropriate account or subaccount of the Taxable Note Payment Fund for use in accordance with the terms of Section 2.9 hereof. Any amounts remaining in the Taxable Note Construction Fund after the payment of all Project Costs shall be paid into the Taxable Note Payment Fund (for further deposit to the appropriate account or subaccount related to the corresponding series of Notes from which such proceeds were derived) and used for the payment of such maturities of the Notes coming due at such times as may be selected by an Authorized Representative or for the payment of the Loan Notes, as the case may be; provided, however, that, in the event there are then in effect multiple Credit Agreements and there have been issued multiple series of Notes, such amounts will be used to pay all Loan Notes arising under the Credit Agreement or Credit Agreements, respectively, relating to the series of Notes from which such

remaining proceeds were originally derived. In the event no Notes are outstanding and there are no outstanding Loans, any amounts in the Taxable Note Construction Fund not anticipated to be needed to pay Project Costs shall be transferred, upon direction of an Authorized Representative, to the System Fund established by the Senior Lien Obligations Ordinances. For the avoidance of doubt, and except as specified in Section 2.10(b)(iv), funds held in the Taxable Note Construction Fund are not pledged as security for repayment of any Notes or Loan Notes or amounts from time to time owed under any Credit Agreement.

(c) In addition to the accounts and subaccounts created in Section 2.12(a), the City hereby authorizes, within the Taxable Note Construction Fund and at the direction of an Authorized Representative, the creation and establishment of one or more accounts and subaccounts to provide one account or subaccount to relate to each series of Notes with respect to which the City has entered into a particular Credit Agreement and into which proceeds of Notes from such series issued to pay Project Costs of Eligible Projects are to be deposited.

SECTION 2.13 CANCELLATION. All Notes which at maturity are surrendered to the applicable Issuing and Paying Agent and Registrar for the collection of the principal and interest thereon or are surrendered for transfer or exchange pursuant to the provisions hereof shall, upon payment or issuance of new Notes, be canceled by such Issuing and Paying Agent and Registrar, and such Issuing and Paying Agent and Registrar forthwith shall transmit to the Board as agent of the City a certificate identifying such Notes and that such Notes have been duly canceled and destroyed.

SECTION 2.14 FISCAL AND OTHER AGENTS. In furtherance of the purposes of this Ordinance, the City may from time to time appoint and provide for the payment of such additional fiscal, paying or other agents or trustees as it may deem necessary or appropriate in connection with the Notes.

SECTION 2.15 LIQUIDITY AGREEMENTS. The Liquidity Agreement initially entered into to provide liquidity support for the Program Notes attached hereto as Exhibit A, is hereby approved, and shall be entered into with the Bank identified therein. The form of the Loan Notes contained in the Liquidity Agreement is also approved, including the interest rate thereon to be determined as set forth in the Liquidity Agreement. Each Authorized Representative is hereby authorized to execute and deliver the Liquidity Agreement and any other documents called for thereunder. In addition, the Mayor and City Secretary are hereby authorized to execute and deliver any Loan Note related to such Liquidity Agreement. The City Secretary is authorized to place the City seal on any and all of the foregoing instruments.

The City hereby finds that the Liquidity Agreement is a Credit Agreement hereunder relating, to the series of Program Notes identified therein. The payment of the respective fees identified in the Fee Letter and the other costs, expenses, and taxes described in such Liquidity Agreement, as well as the timing of such payments, is hereby authorized from funds on deposit in the appropriate account or subaccount of the Taxable Note Payment Fund lawfully available to the Board for the payment thereof. When required, any "request for extension" (or other document having similar effect, in accordance with the terms of the Liquidity Agreement) shall be delivered to each rating agency then providing a rating on Program Notes simultaneously with the delivery to the applicable Bank, and the City will promptly provide to each such rating agency a copy of

any “notice of extension” (or other document having similar effect, in accordance with the terms of the Liquidity Agreement) it receives or notice that no extension was given.

The Board is hereby authorized to enter into any agreement supplemental to a Liquidity Agreement with the Bank, as an Authorized Representative may deem appropriate. An Authorized Representative may agree with the Bank and the Board, to add additional banking institutions as a Bank under any Liquidity Agreement; provided, however, that such action shall not cause the then existing rating by each rating agency then providing a rating on the Notes, to be reduced, as evidenced by a letter from the respective rating agency confirming the rating of such Notes of the applicable series prior to such action.

SECTION 2.16 RESERVATION OF RIGHT TO ENTER INTO CERTAIN CREDIT AGREEMENTS. The City hereby authorizes any Authorized Representative to enter into Credit Agreements, whether as an extension of any existing Liquidity Agreement, in substitution for any Liquidity Agreement or in addition to an existing Liquidity Agreement, in conjunction with the issuance, payment, sale, resale or exchange of Notes (and payment of amounts existing thereunder and as may be evidenced by one or more Loan Notes, which may be on a parity with the Notes) when determined to be advantageous to or desirable by the Authorized Representative, at the request of the Board, subject to the following conditions:

- (a) each Credit Agreement must be in substantially the same form as the Liquidity Agreement approved pursuant to the terms of this Ordinance and attached hereto as Exhibit A;
- (b) the maximum amount of liquidity provided pursuant to the terms of any Credit Agreement shall not exceed the Program Capacity (measured as the maximum aggregate principal amount of Notes at any one time outstanding plus interest thereon at the Maximum Interest Rate for a period not more than 364 days);
- (c) the maximum interest rate borne by any obligations owed pursuant to the terms of any Credit Agreement shall not exceed the Maximum Interest Rate;
- (d) the maximum term of any Credit Agreement shall not exceed the Maximum Maturity Date;
- (e) a determination by an Authorized Representative that entering into any such Credit Agreement shall not result in default or breach of covenants relating to the Program Note (including the terms of outstanding Notes or Loan Notes or any then-existing Credit Agreement that remains in effect after the effectiveness of the new or extended Credit Agreement) and that entering into the subject Credit Agreement complies with applicable law; and
- (f) evidence from each rating agency then providing a rating on the series of Notes to which such Credit Agreement relates and that were outstanding before and after the effective date of such extension, substitution, or addition, that the existing rating on such series of Notes is not impacted by such extension, substitution, or addition.

ARTICLE III

ISSUANCE AND SALE OF NOTES

SECTION 3.1 ISSUANCE AND SALE OF NOTES.

(a) The Program Notes shall be completed and delivered by the applicable Issuing and Paying Agent in accordance with computer (electronic mail) or written instructions of an Authorized Representative in the manner specified below and in the Issuing and Paying Agent Agreement or Credit Agreement, as applicable. Said instructions shall specify such principal amounts, Note Dates, dates of issue, maturities, rates of discount or interest, and other terms and conditions which are hereby authorized and permitted to be fixed by an Authorized Representative at the time of sale of the Program Notes. Such instructions shall include the purchase price of the Program Notes, and a request that the applicable Issuing and Paying Agent authenticate such Program Notes by counter signature of its authorized officer or employee and deliver them to the named purchaser or purchasers thereof upon receipt of payment in accordance with the custom then prevailing in the New York financial market in regard to such Program Notes. By delivery of such instructions, the City represents that:

(i) all action on the part of the City necessary for the valid issuance of the Program Notes then to be issued has been taken;

(ii) all provisions of Texas law necessary for the valid issuance of such Program Notes have been complied with, and that such Program Notes in the hands of the Holders thereof will be valid and enforceable obligations of the City according to their terms, subject to the exercise of judicial discretion in accordance with general principles of equity and bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors, rights heretofore or hereafter enacted to the extent constitutionally applicable;

(iii) reserved;

(iv) no Event of Default under Section 5.1 hereof has occurred and is continuing as of the date of such instructions;

(v) the City is in compliance with the covenants set forth in Article IV hereof as of the date of such instructions;

(vi) the Board as agent of the City has been advised by Bond Counsel that the projects to be financed with the proceeds of the Program Notes will constitute Eligible Projects; and

(vii) the sum of the interest payable on such Program Notes will not exceed a yield (calculated on the principal amount of the Program Notes based on the actual number of days elapsed and a 365-day or 366-day year or 360-day year (comprised of twelve 30 day months), as may be applicable,) to the maturity date of such Program Notes in excess of the Maximum Interest Rate in effect on the date of issuance of such Program Notes.

(b) Any Loan Note, as applicable, shall be or have been delivered to the applicable Bank, as applicable, and indebtedness may be incurred thereunder in accordance with the terms of the applicable Credit Agreement.

Notwithstanding Subsection (a) above, to the extent Notes of a particular series are being directly purchased by or privately placed with a Bank, the contents of the instructions may be specified in the related Credit Agreement.

SECTION 3.2 PROCEEDS OF SALE OF NOTES. The proceeds of the sale of any Notes (net of all expenses and costs of sale and issuance) shall be applied for any or all of the following purposes as directed by an Authorized Representative:

(i) Proceeds to be used for the payment and redemption of outstanding Notes at or before maturity and the repayment of any Loans (evidenced by the applicable Loan Note) or other amounts due under the applicable Credit Agreement shall be deposited in the applicable account or subaccount of the Taxable Note Payment Fund, and expended therefor; and

(ii) Proceeds not deposited in the Taxable Note Payment Fund as provided in subparagraph (i) above shall be deposited to the applicable account or subaccount of the Taxable Note Construction Fund and used and applied in accordance with the provisions of Section 2.12 hereof.

SECTION 3.3 ISSUING AND PAYING AGENCY AGREEMENT. The initial Issuing and Paying Agency Agreement for the Notes will be the Note Purchase Agreement, substantially in the form attached hereto as Exhibit A, and the Mayor and each Authorized Representative is hereby authorized and directed to execute the same for and on behalf of the City and, in connection with the execution thereof, approve such changes, additions, or amendments thereto as may be necessary and proper to carry out the purpose and intent of such Issuing and Paying Agency Agreement. The Board, on behalf of the City, is hereby authorized to enter into any supplemental agreements with any Issuing and Paying Agent or with any successor Issuing and Paying Agent for any series of Notes in order to implement the functions of Issuing and Paying Agent or Registrar with respect to the Notes and to have any Authorized Representative execute and deliver such document, and any other documents called for thereunder, for and on behalf of the City and the Board.

ARTICLE IV

COVENANTS OF THE CITY

SECTION 4.1 LIMITATION ON ISSUANCE. Unless this Ordinance is amended and modified by the City Council in accordance with the provisions of Section 7.1 hereof, the City covenants that there will not be issued and outstanding at any time under this Ordinance more than \$100,000,000 in principal amount of Notes; subject, however, to the provision below regarding the Available Commitment. For purposes of this Section 4.1 any portion of outstanding Notes to be paid on a particular day from money on deposit in the Taxable Note Payment Fund, the Taxable Bank Note Fund, and available proceeds of Notes or Bonds shall not be considered outstanding on

such day. Additionally, the City covenants and agrees that the total principal amount of all Notes of a particular series outstanding at any one time shall not exceed the sum total of the Available Commitment then applicable to such series of Notes.

SECTION 4.2 RATES AND CHARGES. The City hereby agrees and covenants to the holders of the Senior Lien Obligations and covenants to the Holders of the Notes and the Loan Notes that it will at all times maintain rates and charges for the services furnished, provided, and supplied by the System which shall comply with the provisions of the Senior Lien Obligations Ordinances, and produce income and revenues sufficient:

- (a) to pay Maintenance and Operating Expenses;
- (b) to produce Net Revenues sufficient to pay (i) the principal of and interest on the Senior Lien Obligations and to make all required payments to the special funds or accounts created for the payment and security of the Senior Lien Obligations and (ii) the amounts required to be deposited in any reserve or contingency fund created for the payment and security of the Senior Lien Obligations and any other obligations or evidences of indebtedness issued or incurred that are payable from and equally and ratably secured solely by a first lien on and pledge of the Net Revenues;
- (c) to produce Net Revenues, together with any other lawfully available funds (including the proceeds of Debt which the City expects will be utilized to pay all or part of the principal and/or interest on any obligations described in this subsection (c)), sufficient to pay (i) the principal of and interest on any Subordinate Lien Obligations and any Additional Subordinate Lien Obligations and the amounts required to be deposited in any reserve or contingency fund created for the payment and security of the Subordinate Lien Obligations, any Additional Subordinate Lien Obligations; and
- (d) to pay any other Debt payable from the Net Revenues and/or secured by a lien on the System.

SECTION 4.3 SYSTEM FUND. Pursuant to Section 2.11 hereof, the City hereby reaffirms its covenant to the holders of the currently outstanding Senior Lien Obligations and hereby covenants with respect to the Holders of the Notes, that all Gross Revenues shall be deposited as received by the Board in the “City of New Braunfels, Texas Utility System Fund” (as established by the Senior Lien Obligations Ordinances and hereinafter referred to as the *System Fund*), which shall be maintained at a Depository and kept separate and apart from all other funds of the City and the Board, and monies in the System Fund shall be applied as provided in the Senior Lien Obligation Ordinances.

SECTION 4.4 PRIORITY OF DEPOSITS AND PAYMENTS FROM SYSTEM FUND.

- (a) The Board, on behalf of the City, shall make the deposits and payments from the Pledged Revenues and/or Net Revenues in the System Fund when and as required by the Senior Lien Obligations Ordinances, and such deposits shall be made in the order and with the priorities set forth in the Senior Lien Obligations Ordinances. All Net Revenues to be applied by the Board for the payment of (i) principal and/or interest on any Notes or (ii) principal and/or interest on

any Loan Notes and amounts from time to time due and owing under a related Credit Agreement (which are considered Subordinate Lien Obligations), shall be deposited into the Taxable Note Payment Fund for the payment of principal of and/or interest on Notes when due and to the Taxable Bank Note Fund (being the fund created and established under Subsection (b) below), if and when necessary, to pay when due those City obligations specified in Subsection (b) below.

(b) There is hereby created and there shall be established and maintained on the books of the Board at a Depository a separate fund to be known as the "Taxable Bank Note Fund" for the sole benefit of the Loan Notes and the Bank under the related Credit Agreement. All Net Revenues, to be applied by the Board in the manner specified in Subsection (a) above, for the payment, when due, of principal of and/or interest on the Loan Notes and amounts owed from time to time under the related Credit Agreement shall be deposited into the Taxable Bank Note Fund.

The City hereby authorizes, within the Taxable Bank Note Fund and at the direction of an Authorized Representative, the creation and establishment of one or more accounts to provide for one account to relate each series with respect to which the City has entered into a particular Credit Agreement.

SECTION 4.5 MAINTENANCE OF AVAILABLE CREDIT FACILITIES REQUIREMENT.

(a) The City agrees and covenants that at all times up to and including the Maximum Maturity Date, unless the Notes are no longer outstanding, it will maintain one or more Credit Agreements with Banks in amounts such that, assuming that all then outstanding Notes of a particular series were to become due and payable immediately, the amount available for borrowing under the Credit Agreement or Credit Agreements applicable to such series of Notes would be sufficient at that time to pay the principal of all Notes of such series. However, the City reserves the right to provide internal liquidity for the Notes payable from the lawfully available cash balances. Such obligation to draw on its own funds prior to entering into a Loan pursuant to the terms of the applicable Credit Agreement will be in accordance with the provisions specified in such Credit Agreement. No Note shall be issued which if, after giving effect to the issuance thereof and, if applicable, the immediate application of the proceeds thereof to retire other Notes of such series secured by each Credit Agreement, the aggregate principal amount of all Notes of such series secured by each Credit Agreement would exceed the amount of the credit commitment under each Credit Agreement. The availability for borrowing of such amounts under each Credit Agreement may be subject to reasonable conditions precedent, including but not limited to, bankruptcy of the City. In furtherance of the foregoing covenant, the City agrees that it will not issue any Notes of a particular series or make any borrowings which will result in a violation of such covenant, will not amend any Credit Agreements then in effect in a manner which will cause a violation of such covenant and, if and to the extent necessary to maintain compliance with such covenant, will arrange for an alternate Credit Agreement prior to, or contemporaneously with, the expiration of an existing Credit Agreement.

(b) The City hereby approves the Liquidity Agreement related to the Program Notes.

(c) The Liquidity Agreement currently satisfies the covenant contained in the first sentence of paragraph (a) above with respect to Available Commitments that supports the issuance of up to \$100,000,000 in aggregate principal amount at any one time outstanding of Program Notes. Notwithstanding this Available Commitment, currently in an amount equal to the maximum principal component of the Program Capacity, the City expressly reserves (and delegates to an Authorized Representative) the ability to alter the Available Commitment under any applicable Credit Agreement; to deliver an additional Credit Agreement; provide an alternate Credit Agreement related to any series of Notes, so long as the aggregate Available Commitments do not exceed the amount needed to support \$100,000,000 in aggregated principal amount of the Notes, enter into and execute a Fee Letter related to an additional or alternate Credit Agreement; modify an existing Fee Letter related to an existing Credit Agreement; and do anything necessary or advisable related to the Notes and to otherwise engage in any action to effectuate the purposes of this Ordinance; provided, however, that any substitution, extension, or addition of a then-existing Credit Agreement shall require demonstration of compliance with Section 2.16 hereof.

SECTION 4.6 BONDS. The City hereby acknowledges that the Notes are being issued as bond anticipation notes, and therefore the City in good faith shall endeavor to sell a sufficient principal amount of the Bonds in order to have funds available, together with other money available therefor, to pay the Notes and the interest thereon, or any renewals thereof, as the same shall become due and other amounts, including Loan Notes and interest thereon, due under the Credit Agreements from time to time valid and in effect.

SECTION 4.7 PUNCTUAL PAYMENT. The Board on behalf of the City will punctually pay or cause to be paid the principal of and interest, if any, on the Notes (but only from the sources pledged herein), in conformity with the Notes, Loan Notes, this Ordinance, and any Credit Agreement.

SECTION 4.8 RESERVED.

SECTION 4.9 OPINION OF BOND COUNSEL. The City shall cause the legal opinion of Bond Counsel as to the validity of the Notes to be furnished to any Noteholder without cost. In addition, a copy of said opinion may be printed on each of the Notes.

SECTION 4.10 RESERVED.

SECTION 4.11 RESERVED.

SECTION 4.12 COMPLIANCE WITH BOND ORDINANCES AND OTHER DOCUMENTS. The City and the Board will comply with the terms and provisions of the Bond Ordinances and any other ordinance or contract to which the City or the Board is a party, the non-compliance with which would materially adversely affect the ability of the Board on behalf of the City to make payments on the Notes when due.

SECTION 4.13 RESERVATION OF RIGHT TO ISSUE ADDITIONAL SENIOR LIEN OBLIGATIONS, ADDITIONAL SUBORDINATE LIEN OBLIGATIONS.

(a) Additional Senior Lien Obligations. The City hereby expressly reserves the right to hereafter issue Additional Senior Lien Obligations in accordance with the provisions of the Senior Lien Obligations Ordinances, payable from and secured by a lien on and pledge of the Net Revenues of the System prior in right and claim to the lien and pledge securing the payment of any Subordinate Lien Obligations or obligations with a pledge of the Net Revenues inferior and subordinate to the pledge of the Net Revenues to the Subordinate Lien Obligations.

(b) Additional Subordinate Lien Obligations. The City hereby reserves, the right to issue, at any time, obligations payable from and equally and ratably secured, in whole or in part, by a lien on and pledge of the Net Revenues, subordinate and inferior in rank and dignity to the lien on and the pledge of such Net Revenues securing the payment of the Senior Lien Obligations issued from time to time by the City or obligations with a pledge of the Net Revenues on a parity with or inferior and subordinate to the pledge of the Net Revenues to the Subordinate Lien Obligations, as may be authorized by the laws of the State of Texas.

SECTION 4.14 MAINTENANCE OF ISSUING AND PAYING AGENT. The City will, and with respect to each series of Notes, at all times maintain an issuing and paying agent in the State of Texas, meeting the qualifications herein described, for the performance of the duties of the Issuing and Paying Agent for any series of Notes hereunder. The Issuing and Paying Agent for any series of Notes may be removed from its duties hereunder at any time with or without cause by action of an Authorized Representative and not less than 30 days' notice to each Holder specifying the substitution of another Issuing and Paying Agent for such affected series of Notes, the effective date thereof, and the address of such successor Issuing and Paying Agent, but no such removal shall become effective until such successor shall have accepted the duties of the Issuing and Paying Agent for such affected series of Notes hereunder by written instrument.

Each Issuing and Paying Agent appointed hereunder shall at all times be a corporation organized and doing business under the laws of the United States of America or of any state, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, subject to supervision or examination by federal or state authority, registered as a transfer agent with the Securities and Exchange Commission, and having an office in the State of Texas. If such corporation publishes reports of condition at least annually pursuant to law or to the requirements of such supervising or examining authority, then for the purposes of this Section the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES OF NOTEHOLDERS

SECTION 5.1 EVENTS OF DEFAULT. If one or more of the following events shall occur, that is to say:

(a) if default shall be made in the due and punctual payment of any installment of principal of any Note when and as the same shall become due and payable, whether at maturity as therein expressed, by declaration or otherwise;

(b) if the City shall fail to make due and punctual payment of any installment of interest on any Note when and as such interest installment shall become due and payable and such failure shall continue for five (5) Business Days;

(c) if applicable under a Credit Agreement at such time valid and in effect, if the Bank has delivered to the Issuing and Paying Agent notice of an “Event of Default” under a Credit Agreement that would permit the principal of the Loan Notes (and interest accrued thereon) to be made to become due and payable pursuant to the term out provisions under the Loan Notes and the applicable Credit Agreement;

(d) if default shall be made by the City in the performance or observance of any other of the covenants, agreements or conditions on its part in this Ordinance or in the Notes contained, and such default shall continue for a period of sixty (60) days after written notice thereof; provided, however, that if such default cannot be cured within the sixty (60) day period but corrective action to cure such default is commenced and diligently pursued until the default is corrected no such Event of Default shall be deemed to have occurred;

(e) if there shall occur the dissolution (without a successor being named to assume the rights and obligations) or liquidation of the City or the filing by the City of a voluntary petition in bankruptcy, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of its creditors, or the entry by the City into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceeding for its reorganization instituted under the provisions of the Bankruptcy Code, as amended, or under any similar act in any jurisdiction which may now be in effect or hereafter enacted; or

(f) if an order or decree shall be entered, with the consent or acquiescence of the City, appointing a receiver or receivers of the System, or any part thereof, or of the rents, fees, charges or other revenues therefrom, or if such order or decree, having been entered without the consent or acquiescence of the City shall not be vacated or discharged or stayed within ninety (90) days after the entry thereof;

then such event as described above shall constitute an “Event of Default” under this Ordinance.

SECTION 5.2 SUITS AT LAW OR IN EQUITY AND MANDAMUS. In case one or more Events of Default shall occur, then and in every such case the Holder of any Note at the time outstanding shall be entitled to proceed to protect and enforce such Holder’s rights by such appropriate judicial proceeding as such Holder shall deem most effectual to protect and enforce any such right, either by suit in equity or by action at law, whether for the specific performance of any covenant or agreement contained in this Ordinance, or in aid of the exercise of any power granted in this Ordinance, or to enforce any other legal or equitable right vested in the Holders of Notes by this Ordinance or the Notes or by law. The provisions of this Ordinance shall be a contract with each and every Holder of Notes and the duties of the City and the Board shall be enforceable by any Noteholder by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction.

SECTION 5.3 REMEDIES NOT EXCLUSIVE. No remedy herein conferred upon or reserved to the Holders of Notes is intended to be exclusive of any other remedy, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise, and may be exercised at any time or from time to time, and as often as may be necessary, by the Holder of any one or more of the Notes. The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

ARTICLE VI

MANAGEMENT OF THE SYSTEM

The complete management and control of the System during such time as any Debt is outstanding shall be vested in the Board pursuant to the provisions of Section 24 of the Senior Lien Obligations Ordinances which provisions are hereby incorporated by reference and Chapter 1502, as amended, Texas Government Code.

ARTICLE VII

MISCELLANEOUS

SECTION 7.1 AMENDMENTS OR MODIFICATIONS.

(a) Amendments Without Consent of Holders. This Ordinance and the rights and obligations of the City and the Board and of the Holders of Notes may be modified or amended at any time by a supplemental ordinance, without notice to or the consent of any Holders, but only to the extent permitted by law and any Credit Agreement, and, subject to the rights of the Holders of the Notes, only for any one or more of the following purposes:

(i) to add to the covenants and agreements of the City in this Ordinance contained, other covenants and agreements thereafter to be observed, or to surrender any right or power herein reserved to or conferred upon the City or the Board;

(ii) to cure any ambiguity or inconsistency, or to cure or correct any defective provision contained in this Ordinance, upon receipt by the City of an approving opinion of Bond Counsel that the same is needed for such purpose, and will more clearly express the intent of this Ordinance; or

(iii) to supplement the security for the Notes, replace or provide alternate Credit Facilities, or change the form of the Notes or make such other changes in the provisions hereof as the City may deem necessary or desirable and which shall not materially adversely affect the interests of the Holders of the Notes;

(b) Amendments Requiring Consent of All Holders. Nothing herein contained shall permit or be construed to permit the amendment of the terms and conditions of this Ordinance or of the Notes so as to:

(i) make any change in the maturity of any of the outstanding Notes;

- (ii) reduce the rate of interest borne by any of the outstanding Notes;
 - (iii) reduce the amount of the principal payable on any of the outstanding Notes;
 - (iv) modify the terms of payment of principal of or interest on the outstanding Notes, or impose any conditions with respect to such payment;
 - (v) affect the rights of the Holders of less than all of the outstanding Notes; or
 - (vi) give priority of payment from Net Revenues to any Note over other Notes;
- or
- (vii) reduce or restrict the pledge made pursuant to Section 2.10 hereof for payment of the Notes;

unless such amendment shall be approved by the Holders of all of the Notes (including any Bank as the Holder of a Loan Note) then outstanding;

(c) Amendments Requiring Consent of Bank and a Majority of Holders of Notes. The City may, with the written consent of the Bank and the Holders of a majority in aggregate principal amount of the Notes then outstanding affected thereby, amend, change, modify, or rescind any provisions of this Ordinance which are otherwise not described under Section 7.1(a) or Section 7.1(b) hereof; and

(d) Amendments Effective Upon Maturity of all Then Outstanding Notes. Whenever the City shall desire to make any amendment to or additions to or rescission of this Ordinance requiring consent of the Bank and the Holders of the Notes then outstanding, the City may adopt such amendment, addition or recession (upon prior consent of the Bank but without having to receive the consent of any Holder of then outstanding Notes) which will become effective only upon the payment in full of all such outstanding Notes.

(e) Approval of Attorney General Required. Notwithstanding the foregoing provisions of this Section 7.1, no change, modification or amendment shall be made in this Ordinance or become valid and effective without the approval of such change, modification or amendment by the Attorney General of the State of Texas, to the extent (but only to the extent) required by the Act.

SECTION 7.2 ADDITIONAL ACTIONS. The Mayor, the City Secretary, an Authorized Representative, and the other officers of the City and the Board are hereby authorized and directed, jointly and severally, to do any and all things necessary and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the issuance, sale and delivery of the Notes and agreements related thereto, and to otherwise engage in any action to effectuate the purposes of this Ordinance, any Credit Agreement, Issuing and Paying Agency Agreement, Fee Letter, and any additional documents related thereto. Specifically, by the adoption of this Ordinance, the City Council hereby authorizes the payment of the fees and expenses incurred and to be paid by the Board in connection with the issuance, sale, and delivery of the Notes and the execution and delivery of each Credit Agreement, Issuing and Paying Agency

Agreement, Fee Letter, and any additional agreements related to the Notes, as well as amendments to each of the foregoing, and as otherwise provided in this Ordinance.

SECTION 7.3 ORDINANCE TO CONSTITUTE A CONTRACT; EQUAL SECURITY. In consideration of the acceptance of the Notes, the issuance of which is authorized hereunder, by those who shall hold the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the City and the Holders from time to time of the Notes and the pledge made in this Ordinance by the City and the covenants and agreements set forth in this Ordinance to be performed by the City shall be for the equal and proportionate benefit, security and protection of all Holders of the Notes, without preference, priority or distinction as to security or otherwise of any of the Notes authorized hereunder over any of the others by reason of time of issuance, sale or maturity thereof or otherwise for any cause whatsoever, except as expressly provided in or permitted by this Ordinance or, with respect to any Loan Note, the related Credit Agreement.

SECTION 7.4 SEVERABILITY OF INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof or of the Notes issued hereunder.

SECTION 7.5 PAYMENT AND PERFORMANCE ON BUSINESS DAYS. Unless otherwise provided by the applicable Credit Agreement, whenever under the terms of this Ordinance or the Notes, the performance date of any provision hereof or thereof, including the payment of principal of or interest on the Notes, shall occur on a day other than a Business Day, then the performance thereof, including the payment of principal of and interest on the Notes, need not be made on such day but may be performed or paid, as the case may be, on the next succeeding Business Day with the same force and effect as if made on the date of performance or payment, and no interest shall accrue on such payments in the interim.

SECTION 7.6 DEFEASANCE. If, when all or any portion of the Notes shall have become due and payable in accordance with their terms or otherwise as provided in this Ordinance, the entire principal and interest so due and payable upon said Notes shall be paid, or if at or prior to the date said Notes have become due and payable, sufficient money and/or Government Securities the principal of and interest on which will provide sufficient money for such payment, shall be held in trust by an authorized escrow agent and provision shall also be made for paying all other sums payable hereunder by the City with respect to said Notes, the pledge herein created with respect to said Notes shall thereupon cease, terminate and become discharged and said Notes shall no longer be deemed outstanding for purposes of this Ordinance and all the provisions of this Ordinance relating to the Notes, including all covenants, agreements, liens and pledges made herein for the benefit thereof, shall be deemed duly discharged, satisfied and released. Notwithstanding the foregoing, prior to effectuating a defeasance of Notes pursuant to this Section, the City shall have first received written notification from each rating agency then providing a rating on the affected Notes that the contemplated Note defeasance will not result in a reduction or withdrawal of such Note rating.

SECTION 7.7 LIMITATION OF BENEFITS WITH RESPECT TO THE ORDINANCE. With the exception of the rights or benefits herein expressly conferred, nothing expressed or contained herein or implied from the provisions of this Ordinance or the Notes is intended or should be construed to confer upon or give to any person other than the City, the Board, Bond Counsel, the Holders of the Notes, any Issuing and Paying Agent and Registrar, and the parties to the Credit Agreement, any legal or equitable right, remedy or claim under or by reason of or in respect to this Ordinance or any covenant, condition, stipulation, promise, agreement or provision herein contained. This Ordinance and all of the covenants, conditions, stipulations, promises, agreements and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the City, the Board, Bond Counsel, the Holders of the Notes, any Issuing and Paying Agent and Registrar and the respective parties to each Credit Agreement as herein and therein provided.

SECTION 7.8 RESERVED.

SECTION 7.9 APPROVAL OF ATTORNEY GENERAL. No Notes herein authorized to be issued shall be sold or delivered by an Authorized Representative until the Attorney General of the State of Texas shall have approved this Ordinance, the Note Purchase Agreement, and other agreements and proceedings as may be required in connection therewith, all as required by the Act.

SECTION 7.10 RESERVED.

SECTION 7.11 NOTICE TO RATING AGENCIES. Any notices required to be delivered hereunder shall also be provided to each rating agency at such time providing a rating on the Notes. Such notices shall be given to each rating agency utilizing the following contact information: (1) Moody's Investors Service, Inc., 7 World Trade Center, 250 Greenwich Street, New York, New York 10007, Attention: Public Finance Group—Texas Local Ratings; (2) S&P Global Ratings, 55 Water Street, 38th Floor, New York, New York 10041, Attention: Municipal Structured Finance; and (3) Fitch Ratings, Inc., 33 Whitehall Street, New York, New York, 10004, Attention: Municipal Structured Finance.

SECTION 7.12 PREAMBLE. The preamble to this Ordinance shall be considered an integral part of this Ordinance, and is herein incorporated as part of the body of this Ordinance for all purposes.

SECTION 7.13 FURTHER PROCEDURES. The officers and employees of the City are hereby authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge, and deliver in the name and under the corporate seal and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, the initial sale and delivery of the Program Notes, any Issuing and Paying Agency Agreement, any Credit Agreement and amendments thereto. In addition, prior to the initial delivery of the Program Notes, the Mayor, the City Manager or Assistant City Manager, the City Attorney, any Authorized Representative, and Bond Counsel are hereby authorized and directed to approve any technical changes or corrections to this Ordinance or to any of the instruments authorized and approved by this Ordinance necessary in order to (i) correct any ambiguity or mistake or properly or more

completely document the transactions contemplated and approved by this Ordinance and as described in the Offering Memorandum, (ii) obtain a rating from any of the national bond rating agencies, or (iii) obtain the approval of the Program Notes by the Texas Attorney General's office. In case any officer of the City whose signature shall appear on any certificate shall cease to be such officer before the delivery of such certificate, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 7.14 DELEGATION AUTHORITY. Furthermore, though such parties may be identified, and the entry into a particular contract may be authorized, herein, pursuant to the Act, and any other applicable law, the City Council hereby delegates to any Authorized Representative the authority to independently select the counterparty to any contract that is determined by such party, NBU's Financial Advisor, or NBU's Bond Counsel to be necessary or incidental to the issuance of the Notes.

SECTION 7.15 CITY'S CONSENT TO PROVIDE INFORMATION AND DOCUMENTATION TO THE TEXAS MAC. The Municipal Advisory Council of Texas (the *Texas MAC*), a non-profit membership corporation organized exclusively for non-profit purposes described in section 501(c)(6) of the Internal Revenue Code and which serves as a comprehensive financial information repository regarding municipal debt issuers in Texas, requires provision of written documentation regarding the issuance of municipal debt by the issuers thereof. In support of the purpose of the Texas MAC and in compliance with applicable law, the City hereby consents to and authorizes any Authorized Representative, NBU's Bond Counsel, and/or NBU's Financial Advisor to provide to the Texas MAC information and documentation requested by the Texas MAC relating to the Notes. This consent and authorization relates only to information and documentation that is a part of the public record concerning the issuance of the Notes.

SECTION 7.16 EFFECTIVE DATE. This Ordinance shall take effect and be in force immediately from and after its passage on the date shown below as provided in Texas Government Code, Section 1201.028, as amended.

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PASSED AND APPROVED this 8th day of March, 2021.

CITY OF NEW BRAUNFELS, TEXAS

By: _____
Mayor

ATTEST:

City Secretary

APPROVED AS TO FORM:

City Attorney

(CITY SEAL)

EXHIBIT A

Liquidity Agreement

3/8/2021

Agenda Item No. B)

Presenter*Robert Camareno, City Manager*
*rcamareno@nbtexas.org***SUBJECT:**

Discuss and consider approval of an ordinance regarding the ratification of a waiver of certain permit fees and solid waste management fees related to the 2021 winter storm.

BACKGROUND / RATIONALE:

Council District: All

Staff Contacts: KC Collins, Building Official
(830) 221-4062
kcollins@nbtexas.org

Mike Mundell, Solid Waste Manager
(830) 221-4044
mmundell@nbtexas.org

The City of New Braunfels was impacted by unprecedented weather the week of February 15-19, 2021 that resulted in multiple days of below freezing temperatures. As a result, trash pickup services throughout the community were impacted and many residents experienced frozen pipes resulting in property damage.

The City of New Braunfels has implemented several initiatives to ease the impacts to the community related to the storm damage:

- Waiving of fees for permits associated with projects resulting from storm damage.
- Expediting of the above permits.
- Solid waste management fees will be waived the week of February 15-19, 2021.

Plumbing permits are typically applied for by plumbers or plumbing contractors. Pursuant to the International Plumbing Code (IPC), plumbing repairs due to leaks are exempt from permits, so long as the leak is unconcealed. Therefore, the proposed waivers would apply to concealed leaks/repairs. The Plumbing Permit Application (see Resources section below) lists all of the different elements of plumbing permits and corresponding fees.

Since irrigation (sprinkler systems) can also be impacted by freezing temperatures, these permit fees are also proposed for waiver. They include:

- Application Fee - \$15
- Backflow Preventer - \$5

- Each Head - \$2

Thus far, staff has waived seven irrigation permit fees for backflow preventer damage.

Residential alterations and repairs may be needed due to leaking or broken pipes. A fee breakdown for these types of permits includes:

- Application Fee - \$50
- Plan Review Fee - 25% of permit cost, not to exceed \$2,500
- Permit Fee - \$.25 per square foot of work area

No permit applications for this type of work have yet been received.

Commercial alteration and repairs break down as follows:

- Application Fee - \$100
- Plan Review Fee - 25% of permit cost, not to exceed \$2,500
- Permit Fee - Based on valuation and in tiers: Initial tier \$0 to \$50,000 in valuation = \$50 plus \$6 per \$1,000 of valuation or fraction thereof

No permit applications for this type of work have yet been received.

It typically takes staff two days to review and issue simple trade permits, such as plumbing and irrigation permits. The process begins with the applicant (licensed/registered plumber) submitting the application online or over the counter. Staff can expedite these to being reviewed and approved over the counter, as long as the contractor is registered or has their proper registration paperwork on hand.

Residential and commercial alteration permits fall into the 10-day and 20-day cycle time goals respectively. To expedite, we can complete these in 5 to 7 days, as long as the plans are complete and meet the adopted ordinances.

To accomplish expediting as described above, rather than reviewing first come-first served, staff will move review of these types of permits to the front of the line (or “top of the stack”) above all other building permit applications. We are asking applicants to notify the City on the application paperwork that the repair/alteration is due to severe weather damage.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

Envision New Braunfels Comprehensive Plan	Action 3.6: Pro-actively provide a regulatory environment that remains business and resident friendly.
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FISCAL IMPACT:

Permit fees proposed to be waived would not have been collected had the extreme winter weather not occurred. This coupled with the fact that these specific fees and associated time spent delivering the corresponding services are minimal, this proposal is anticipated to have a negligible impact on the General Fund. Regarding Solid Waste Management Fees, the net impact of the credit and reduced operating costs from not providing services for approximately one week, is also expected to be immaterial and will be supported from excess reserves.

COMMITTEE RECOMMENDATION:

Not applicable.

STAFF RECOMMENDATION:

Approval.

RESOURCES:

- Plumbing Permit application:
<http://www.nbtexas.org/DocumentCenter/View/1062/Plumbing-application-and-fees?bidId=>>
- Residential permit information and fees:
<http://www.nbtexas.org/1177/Do-I-Need-a-Residential-Permit>

ATTACHMENTS:

- Ordinance

ORDINANCE NO. 2021-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS AUTHORIZING THE DEVELOPMENT SERVICES DEPARTMENT TO WAIVE PERMIT FEES FOR PROJECTS RESULTING FROM THE 2021 WINTER STORM, AND TO EXPEDITE REVIEW FOR SUCH PERMITS; AND AUTHORIZING THE PUBLIC WORKS DEPARTMENT TO WAIVE SOLID WASTE FEES ACCRUED DURING THE WEEK OF THE STORM; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SAVINGS CLAUSE; AND DECLARING AN EFFECTIVE DATE AND DECLARING AN EMERGENCY.

WHEREAS, the Winter Storm of 2021 included multiple days of sub-freezing temperatures, atypical for New Braunfels' latitude; and

WHEREAS, the successive days of sub-freezing temperatures caused unprecedented damage to property owners' water pipes; and

WHEREAS, the dangerous driving conditions from the snow and ice prevented solid waste service delivery the week of February 15-19; and

WHEREAS, the City of New Braunfels desires to ease the impact on local homeowners and business owners.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

SECTION 1

THAT the City of New Braunfels City Council authorizes the Development Services Department to waive permit fees for projects resulting from the 2021 Winter Storm. The fees waived are those development-related fees enumerated in Appendix D of the City's Code of Ordinances. Such qualifying fees shall be waived until 5:00 p.m. on August 23, 2021.

SECTION 2

THAT the City of New Braunfels City Council authorizes the Development Services Department to expedite review for such permits.

SECTION 3

THAT the City of New Braunfels City Council authorizes the Public Works Department to waive Solid Waste fees accrued during the week of February 15-19, 2021.

SECTION 4

THAT all provisions of the Code of Ordinances of the City of New Braunfels not herein amended or repealed shall remain in full force and effect.

SECTION 5

THAT all other ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent that they are in conflict.

SECTION 6

THAT if any provisions of this ordinance shall be held void or unconstitutional, it is hereby provided that all other parts of the same which are not held void or unconstitutional shall remain in full force and effect.

SECTION 7

PURSUANT to Section 3.10 of the City Charter, it is further ordained that this Ordinance is necessary to protect the public's peace, health, safety, and general welfare, and shall therefore be passed as an EMERGENCY ORDINANCE and become effective at once upon one reading of the City Council, upon the approval of a majority vote of the City Council members.

PASSED AND APPROVED: this 8th day of March, 2021.

CITY OF NEW BRAUNFELS

RUSTY BROCKMAN, Mayor

ATTEST:

CAITLIN KROBOT, City Secretary

APPROVED AS TO FORM:

VALERIA M. ACEVEDO, City Attorney

3/8/2021

Agenda Item No. C)

Presenter/Contact

Jennifer Cain, Capital Programs Manager
(830) 221-4646 - jcain@nbtexas.org

SUBJECT:

Discuss and consider approval of a construction contract with Stoddard Construction Management Inc., a materials testing contract with Raba Kistner, payment to New Braunfels Utilities (NBU) for water and sewer impact fees, a contract with Hill International for on-site Owner's Representative services and authorize the City Manager to execute any change orders up to the contingency amount as part of the 2019 Bond Westside Library Branch Project.

BACKGROUND / RATIONALE:

On September 26, 2018, City Council approval a contract with Komatsu Architecture for conceptual design for a new Westside Library in support of the 2019 Bond Election. On October 14, 2019 City Council approved final design with Komatsu Architecture. On October 12, 2020 City Council approved the competitive sealed proposal (CSP) project delivery method.

The proposed new Westside Library will be located on existing Westside Community Center property. The new building will be approximately 8,000 square feet and could include but is not limited to a Library, program room, study rooms, and an outdoor garden.

The City issued a CSP on January 6, 2021 and was fortunate to receive 11 responses on February 3, 2021. The City project team evaluated responses and interviewed the top two firms based on their cost of work, project experience and qualifications, proposed schedule/contract time, previous experience with the City or other municipalities, references and interviews. Staff is recommending award to Stoddard Construction Management Inc., as the highest ranked vendor. The construction contract is a base price of \$3,980,000 and an add alternate price for the community garden of \$152,764. Including a ten percent contingency, the contract total is \$4,546,040.

In addition, staff are recommending approval of a materials testing contract with Raba Kistner for \$24,960, water/sewer impact fees to NBU for \$69,839, and a third party on-site representative services contract with Hill International for \$35,000 as a part of this item to supplement the Westside Library Branch Project. Raba Kistner has a Master Service Agreement with the City for materials testing services.

A summary of the total costs requested for approval is provided on the following page.

Cost Summary - Westside Library Branch Project (for 3/8/2021 approval)

Construction - Base Price	\$	3,980,000
Community Garden - Funded by Library Foundation		152,764
Contingency		413,276
Total Construction Contract - Stoddard Construction	\$	4,546,040

Additional Costs

Materials Testing - Raba Kistner	\$	24,960
Impact Fees - NBU		69,839
On-site Rep - Hill International		35,000
Total Additional Costs	\$	129,799

Total requested for approval (3/8/2021) \$ **4,675,839**

At a future regular meeting, staff will bring the remaining additional contracts to City Council associated with this project such as the purchase of furniture, equipment and technology related items once they are ready for recommendation and approval.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

<input checked="" type="checkbox"/>	Yes	City Plan/Council Priority:	Strategic Priorities Infrastructure Objective 3: Implement ongoing program of infrastructure construction and maintenance.
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FISCAL IMPACT:

The proposed contract amounts are within the cost estimates developed for the 2019 bond projects. In addition, the Library Foundation will support the full costs of the community garden. Those funds will be managed and accounted for separate from the other costs associated with this project. Therefore, sufficient funds are available to approve and begin expensing bond proceeds for the expenditures as described above.

COMMITTEE RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff recommends approval of a construction contract with Stoddard Construction Management Inc., a materials testing contract with Raba Kistner, payment to New Braunfels Utilities (NBU) for water and sewer impact fees, a contract with Hill International for on-site Owner's Representative services and authorize the City Manager to execute any change orders up to the contingency amount as part of the 2019 Bond Westside Library Branch Project.

3/8/2021

Agenda Item No. D)

Presenter*Jason Hurta, Councilmember*
*jhurta@nbtexas.org***SUBJECT:**

Discuss and consider the reconsideration of a proposed ordinance to rezone approximately 68.05 acres out of the O. Russell Survey No. 2, Abstract No. 485, located at the northern corner of the intersection of Goodwin Lane and Orion Drive, from "APD" Agricultural/Pre-Development District to "R-1A-4" Single-Family Small Lot Residential and "R3-H" Multifamily High Density District.

BACKGROUND / RATIONALE:

This item has been placed on the agenda for reconsideration at the request of Councilmember Hurta.

Reconsideration Procedure:

At their regular meeting on February 22, 2021, City Council denied the first reading of this requested rezoning (motion to approve failed 2-5).

According to the Code of Ordinances, in order to reconsider the item:

1. Only a Councilmember who originally voted on the prevailing side of this item may make a motion to reconsider. The motion must have a second and be approved by a majority vote.
2. If a motion to reconsider is passed, the City Council may reconsider the original item.

Section 2-38(d) of the Code of Ordinances states: "The motion to reconsider shall be used to reopen discussion for a vote on an item already acted upon. Reconsideration may only occur at the same meeting, or at the next meeting after the one at which the original action occurred. A motion to reconsider may only be made by a member who voted on the prevailing side of the original action. It requires a second, is not amendable, is debatable and requires a majority vote for adoption. The effect of the adoption of the motion to reconsider is immediately to place before the members again the item on which the vote was originally taken. Reconsideration of an item at a subsequent meeting requires the item to be placed on the agenda for that meeting."

Chapter 211 of the Texas Local Government Code, § 211.006 requires notification of rezoning requests appear in a newspaper of general circulation, and §211.007 requires notification of rezoning requests be mailed to owners of property within 200 feet. This statute requires these notifications 16 days and 11 days respectively before the public hearing. If City Council votes to reconsider, the reconsideration of this rezoning request cannot occur until state-mandated notification requirements are met.

Therefore, if City Council votes to reconsider this rezoning request, the case will need to be postponed/continue to a future meeting to allow adequate time to meet the state-mandated notification requirements.

Case No.: PZ20-0329

Council District: 4

Applicant:

Moeller & Associates
2021 SH 46W, Ste. 105

James Ingalls, P.E.

New Braunfels, TX 78132
(830) 358-7127
plats@ma-tx.com

Owner:

EB Industries

Richard Byrd
(251) 510-1118
rbyrd@aspengroverrealty.com

Staff Contact:

Matthew Simmont, AICP
(830) 221-4058
msimmont@nbtexas.org

The approximately 68-acre tract is located north of the intersection of Goodwin Lane and Orion Drive. It is up to approximately 1,200 feet wide and 3,000 feet deep, extending northwest with Orion Drive frontage to Nebel Street and Alster. The unimproved property is in agricultural production, a portion of which lies within the Alligator Creek floodplain. The applicant has indicated they are making this request to allow for a 520-unit residential development.

Surrounding Zoning and Land Use:

North - Alster, Wasser Ranch PD / Local street and railroad

South - Across Goodwin Ln., Oak Creek Estates PD and ZH-A / Single family residences (Creekside Farms and Oak Creek Estates) and Alligator Creek

East - Wasser Ranch PD / Single family residences and Alligator Creek

West - Across Orion Drive, M-1A, MU-B and APD / Duplex residences and a planned manufactured home community.

Determination Factors:

In making a decision on zoning, the following factors are to be considered:

- Whether the permitted uses will be appropriate in the immediate area, and their relationship to the area and to the City as a whole *(R-3H adjacent to this key intersection creates opportunities for encouraged housing variety and density which is generally compatible with the expanding neighborhood of residential use.)*
- Whether the change is in accord with any existing or proposed public schools, streets, water supply, sanitary sewers, and other utilities to the area *(CISD was sent notice of this request. The adequacy of public facilities and utilities to serve the property is evaluated by each provider at the platting and permitting stages.);*
- How other areas designated for similar development will be affected *(The proposed zoning change should not impact other areas designated for similar development.);*
- Any other factors that will substantially affect the public health, safety, morals, or general welfare *(None identified. Drainage, utility and traffic impact issues will be reviewed and addressed through the platting process.);* and
- Whether the request is consistent with the Comprehensive Plan: *see below*

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

City Plan/Council Priority: Envision New Braunfels Comprehensive Plan	Action 1.3: Encourage balanced and fiscally responsible land use patterns. Action 3.13: Cultivate an environment where a healthy mix of different housing products at a range of sizes, affordability, densities, amenities and price points can be provided across the community as well as within individual developments. Future Land Use Plan: The property is situated in the Oak Creek Sub-Area near Existing Employment, Market and Education Centers.
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FISCAL IMPACT:

N/A

COMMITTEE RECOMMENDATION:

The Planning Commission held a public hearing on February 2, 2021 and recommended approval (9-0-0).

STAFF RECOMMENDATION:

Approval. The applicant's proposal to create a residential development with a variety of housing types is consistent with ongoing development in the area, which is transitioning from available industrial opportunities to residential. It is, therefore, supported by the Comprehensive Plan as noted above, as well as the Workforce Housing Study.

Notification:

Public hearing notices were sent to 26 owners of property within 200 feet. The City has received one response (# 16) in objection.

RESOURCE LINKS:

- Chapter 144, Section 3.4-1. *"APD" Agricultural / Pre-Development District* of the City's Code of Ordinances:
https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?
- Chapter 144, Section 3.4-2. *"R-1A-4" Single-Family Small Lot Residential District* of the City's Code of Ordinances:

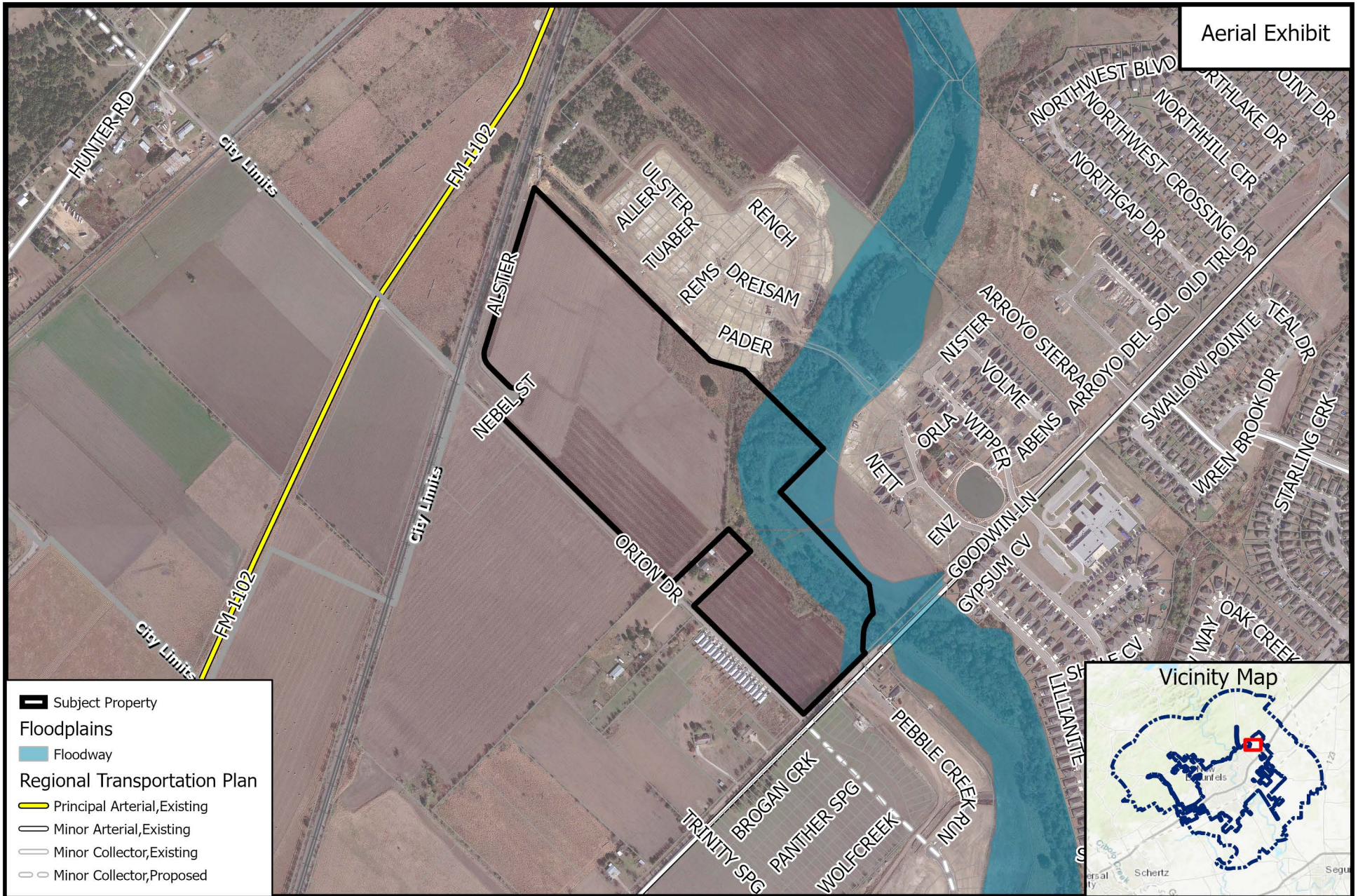
https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?

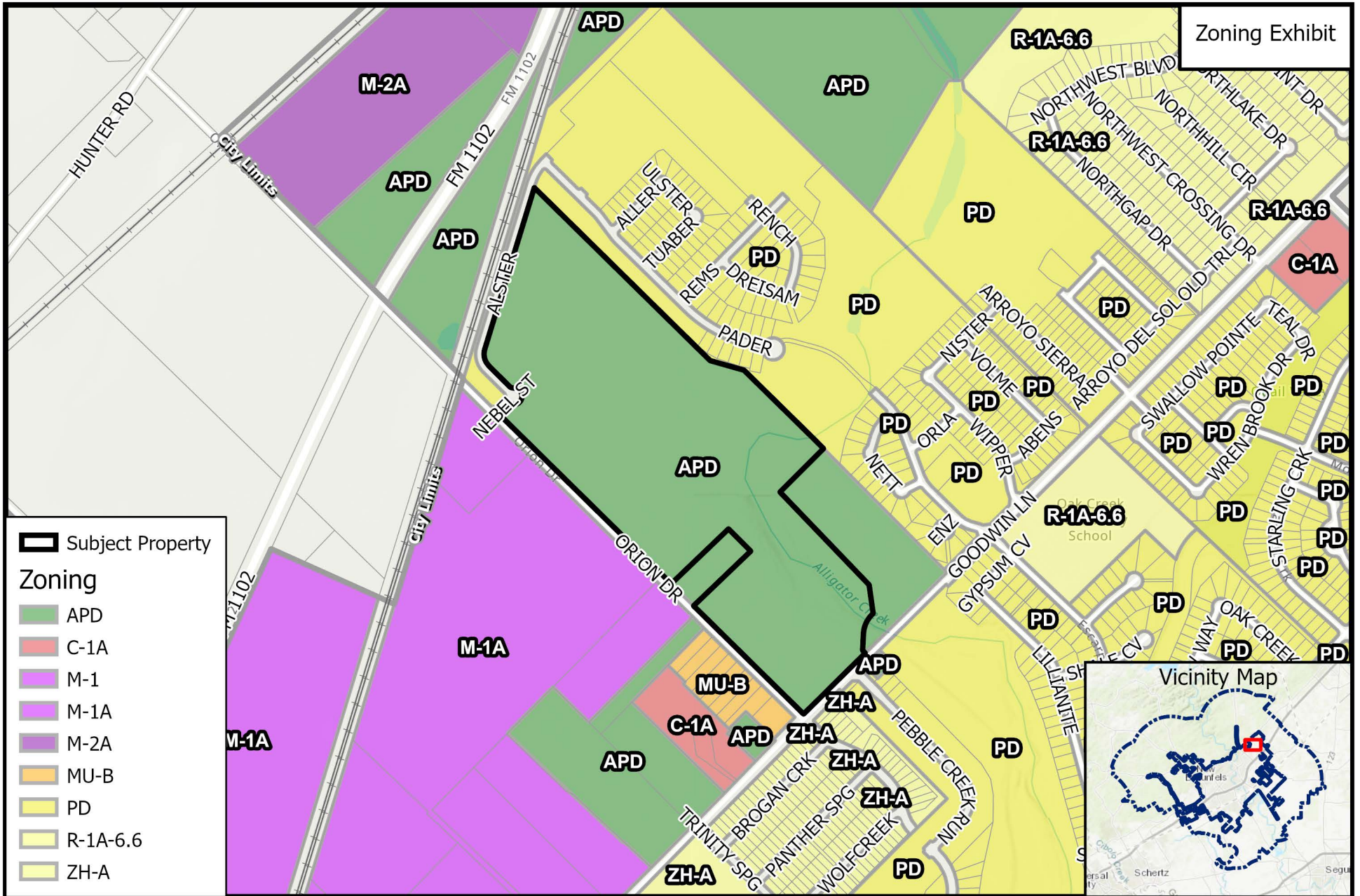
Chapter 144, Section 3.4-5. *"R-3H" Multifamily High Density District* of the City's Code of Ordinances:

https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?

ATTACHMENTS:

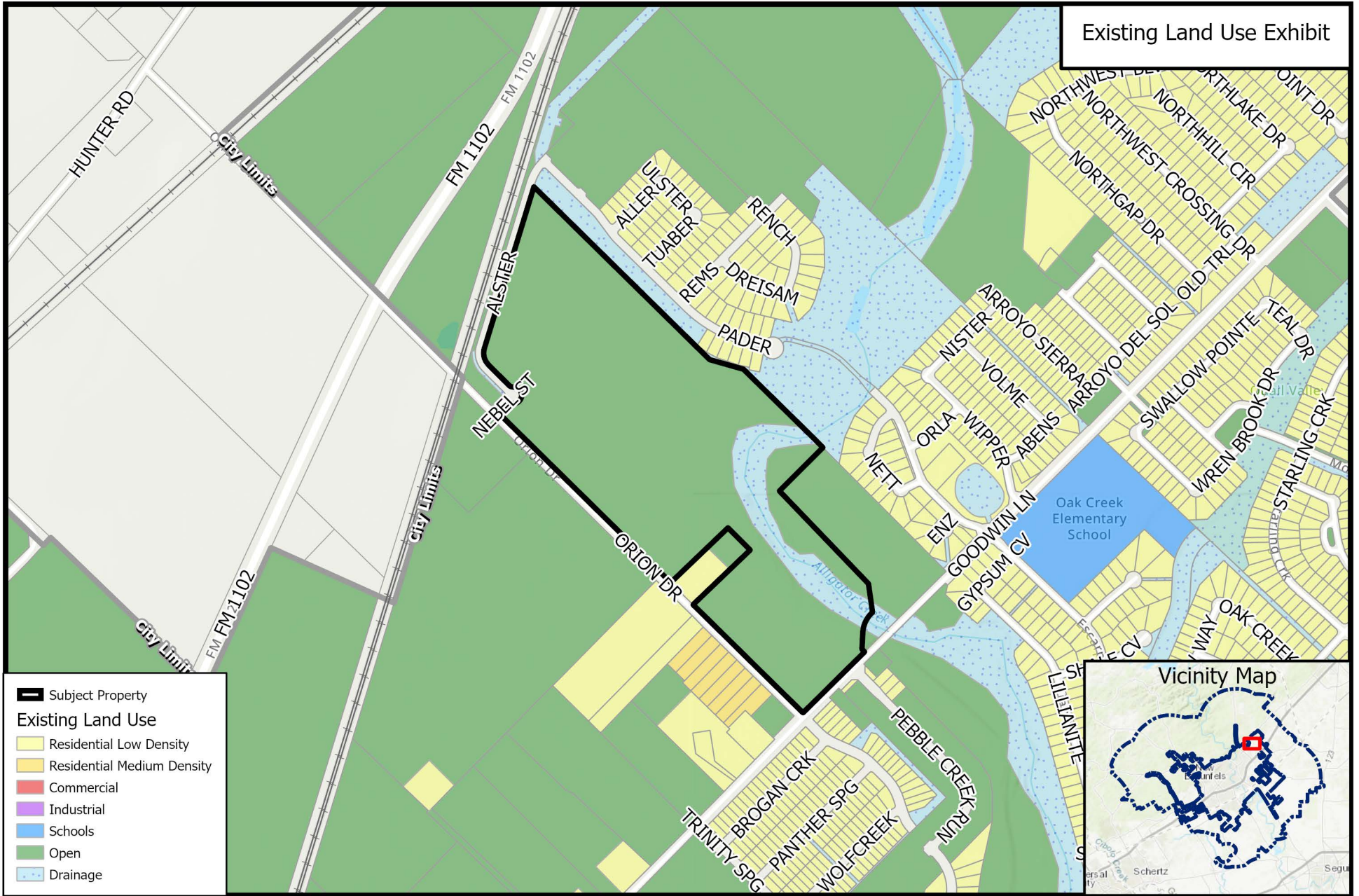
1. Aerial Map
2. Land Use Maps (Zoning, Existing Land Use, Future Land Use Plan)
3. Proposed Zoning Exhibit
4. Notification List, Map and Responses
5. Excerpt of Minutes from the February 2, 2021 Planning Commission Meeting
6. Draft of Ordinance





PZ20-0329
APD to R-1A-4 and R-3H





EXISTING CENTERS

Centers are the middle, core or heart of an area. It is a point of activity and vitality. Centers come in many sizes and have different purposes or activities within. They may have endangered species habitat or aquifer recharge areas that require additional standards and consideration relating to future growth. It is envisioned that all centers be walkable, connected, and have a mix of uses. These centers must provide adequate infrastructure to support the commercial development present especially mobility and access for pedestrians, bicycles, vehicles and transit. Given the mixed-use nature of these centers, parking should be shared and not detract from the aesthetic of the area.

EMPLOYMENT CENTER

Employment Centers are mixed-use areas centered around office or industrial uses that can support significant employment.

MARKET CENTER

Market Centers are mixed-use areas anchored by a retail destination where surrounding residents go to get daily goods and services.

MEDICAL CENTER

Medical Centers are mixed-use areas centered around a medical destination such as a hospital or clinic.

CIVIC CENTER

Civic Centers are mixed-use areas centered around a civic destination such as City Hall, a library or a recreation center.

OUTDOOR RECREATION CENTER

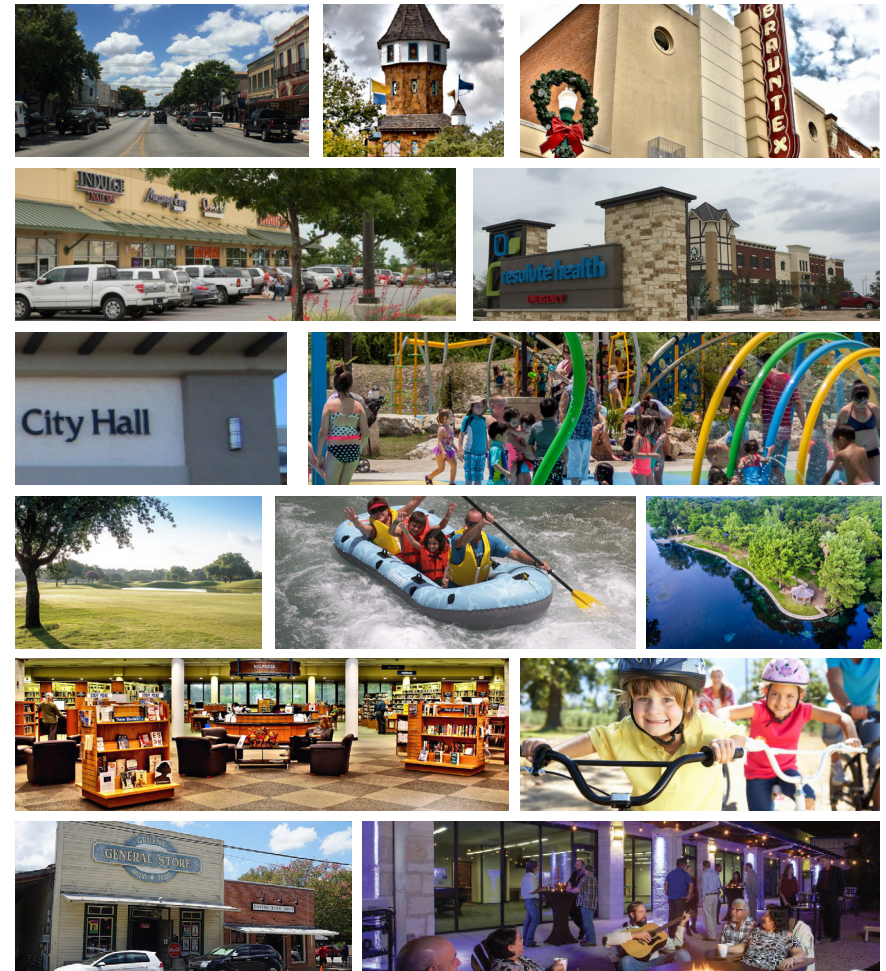
Outdoor Recreation Centers center around a public or private outdoor destination such as Landa Lake.

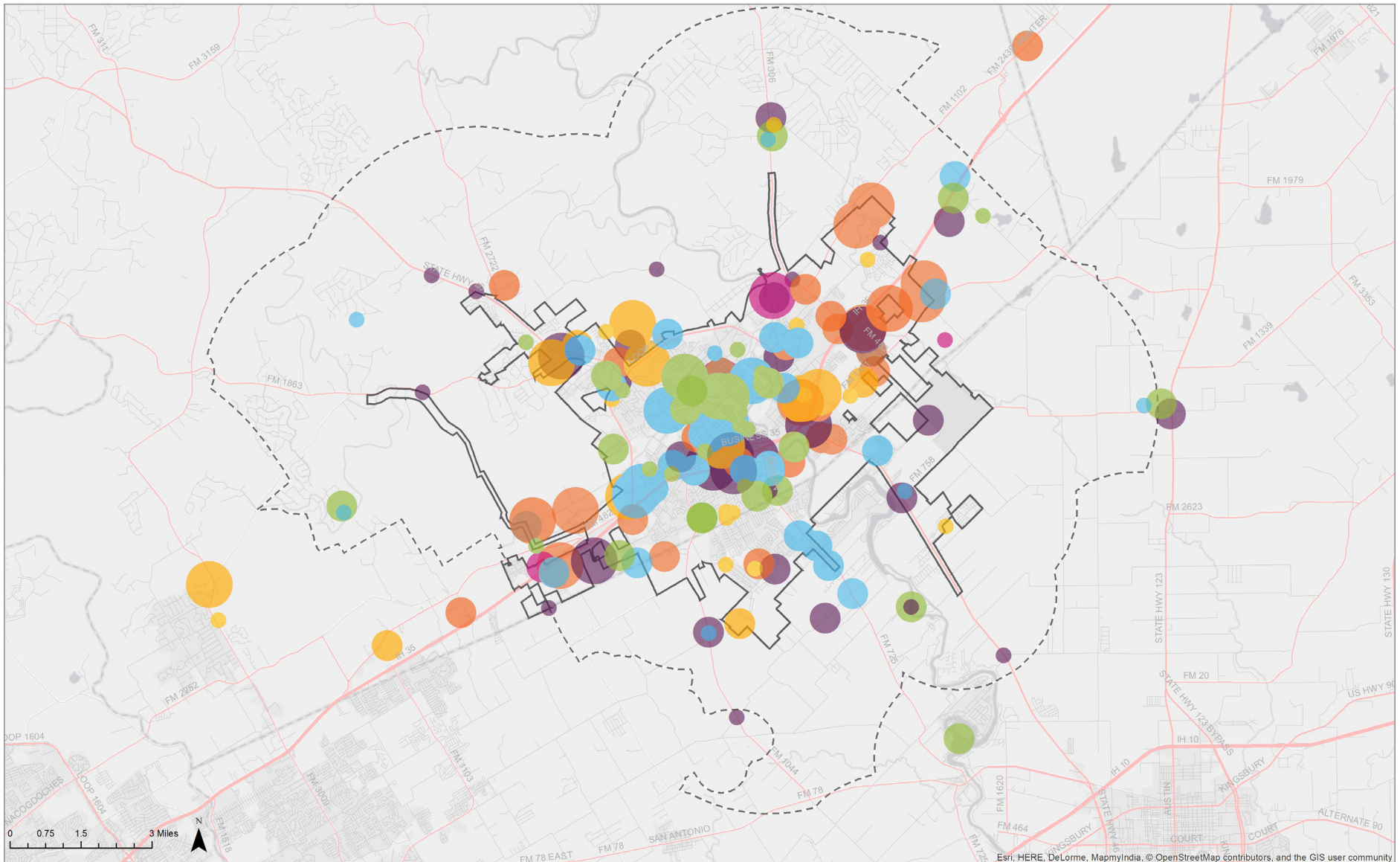
EDUCATION CENTER

Education Centers are mixed-use areas centered around an educational destination such as a K-12 school or university/college.

TOURIST/ENTERTAINMENT CENTER

Tourist/Entertainment Centers are mixed-use areas around an entertainment venue such as Gruene Hall or a tourist destination such as the Tube Chute.





The location of existing centers was determined through the analysis of previous studies and background documents, windshield surveys, and reviewed by City staff, Steering Committee members, and Plan Element Advisory Group members during a public workshop.

FUTURE LAND USE PLAN

A future land use plan is how land is envisioned to be. It establishes priorities for more detailed plans (sub area plans) and for detailed topical plans (such as parks and open spaces, trails and roads). It cannot be interpreted without the goals and actions of Envision New Braunfels.

TRANSITIONAL MIXED-USE CORRIDOR

Transitional Mixed-Use Corridors express an aspiration to retrofit existing auto-dominated retail corridors with a mix of uses and a variety of travel modes over time.

OUTDOOR RECREATION CENTER

Outdoor Recreation Centers are centered around a public or private outdoor destination like Fischer Park.

EMPLOYMENT CENTER

Employment Centers are mixed-use areas centered around office or industrial uses that can support significant employment.

MARKET CENTER

Market Centers are mixed-use areas anchored by a retail destination where surrounding residents go to get daily goods and services.

CIVIC CENTER

Civic Centers are mixed-use areas centered around a civic destination such as City Hall, a library or a recreation center.

SUB AREA 1

Sub Area 1 includes the Downtown, Gruene and the Mid-Century or older neighborhoods that surround them. It is home to the natural springs and headwaters of flowing rivers that have attracted New Braunfelsers to the town for centuries.

SUB AREA 2

Sub Area 2 refers to the neighborhoods and residential enclaves that have grown alongside the Hill Country landscape.

SUB AREA 3

Sub Area 3 includes a planned community offering a diversity of housing, distinct community centers and preserved Hill Country landscape features.

SUB AREA 4

At the heart of Sub Area 4 is Fischer Park. Proximity to IH-35, downtown and neighboring communities like McQueeney makes this area highly desirable and accessible.

SUB AREA 5

Sub Area 5 bridges together many communities east of IH-35. It includes the scenic landscape along both banks of the Guadalupe River between Highway 46 and FM 725.

SUB AREA 6

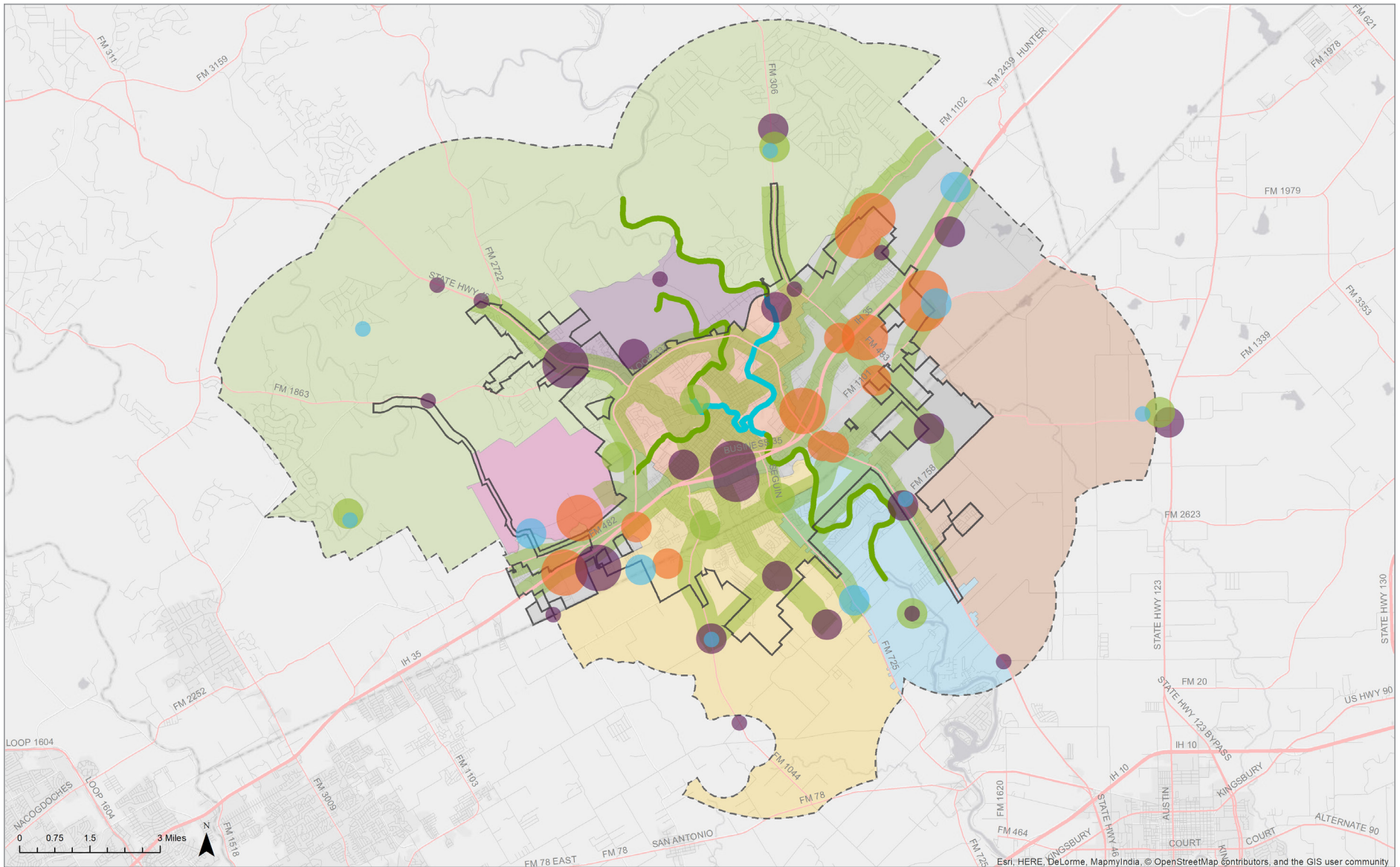
Sub Area 6 expresses an aspiration for conservation communities focused around maintaining and enhancing ecological integrity while allowing some level of development to occur.

SUB AREA 7

Sub Area 7 includes parts of the city currently being mined for natural resources. These sites may become parks and open space, mixed-use communities or new commercial or entertainment areas in the future.

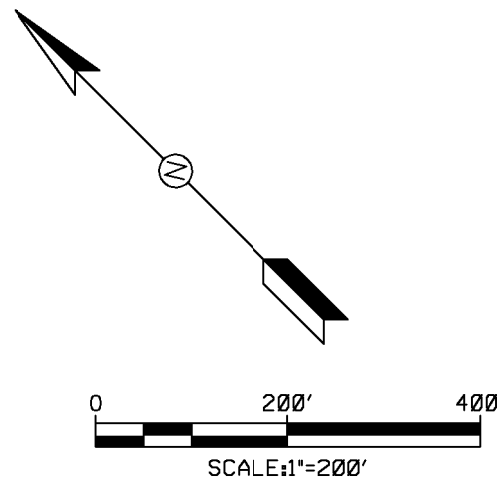
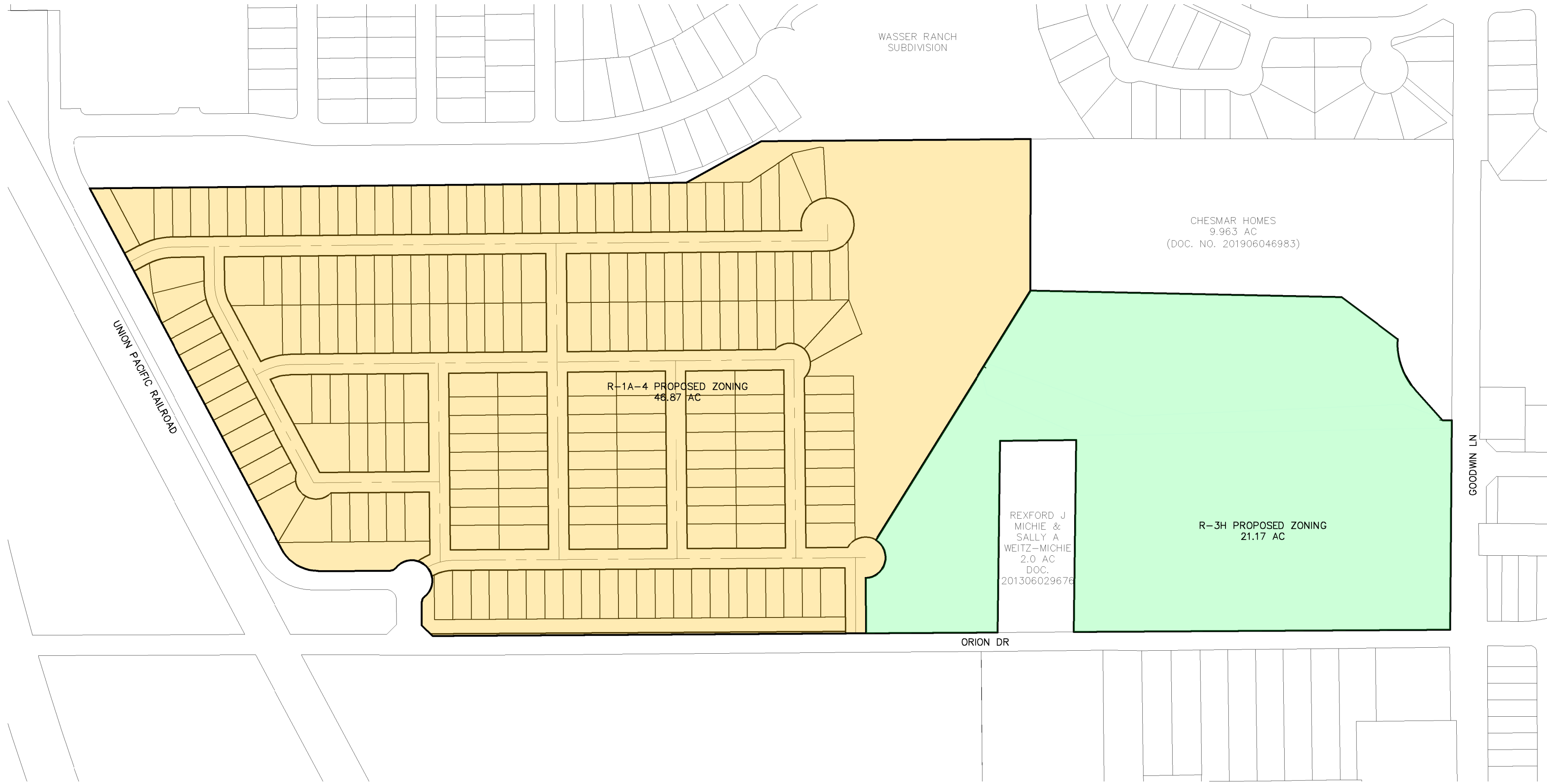
SUB AREA 8

This fast-growing Sub Area includes many neighborhoods offering affordable places for young families to live.



A Comprehensive Plan shall not constitute zoning regulations or establish zoning district boundaries. Preferred future growth scenario combines Scenarios A and C per recommendations of the Envision New Braunfels Steering Committee (February 2018). Exact boundaries of sub areas, centers, and corridors may be [zoomed and viewed online](#).

Drawing Name: N:\Projects\ASGROD\ Goodwin 69ac Tract Unit 1 and 2\Civil\Exhibits\Zoning Exhibit.dwg User: Molokanovs Feb 08, 2021 - 10:20am



LEGEND



R-1A-4 PROPOSED ZONING



R-3H PROPOSED ZONING



THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF INTERIM REVIEW UNDER THE AUTHORITY OF JAMES INGALLS, P.E. #107416 ON February 8, 2021. IT IS TO BE USED FOR BIDDING AND PERMITTING PURPOSES ONLY. NOT TO BE USED FOR CONSTRUCTION.

NO. DATE ISSUES AND REVISIONS

**MOELLER & ASSOCIATES**
Engineering Solutions
2021 W SH446, STE 105, NEW BRAUNFELS, TX. 78132
PH: 830-358-7127 www.ma-tx.com
TBPE FIRM F-13351

ZONING EXHIBIT

GOODWIN LN 69 AC TRACT
NEW BRAUNFELS, TEXAS

SHEET
EX
OF 1

PLANNING COMMISSION – FEBRUARY 2, 2021 – 6:00PM

Zoom Meeting

Applicant/Owner: James Ingalls, P.E.

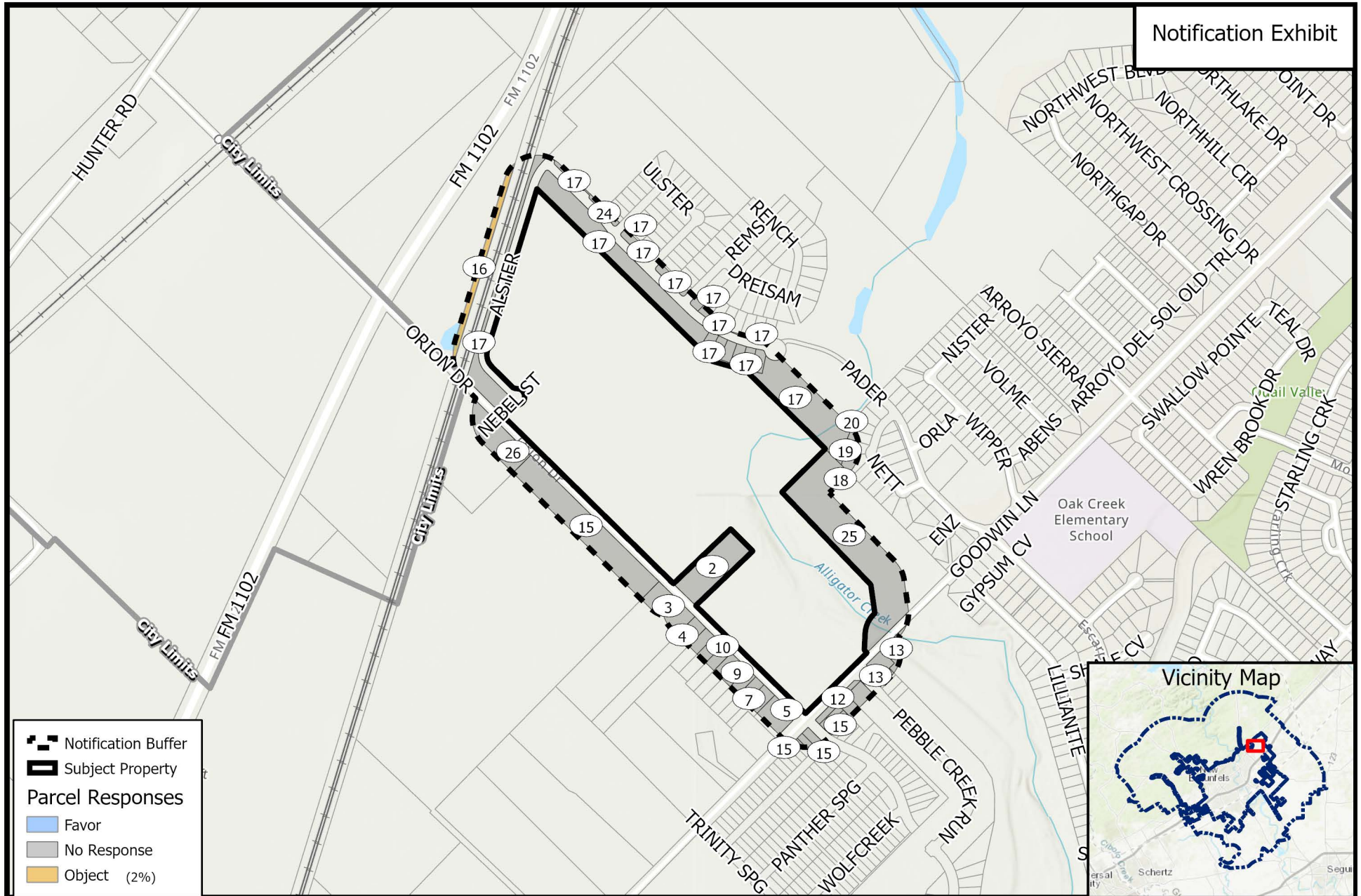
Address/Location: Intersection of Orion Dr & Goodwin Ln

PROPOSED ZONE CHANGE – CASE #PZ20-0329

The circled numbers on the map correspond to the property owners listed below. All information is from the Appraisal District Records. The property under consideration is marked as “Subject Property”.

- | | |
|--|---|
| 1. MARIPOSA HOLDINGS LLC | 14. FRECH MARY E |
| 2. MICHIE REXFORD J & SALLY A WEITZ-
MICHIE | 15. PROPERTY OWNERS |
| 3. WHIPKEY ROBERT D & PAULA J | 16. ROW JOHNNIE F |
| 4. SEBA PETER E | 17. CHESMAR HOMES CT LTD |
| 5. REVIVE NEW BRAUNFELS MINISTRIES | 18. FEATHERSTON DONALD C |
| 6. KOCH WAYLON | 19. ROGERS MELISSA J & CHRISTOPHER N |
| 7. WILLIAMS MARK E & TERRY K | 20. RICHARDSON NANCY C |
| 8. JMH FAMILY HOLDINGS LLC | 21. HORTON CAPITAL PROPERTIES LLC |
| 9. SCHEEL SHAWN | 22. CASARES PAUL & CASANDRA R |
| 10. KOEHN N MICAH | 23. TRUESDELL ESSENCE M & NOLAN A |
| 11. SADDLER DAVID L & CRYSTAL M SADDLER | 24. DE LA CRUZ CHRISTOPHER M & MICHELLE F |
| 12. IVY B SCHLICHTING PROP II LTD | 25. CHESMAR HOMES LLC |
| 13. CONTINENTAL HOMES OF TEXAS LP | 26. SCHMIDT KENNETH W |

SEE MAP



YOUR OPINION MATTERS - DETACH AND RETURN

Case: #PZ20-0329 ms

RECEIVED

FEB 12 2021

Name: Johnnie F Row

I favor: _____

Address: 1383 Hillcrest Dr

I object: ☒ (State reason for objection) RV

Property number on map: 16

Comments: (Use additional sheets if necessary)

1. I don't like the small lot word! Most small lots have no room for cars, children area. Some on Goodwin Lane are a good example. Also there is the possibility of flooding in this area. No playgrounds or trails for children or adults!
Signature: Johnnie F Row
P.S. I have picture of past flooding!

Draft Minutes for the February 2, 2021 Planning Commission Regular Meeting

E) PZ20-0329 Public hearing and recommendation to City Council regarding a proposed rezoning of approximately 68.05 acres out of the O. Russell Survey No. 2, Abstract No. 485, located at the northern corner of the intersection of Goodwin Lane and Orion Drive, from “APD” Agricultural/Pre-Development District to “R-1A” Single-Family Small Lot Residential and “R3-H” Multifamily High Density District. Applicant: James Ingalls, P.E.; Owner: EB Industries (Richard Byrd); Case Manager: Matthew Simmont.

Mr. Simmont presented and recommended approval with conditions as listed in the staff report.

Chair Edwards asked if there were any questions for staff.

Chair Edwards asked if the applicant would like to speak.

James Ingalls, 2021 St Hwy 46, Moeller and Associates, provided clarification on the request.

Richard Baird, CRE Analyst, 8309 Chadbourne Rd, stated they can answer any further questions or concerns from the Commission.

Chair Edwards opened the public hearing and asked if anyone wished to speak.

Amy Gusman, 3015 Shell Cove, asked how many units are proposed in the multifamily area and stated concerns over the character of the neighborhood.

Discussion followed.

Chair Edwards closed the public hearing.

Chair Edwards asked if there were any further questions or a motion.

Motion by Commissioner Gibson, seconded by Vice Chair Laskowski, to recommend approval to City Council of the proposed rezoning of approximately 68.05 acres out of the O. Russell Survey No. 2, Abstract No. 485, located at the northern corner of the intersection of Goodwin Lane and Orion Drive, from “APD” Agricultural/Pre-Development District to “R-1A” Single-Family Small Lot Residential and “R3-H” Multifamily High Density District with staff recommendations.

Discussion followed on clarification of the purview being considered.

Motion carried (9-0-0).

ORDINANCE NO. 2021-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS REZONING APPROXIMATELY 68 ACRES OUT OF THE ORILLA RUSSELL SURVEY NO. 2, ABSTRACT 485, FROM “APD” AGRICULTURAL / PRE-DEVELOPMENT DISTRICT TO “R-1A-4” SINGLE FAMILY SMALL LOT RESIDENTIAL DISTRICT AND “R-3H” MULTIFAMILY HIGH DENSITY DISTRICT; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SAVINGS CLAUSE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of New Braunfels has complied with all requirements of notice of public hearing as required by the Zoning Ordinance of the City of New Braunfels; and

WHEREAS, in keeping with the spirit and objectives of the “R-1A-4” Single Family Small Lot Residential District and the “R-3H” Multifamily High Density District, the City Council has given due consideration to all components of said districts; and

WHEREAS, it is the intent of the City Council to provide harmony between existing zoning districts and proposed land uses; and

WHEREAS, the requested rezoning is in accordance with Envision New Braunfels, the City’s Comprehensive Plan; and

WHEREAS, the City Council desires to amend the Zoning Map by rezoning approximately 68 acres out of the Orilla Russell Survey No. 2, Abstract 485, from “APD” Agricultural / Pre-Development District to “R-1A-4” Single Family Small Lot Residential District and “R-3H” Multifamily High Density District; **now, therefore;**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

SECTION 1

THAT pursuant to Section 1.2-3, Chapter 144 of the New Braunfels Code of Ordinances, the Zoning Map of the City of New Braunfels is revised by rezoning the following described tracts of land from “APD” to:

“R-1A-4” Single Family Small Lot Residential District (Tract 1): 46.871 acres out of the Orilla Russell Survey No. 2, Abstract 485, as illustrated in Exhibit “A” and described in Exhibit “B”, attached; and

“R-3H” Multifamily High Density District (Tract 2): 21.173 acres out of the Orilla Russell Survey No. 2, Abstract 485, as illustrated in Exhibit “A” and described in Exhibit

“C”, attached.

SECTION 2

THAT all provisions of the Code of Ordinances of the City of New Braunfels not herein amended or repealed shall remain in full force and effect.

SECTION 3

THAT all other ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent that they are in conflict.

SECTION 4

THAT if any provisions of this ordinance shall be held void or unconstitutional, it is hereby provided that all other parts of the same which are not held void or unconstitutional shall remain in full force and effect.

SECTION 5

THIS ordinance will take effect upon the second and final reading in accordance with the provisions of the Charter of the City of New Braunfels.

PASSED AND APPROVED: First reading this 22nd day of February, 2021.

PASSED AND APPROVED: Second reading this 8th day of March, 2021.

CITY OF NEW BRAUNFELS

RUSTY BROCKMAN, Mayor

ATTEST:

CAITLIN KROBOT, Assistant City Secretary

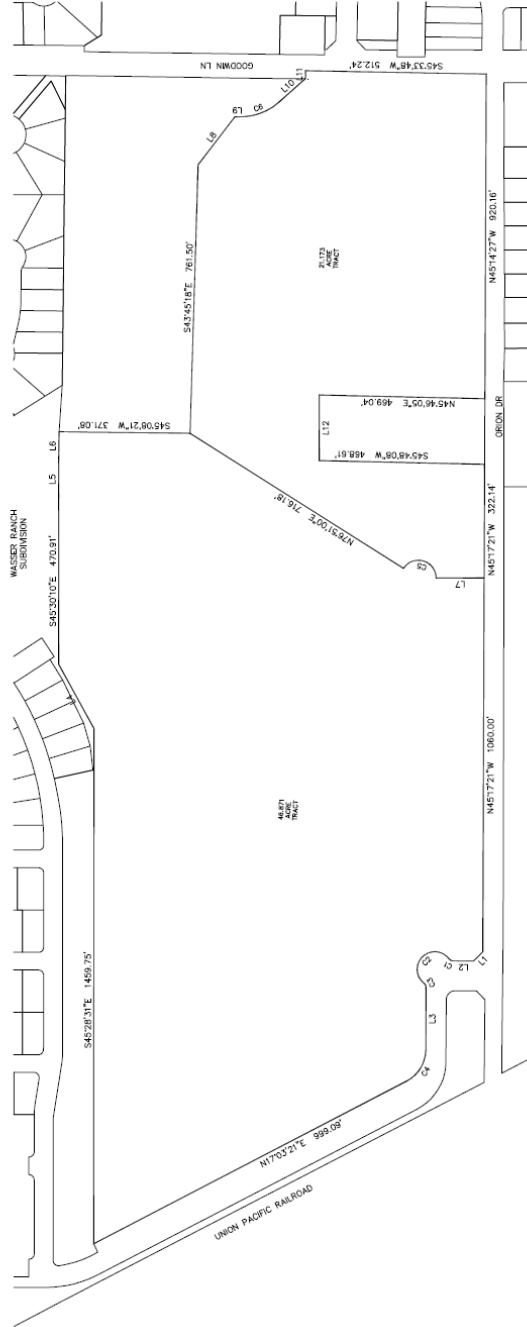
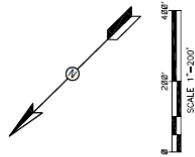
APPROVED AS TO FORM:

VALERIA M. ACEVEDO, City Attorney

EXHIBIT "A"

3

ZONING EXHIBIT



CURVE	LENGTH	RADIUS	DELTA	TANGENT	CHORD LENGTH	CHORD BEARING
C1	13.53	15.00	53°11'07"	7.51	13.43	N79°43'37"E
C2	170.89	50.00	185°47'46"	36.45	99.07	N03°07'09"W
C3	13.85	15.00	50°46'29"	7.45	13.34	N71°58'23"W
C4	109.67	105.00	87°22'22"	60.94	104.35	N43°02'21"W
C5	128.10	50.00	147°56'21"	174.02	96.11	N69°40'09"E
C6	121.86	165.00	47°16'20"	63.86	119.11	S34°22'27"W

LINE	LENGTH	BEARING
L1	36.82	S00°00'49"W
L2	52.97	N44°09'50"E
L3	178.47	N45°13'05"W
L4	208.22	S74°08'50"E
L5	107.27	S40°31'12"E
L6	86.68	S44°46'50"E
L7	136.30	N44°38'19"E
L8	177.03	S07°06'17"E
L9	12.39	S43°09'46"W
L10	100.00	S03°00'11"W
L11	22.63	S44°33'47"E
L12	160.80	N45°26'50"W

MOELLER & ASSOCIATES
 Surveyors
 2021, S.W. 46th, Suite 105
 New Braunfels, TX 78132
 P: (830) 258-7127
 www.m-a-s.com TBE FIRM F-13351



METES AND BOUNDS DESCRIPTION
FOR A
46.871 ACRE TRACT OF LAND
“ZONING”

BEING a 46.871 acre tract of land situated in the Orilla Russell Survey No. 2, Abstract No. 485, in the City of New Braunfels, Comal County, Texas, being a portion of the remaining portion of a called 100.0 acre tract of land, as conveyed to EB Industries, Inc., and recorded in Document No. 202006000300, of the Official Public Records of Comal County, Texas, and said 46.871 acre tract of land being more particularly described by metes and bounds as follows:

COMMENCING at a ½” iron pin with yellow cap found in the Northeasterly Right-of-Way (R.O.W.) line of Orion Drive (a variable width R.O.W.), being the most Southwesterly corner of a called 2.00 acre tract of land, as conveyed to Rexford J. Michie, and recorded in Document No. 201306029676, of the Official Public Records of Comal County, Texas, and being a Southwesterly corner of the remaining portion of said 100.0 acre tract of land;

THENCE with the Northeasterly R.O.W. line of said Orion Drive, and with the Southwesterly line of the remaining portion of said 100.0 acre tract of land, N 45° 17' 21" W, a distance of 322.14 feet to a point in the Northeasterly R.O.W. line of said Orion Drive, being in the Southwesterly line of the remaining portion of said 100.0 acre tract of land, and being the most Southerly corner of this herein described tract of land and the POINT OF BEGINNING;

THENCE continuing with the Northeasterly R.O.W. line of said Orion Drive, and with the Southwesterly line of the remaining portion of said 100.0 acre tract of land, N 45° 17' 21" W, a distance of 1,060.00 feet to a point at the Southerly end of a cutback line between the Northeasterly R.O.W. line of said Orion Drive and the Southeasterly R.O.W. line of Nebel Street (a 50' wide R.O.W.), and being a Westerly corner of the remaining portion of said 100.0 acre tract of land and this herein described tract of land;

THENCE departing the Northeasterly R.O.W. line of said Orion Drive, with the cutback line between the Northeasterly R.O.W. line of said Orion Drive and the Southeasterly R.O.W. line of said Nebel Street, and with the Westerly line of the remaining portion of said 100.0 acre tract of land, N 00° 00' 46" W, a distance of 36.82 feet to a point in the Southeasterly R.O.W. line of said Nebel Street, and being a Westerly corner of the remaining portion of said 100.0 acre tract of land and this herein described tract of land;

THENCE continuing with the Southeasterly R.O.W. line of said Nebel Street, and with the Westerly line of the remaining portion of said 100.0 acre tract of land, N 44° 59' 36" E, a distance of 57.57 feet to a point in the Southeasterly R.O.W. line of said Nebel Street, being at the beginning of a curve to the right, and being a Westerly corner of the remaining portion of said 100.0 acre tract of land and this herein described tract of land;

THENCE continuing with the Southeasterly R.O.W. line of said Nebel Street, same being the Westerly line of the remaining portion of said 100.0 acre tract of land, and with said curve to the right, having an arc length of 13.93 feet, a radius of 15.00 feet, a delta angle of 53° 11' 07", a tangent length of 7.51 feet, and a chord bearing and distance of N 70° 43' 37" E, 13.43 feet to a point at the beginning of a reverse transition cul-de-sac curve to the left between the Southeasterly R.O.W. line of said Nebel Street and the Northeasterly R.O.W. line of Alster (a 50' wide R.O.W.), and being a Westerly corner of the remaining portion of said 100.0 acre tract of land and this herein described tract of land;

EXHIBIT “B”

THENCE with the Northwestern line of the remaining portion of said 100.0 acre tract of land, and with said transition cul-de-sac curve to the left, between the Southeasterly R.O.W. line of said Nebel Street and the Northeasterly R.O.W. line of said Alster, having an arc length of 170.89 feet, a radius of 50.00 feet, a delta angle of $195^{\circ} 47' 49''$, a tangent length of 360.45 feet, and a chord bearing and distance of $N 00^{\circ} 07' 09'' W$, 99.07 feet to a point in the Northeasterly R.O.W. line of said Alster, being a Westerly corner of the remaining portion of said 100.0 acre tract of land, and being at the beginning of a reverse curve to the right;

THENCE with the Northeasterly R.O.W. line of said Alster, same being a Westerly line of the remaining portion of said 100.0 acre tract of land, and with said curve to the right, having an arc length of 13.83 feet, a radius of 15.00 feet, a delta angle of $52^{\circ} 48' 29''$, a tangent length of 7.45 feet, and a chord bearing and distance of $N 71^{\circ} 38' 21'' W$, 13.34 feet to a point in the Northeasterly R.O.W. line of said Alster, and being a Westerly corner of the remaining portion of said 100.0 acre tract of land and this herein described tract of land;

THENCE continuing with the Northeasterly R.O.W. line of said Alster, and with the Westerly line of the remaining portion of said 100.0 acre tract of land, $N 45^{\circ} 11' 03'' W$, a distance of 176.47 feet to a point in the Northeasterly R.O.W. line of said Alster, being a Westerly corner of the remaining portion of said 100.0 acre tract of land, and being at the beginning of a curve to the right;

THENCE continuing with the Northeasterly R.O.W. line of said Alster, same being the Westerly line of the remaining portion of said 100.0 acre tract of land, and with said curve to the right, having an arc length of 109.67 feet, a radius of 101.01 feet, a delta angle of $62^{\circ} 12' 22''$, a tangent length of 60.94 feet, and a chord bearing and distance of $N 14^{\circ} 02' 21'' W$, 104.36 feet to a point in the Easterly R.O.W. line of said Alster, and being a Westerly corner of the remaining portion of said 100.0 acre tract of land and this herein described tract of land;

THENCE with the Easterly R.O.W. line of said Alster, and with the Westerly line of the remaining portion of said 100.0 acre tract of land, $N 17^{\circ} 03' 21'' E$, a distance of 999.09 feet to a point in the Easterly R.O.W. line of said Alster, being the most Westerly Northwest corner of Lot 900 (Private Open Space/ Drainage/ Public Utility Easement), Block 15, Wasser Ranch, Unit-2 Subdivision, as recorded in Document No. 201906036500, of the Map and Plat Records of Comal County, Texas, and being the most Northerly Northwest corner of the remaining portion of said 100.0 acre tract of land and this herein described tract of land;

THENCE departing the Easterly R.O.W. line of said Alster, with the Southwesterly line of said Lot 900, the Southwesterly line of Lot 902 (Private Open Space/ Drainage/ Pedestrian Access Easement), Block 5, of said Wasser Ranch, Unit-2 Subdivision, and with the Northeasterly line of the remaining portion of said 100.0 acre tract of land, $S 45^{\circ} 28' 31'' E$, a distance of 1,459.75 feet to a point for a Southwesterly corner of said Lot 902, and being a Northeasterly corner of the remaining portion of said 100.0 acre tract of land and this herein described tract of land;

THENCE with the common line between said Lot 902 and the remaining portion of said 100.0 acre tract of land, $S 74^{\circ} 08' 39'' E$, a distance of 208.23 feet to a point for a Southwesterly corner of said Lot 902, and being a Northeasterly corner of the remaining portion of said 100.0 acre tract of land and this herein described tract of land;

THENCE continuing with the common line between said Lot 902 and the remaining portion of said 100.0 acre tract of land, the following courses:

$S 45^{\circ} 30' 10'' E$, a distance of 470.91 feet to a point for a Southeasterly corner;

$S 45^{\circ} 31' 11'' E$, a distance of 107.27 feet to a point for a Southeasterly corner;

THENCE continuing with the common line between said Lot 902 and the remaining portion of said 100.0 acre tract of land, $S 44^{\circ} 46' 50'' E$, a distance of 80.68 feet to a point in the Southwesterly line of said Lot 902, being the most Northerly corner of a called 9.963 acre tract of land, as conveyed to Chesmar Homes, LLC, and recorded in Document No. 201906046983, of the Official Public Records of Comal County, Texas, and being a Southeasterly corner of the remaining portion of said 100.0 acre tract of land and this herein described tract of land;

THENCE departing the Southwesterly line of said Lot 902, and with the common line between said 9.963 acre tract of land and the remaining portion of said 100.0 acre tract of land, S 45° 08' 21" W, a distance of 371.08 feet to a point for the most Westerly corner of said 9.963 acre tract of land, being a Southeasterly corner of the remaining portion of said 100.0 acre tract of land, and being a Southeasterly corner of this herein described tract of land;

THENCE departing the common line between said 9.963 acre tract of land and the remaining portion of said 100.0 acre tract of land, and across and through the remaining portion of said 100.0 acre tract of land, the following courses:

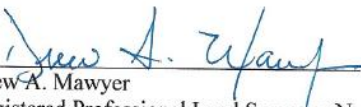
S 76° 51' 00" W, a distance of 716.18 feet to a point for a Southerly corner, and being at the beginning of a curve to the right;

With said curve to the right, having an arc length of 129.10 feet, a radius of 50.00 feet, a delta angle of 147° 56' 21", a tangent length of 174.02 feet, and a chord bearing and distance of S 60° 40' 06" W, 96.11 feet to a point for a Southerly corner;

THENCE continuing across and through the remaining portion of said 100.0 acre tract of land, S 44° 38' 16" W, a distance of 136.35 feet to the POINT OF BEGINNING, and containing 46.871 acres of land, more or less.

Bearings based on the Texas State Plane Coordinate System, Texas South Central Zone (4204), North American Datum 1983.

"This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared."


Drew A. Mawyer
Registered Professional Land Surveyor No. 5348
TBPLS Firm Registration #10191500
5151 W. SH 46, NEW BRAUNFELS, TX 78132
MOE426- ORION 1102- 46.871 AC- 020121





METES AND BOUNDS DESCRIPTION
FOR A
21.173 ACRE TRACT OF LAND
"ZONING"

BEING a 21.173 acre tract of land situated in the Orilla Russell Survey No. 2, Abstract No. 485, in the City of New Braunfels, Comal County, Texas, being a portion of the remaining portion of a called 100.0 acre tract of land, as conveyed to EB Industries, Inc., and recorded in Document No. 202006000300, of the Official Public Records of Comal County, Texas, and said 21.173 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a ½" iron pin with yellow cap found in the Northeasterly Right-of-Way (R.O.W.) line of Orion Drive (a variable width R.O.W.), being the most Southwesterly corner of a called 2.00 acre tract of land, as conveyed to Rexford J. Michie, and recorded in Document No. 201306029676, of the Official Public Records of Comal County, Texas, and being a Southwesterly corner of this herein described tract of land;

THENCE with the Northeasterly R.O.W. line of said Orion Drive, and with the Southwesterly line of the remaining portion of said 100.0 acre tract of land, N 45° 17' 21" W, a distance of 322.14 feet to a point in the Northeasterly R.O.W. line of said Orion Drive, being in the Southwesterly line of the remaining portion of said 100.0 acre tract of land, and being the most Westerly corner of this herein described tract of land;

THENCE departing the Northeasterly R.O.W. line of said Orion Drive, same being the Southwesterly line of the remaining portion of said 100.0 acre tract of land, and across and through the remaining portion of said 100.0 acre tract of land, the following courses:

N 44° 38' 16" E, a distance of 136.35 feet to a point for a Northwesterly corner, and being at the beginning of a curve to the left;

With said curve to the left, having an arc length of 129.10 feet, a radius of 50.00 feet, a delta angle of 147° 56' 21", a tangent length of 174.02 feet, and a chord bearing and distance of N 60° 40' 06" E, 96.11 feet to a point for a Northwesterly corner;

THENCE continuing across and through the remaining portion of said 100.0 acre tract of land, N 76° 51' 00" E, a distance of 716.18 feet to a point for the most Westerly corner of a called 9.963 acre tract of land, as conveyed to Chesmar Homes, LLC, and recorded in Document No. 201906046983, of the Official Public Records of Comal County, Texas, being a Southeasterly corner of the remaining portion of said 100.0 acre tract of land and being the most Northerly corner of this herein described tract of land;

THENCE with the common line between the remaining portion of said 100.0 acre tract of land and said 9.963 acre tract of land, the following courses:

S 43° 45' 18" E, a distance of 761.50 feet to a point for an Easterly corner;

S 07° 58' 57" E, a distance of 171.03 feet to a point for an Easterly corner, and being at the beginning of a curve to the left;

EXHIBIT "C"

With said curve to the left, having an arc length of 121.86 feet, a radius of 165.02 feet, a delta angle of $42^{\circ} 18' 35''$, a tangent length of 63.86 feet, and a chord bearing and distance of $S 24^{\circ} 12' 27'' W$, 119.11 feet to a point for an Easterly corner;

$S 03^{\circ} 00' 11'' W$, a distance of 101.05 feet to a point for an Easterly corner;

THENCE continuing with the common line between the remaining portion of said 100.0 acres and said 9.963 acre tract of land, $S 44^{\circ} 33' 47'' E$, a distance of 22.63 feet to a point in the Northwestern R.O.W. line of Goodwin Lane (a variable width R.O.W.), being the most Southerly corner of said 9.963 acre tract of land, and being the most Easterly Southeast corner of the remaining portion of said 100.0 acre tract of land and this herein described tract of land;

THENCE with the Northwestern R.O.W. line of said Goodwin Lane, and with the Southeasterly line of the remaining portion of said 100.0 acre tract of land, $S 45^{\circ} 33' 48'' W$, a distance of 512.24 feet to a point at the intersection of the Northwestern R.O.W. line of said Goodwin Lane and the Northeasterly R.O.W. line of said Orion Drive, and being the most Southerly Southeast corner of the remaining portion of said 100.0 acre tract of land and this herein described tract of land;

THENCE with the Northeasterly R.O.W. line of said Orion Drive, and with the Southwesterly line of the remaining portion of said 100.0 acre tract of land, $N 45^{\circ} 14' 27'' W$, a distance of 920.16 feet to a point in the Northeasterly R.O.W. line of said Orion Drive, being the most Southerly Southwest corner of aforementioned 2.00 acre tract of land, and being a Southwesterly corner of the remaining portion of said 100.0 acre tract of land and this herein described tract of land;

THENCE departing the Northeasterly R.O.W. line of said Orion Drive, and with the common line between the remaining portion of said 100.0 acre tract of land and said 2.00 acre tract of land, the following courses:

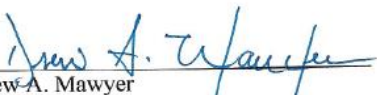
$N 45^{\circ} 46' 05'' E$, a distance of 469.04 feet to a point for a Northwestern interior corner;

$N 45^{\circ} 26' 35'' W$, a distance of 185.80 feet to a point for a Northwestern interior corner;

THENCE continuing with the common line between the remaining portion of said 100.0 acre tract of land and said 2.00 acre tract of land, $S 45^{\circ} 48' 08'' W$, a distance of 468.61 feet to the POINT OF BEGINNING, and containing 21.173 acres of land, more or less.

Bearings based on the Texas State Plane Coordinate System, Texas South Central Zone (4204), North American Datum 1983.

"This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared."


Drew A. Mawyer
Registered Professional Land Surveyor No. 5348
TBPLS Firm Registration #10191500
5151 W. SH 46, NEW BRAUNFELS, TX 78132
MOE426-ORION 1102-21.173 AC- 020121



3/8/2021

Agenda Item No. E)

Presenter

Christopher J. Looney, AICP, Planning and Development Services Director
clooney@nbtexas.org

SUBJECT:

Public hearing and first reading of proposed amendments to Chapter 6, Animals, related to tethering, keeping of rabbits, general standards of pet care, and penalties, as recommended by the Animal Services Advisory Board.

BACKGROUND / RATIONALE:

Council District: All

Staff Contact: Bryan Ruiz, Neighborhood Services Manager
(830) 221-4073
bruiz@nbtexas.org

Chapter 6 of the City's Code of Ordinances includes standards for the care and treatment of pets and animals in New Braunfels. State of Texas statutes include minimal standards that the City of New Braunfels codified initially in 1961. Amendments over the years have built upon those minimum state standards to meet the community's local desires and goals for animal care. The Animal Services Advisory Board (ASAB) has considered a collection of additional amendments over the last year:

Tethering

In response to calls for service, Animal Control staff periodically encounter instances of dogs being chained or tied up at the bare minimum of three feet. Such a limited tether length not only limits a dog's radius of movement, but sometimes puts shade, shelter and even food and water out of reach. Amendments were drafted to provide standards for tethering to ensure a pet's health and safety.

Rabbits

Historically, New Braunfels' rules have been very limiting on rabbit ownership. Several years ago, the City adopted more flexible rules for chickens due to increased interest and trends toward locally sourced food. Interest in keeping rabbits for pets (outside of the typical agriculture programs) is also becoming a trend. However, if owners release their pet rabbits to the Humane Society's Animal Shelter, the shelter cannot adopt them out due to the current limiting regulations. The proposed amendments are intended to provide added flexibility for pet rabbit ownership.

General Care

After instances of concern from the public regarding observed owner mistreatment of pets, staff received requests from citizens to examine the ordinances for opportunities to strengthen the rules. Staff researched ordinances in other Texas cities, and worked with the ASAB to develop some amendments that clarify requirements associated with food, water, shelter, and inclement weather.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

Envision New Braunfels Comprehensive Plan	Action 3.6: Pro-actively provide a regulatory environment that remains business and resident friendly. Action 3.35: Support local non-profits whose mission includes Envision New Braunfels goals.
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FISCAL IMPACT:

N/A

COMMITTEE RECOMMENDATION:

The Animal Services Advisory Board considered and recommended approval of these consolidated amendments at their meetings in 2020 and 2021.

STAFF RECOMMENDATION:

Approval.

ATTACHMENTS:

- Draft Ordinance
- ASAB Minutes

ORDINANCE NO. 2020-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, AMENDING THE NEW BRAUNFELS CODE OF ORDINANCES, CHAPTER 6 ANIMALS RELATED TO TETHERING, RABBITS AND GENERAL CARE AND TREATMENT OF PETS, INCREASING ONE MINIMUM FINE TO \$100, AND INCREASING THE MAXIMUM FINE TO \$2000; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; CONTAINING A SAVINGS CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of New Braunfels has the authority pursuant to statutory provisions of the Texas Health and Safety Code Chapter 821 to adopt and employ regulatory ordinances for the control of domestic animals, and

WHEREAS, the City Council of the City of New Braunfels, Texas, is concerned about the keeping of rabbits, and the proper care and treatment of pets in New Braunfels; and

WHEREAS, the City Council of the City of New Braunfels, Texas deems it necessary to amend its ordinances to achieve desired outcomes of pet ownership; and

WHEREAS, the Comprehensive Plan, Envision New Braunfels, has multiple action items supporting these amendments, including Action 3.6: Pro-actively provide a regulatory environment that remains business and resident friendly; and Action 3.35: Support local non-profits whose mission includes Envision New Braunfels goals; and

WHEREAS, the City Council has directed that ordinances dealing with the care of pets be reviewed by the Animal Services Advisory Board to make recommendations concerning improving those regulations; and

WHEREAS, the Animal Services Advisory Board held separate public hearings on these amendments on May 14, 2019, July 23, 2019, and January 27, 2021 and recommended approval of the proposed amendments; and

WHEREAS, the City Council heard a briefing on these amendments at their regular meeting on February 22, 2021; and

WHEREAS, the City Council held a public hearing and first reading on said amendments at their regular meeting on March 8, 2021; and

WHEREAS, the City Council hereby finds and determines that these amendments

are in the best interest of the citizens of New Braunfels, Texas.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

SECTION 1

THAT the findings and recitations set out in the preamble to this Ordinance are found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2

THAT Chapter 6, Animals, Section 6-1 Definitions, is hereby amended with additions as underlined and deletions as stricken:

ARTICLE I. – IN GENERAL

Sec. 6-1. – Definitions.

The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandon means left without the needed protection, care, or support by the owner, a person, partnership, or corporation.

Altered or sterilized means the surgical removal of the reproductive organs of a dog or cat or the use of nonsurgical methods and technologies approved by the United States Food and Drug Administration or the United States Department of Agriculture to permanently render the animal unable to reproduce.

Animal means every nonhuman species of animal, both domestic and wild.

Animal at large means any animal not under the restraint (as defined in this section) of a person capable of controlling the animal on or off the premises of the owner.

Animal Care means the responsible practice of good handling, feeding, watering, protection, shelter, transportation, treatment, and, when necessary, euthanasia, appropriate for the age, species, condition, size and type of the animal and the provision of veterinary care when deemed necessary by an Animal Control Officer to prevent suffering or impairment of health.

Animal control officer or humane officer means any person designated by the city as a law enforcement officer who is qualified to perform such duties as required by this chapter and/or state law.

Animal shelter means any facility operated by a humane society, or municipal agency or its authorized agents, for the purpose of impounding animals under the

authority of this chapter or state law for care, confinement, return to owner, adoption or euthanasia.

Animal welfare group means any not-for-profit group with 501(c)(3) status whose primary mission includes animal welfare.

Auction means any place or facility where animals are regularly bought, sold, or traded, except for those facilities otherwise defined in this chapter. This definition does not apply to individual sales of animals by owners.

Bite means puncturing or tearing of the skin by an animal's teeth.

Bullhook means a tool or device, also known as an elephant goad or an ankus, used in handling and training elephants, consisting of a spike, hook or combination thereof, attached to a shaft or handle.

Cat means any live or dead felis catus.

Circus means a commercial variety show featuring animal acts for public entertainment.

Commercial animal establishment means any pet shop, grooming shop, guard dog or obedience training center, animal auction, riding school or stable, zoological park, circus, performing animal exhibition, or boarding or breeding kennel.

Cruel manner includes a manner that causes or permits intentional pain or suffering.

Currently vaccinated means vaccinated and satisfying the following criteria:

- (1) The animal must have been at least three months of age at the time of vaccination;
- (2) At least 30 days have elapsed since the initial vaccination;
- (3) Not more than 12 months have elapsed since the most recent vaccination.

Designated Custodian means a person who has possession or control or responsibility of an animal in their direct supervision and is performing veterinary treatment, grooming, training, law enforcement activity, or any other animal related service where the owner and the custodian have agreed to the animal related service or activity.

Dog means any live or dead canis familiaris.

Domestic animal means tame, domesticated, of or pertaining to the family or household.

Ear tipping means the painless removing of the tip of the left ear of a cat while the cat is anesthetized by a licensed veterinarian.

Feral cat means any unowned, homeless, wild, or untamed cat which is too poorly socialized to be handled (and therefore must be trapped and sedated for examination) and which cannot be placed into a typical home as a domestic pet.

Feral cat colony means a group of cats that congregate together, more or less as a unit, who are fed and cared for by a feral cat colony caregiver.

Feral cat colony caregiver means a person who is approved by a sponsor who feeds feral cats, performs trap-neuter-return, and provides long-term care and monitoring for adult feral cats.

Food means access to food that is of sufficient quantity and nutritive value to maintain each animal in good health; is accessible to each animal; is prepared so as to permit ease of consumption for the age, species, condition, size and type of each animal; is provided in a clean and sanitary manner; is placed so as to minimize contamination by excrement and pests; and is provided at suitable intervals for the species, age, and condition of the animal, except as prescribed by a veterinarian.

Fowl means a bird of any kind; domestic cock or hen (*gallus gallus*).

Grooming shop means a commercial establishment where animals are bathed, clipped, plucked or otherwise groomed.

Guard dog means any professionally trained dog that will detect and warn its handler that an intruder is present in or near an area that is being secured.

Identification means any acceptable method such as micro-chipping, registration tag, or tattoo readily traceable to the current owner.

Kennel or *cattery* means any premises wherein any person engages in the business of boarding, breeding, buying, letting for hire, training for a fee, or selling dogs or cats; and/or a facility for keeping more than four animals of the same species.

Licensed veterinarian means a veterinarian licensed to practice veterinary medicine in one or more of the 50 states.

Livestock means domestic animals used or raised on a farm, especially those kept for a profit; specifically, horses, ponies, mules, donkeys, cattle, goats, ~~rabbits~~, sheep and swine, regardless of age, sex or breed.

Local health authority or *rabies control officer*. The city sanitarian shall be designated as the rabies control officer and shall handle all duties required under the Rabies Control Act of 1981 (V.T.C.A., Health and Safety Code § 826.001 et seq.).

Microchip implant means a passive electronic device that is injected into an animal by means of a hypodermic-type syringe device. Each microchip shall contain a unique and original number that is read by an electronic scanning device for the purposes of animal identification and recovery by the animal's owners.

Observation period means the ten days following a bite incident during which the biting animal's health status must be monitored. The ten-day observation period will begin on the day of the bite incident (day one).

Owner means any person, partnership, or corporation owning, keeping, or harboring one or more animals. An animal shall be deemed to be harbored if it is fed or sheltered for three consecutive days or more, or if it returns to a residence or business on three separate days.

Performing animal exhibition means any spectacle, display, act, or event, in which performing animals are used. This shall include animal amusement vendors such as, but not limited to, pony-go-round rides, commercial horseback pictures, etc.

Pet or companion animal means any animal kept for pleasure rather than utility; an animal of a species that has been bred and raised to live in or about the habitation of humans and is dependent on people for food and shelter.

Pet shop means any person, partnership, or corporation, whether operated separately or in connection with another business enterprise (except for a licensed kennel), that buys, sells, or boards any species of animal.

Possible exposure to rabies means the receipt of a bite or scratch from any warm-blooded animal, animal to human or animal to animal, is reason to suspect exposure to rabies.

Properly fitting means, with respect to a collar or harness used for a dog, a collar or harness that: does not impede the dog's normal breathing or swallowing; and is attached to the dog in a manner that does not allow for escape and does not cause injury to the dog.

Provocation means any purposeful act that causes an animal to bite, scratch, or attack in protection of self, owner, or owner's premises. Entrance, in any manner, into an area where an animal is properly under restraint in compliance with city ordinances would be considered provocation, irrespective of the reason for such entrance.

Public nuisance means any animal or animals that unreasonably annoy humans, endanger the life or health of other animals or persons, or substantially interfere with the rights of citizens, other than their owners, to enjoyment of life or property. The term "public nuisance animal" means and includes, but is not limited to, any animal that:

- (1) Is repeatedly at large or stray;
- (2) Damages the property of anyone other than its owner;
- (3) Molests or intimidates pedestrians or passersby;
- (4) Trespasses on school grounds;
- (5) Chases vehicles;
- (6) Excessively makes disturbing noises, including but not limited to continued and repeated howling, barking, whining or other utterances causing unreasonable annoyance, disturbance, or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored;
- (7) Causes fouling of the air by odor and thereby creates unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored;
- (8) Causes insanitary conditions in enclosures or surroundings where the animal is kept or harbored;
- (9) Is offensive or dangerous to the public health, safety, or welfare by virtue of the number and/or types of animals maintained; or
- (10) Attacks other domestic animals.

Quarantine means strict confinement, for the purpose of preventing the spread of disease, under restraint by closed cage, isolation, kennel, rabies chamber, paddock, or

in any other manner approved by the local health authority on the private premises of the owner or at a facility approved by the state department of health.

Quarantine period means that portion of the observation period during which a biting animal is physically confined for observation as provided for under section 6-109.

Rabies means an acute viral disease of man and animal affecting the central nervous system and usually transmitted by an animal bite.

Registered feral cat colony means a managed feral cat colony registered with a sponsor and meeting all requirements of this chapter.

Releasing agency means a public or private animal pound, shelter, or humane organization. The term does not include an individual who occasionally renders humane assistance or shelter in the individual's home to a dog or cat.

Restraint means that an animal is secured by a leash or lead and under the control of a responsible person and obedient to that person's commands. At all other times, a dog or other such animal shall be confined to the realty or premises of the owner of such dog or other animal by a substantial fence of sufficient strength and height to prevent such dog or other animal from escaping therefrom; or inside a house on such premises; or secured on such premises by a leash consisting of a material of sufficient strength to prevent such dog or other animal from escaping from such premises. It shall be unlawful for the leash to be arranged in a manner that allows the dog or other animal to get on or across or within eight feet of any street, park, or other public land or within eight feet of any sidewalk, public way, place or building when such leash is stretched to its full length. Any animal so arranged shall be considered dangerous to the public in general and declared a nuisance and shall be impounded. Although cats shall be exempt from the leash requirement while on the premises of the owner, any cat straying on the property of anyone except its owner shall be deemed a public nuisance animal and will be subject to impoundment.

Riding school or stable means any place that has available for hire, boarding, and/or riding instruction, any horse, pony, donkey, mule, or burro; or any place that regularly buys, sells, or trains the above animals, including a racetrack, trotting track, or rodeo.

School zone means a reduced-speed zone designated on a street by a local authority to facilitate safe crossing of the street by children going to or leaving a public or private elementary or secondary school during the time the reduced speed limit applies.

Scratch means a scrape left by the claws or nails of an animal and of sufficient severity to break the skin and draw blood.

Shelter means provision of and access to housing that is suitable for the species, age, condition, size, and type of each animal; provides adequate space for each animal; is safe and protects each animal from the adverse effects of heat or cold, physical suffering, and impairment of health; is properly lighted; is properly cleaned; enables each animal to be clean and dry; during hot weather, is properly shaded and does not readily conduct heat; during cold weather, has a windbreak at its entrance and provides a quantity of bedding material consisting of hay, cedar shavings, or the equivalent that

is sufficient to protect the animal from cold and promote the retention of body heat; and, provides a solid surface, resting platform, pad, floormat, or similar device that is large enough for the animal to lie on in a normal manner and can be maintained in a sanitary manner. Shelters whose wire, grid, or slat floors (i) permit the animals' feet to pass through the openings, (ii) sag under the animals' weight, or (iii) otherwise do not protect the animals' feet or toes from injury are not adequate shelter.

Sick animal means any animal that appears to be suffering from an infectious, contagious, or communicable disease; or that is showing evidence of a physical injury, physical disorder, or traumatic injury; or that has an elevated temperature.

Sponsor is any animal welfare group partnered with and approved by the city that agrees to comply with the requirements of the ordinance from which this definition derives for sponsors and provides written notice to the city that it will serve as a sponsor.

Stray means animal running free or at large, with no physical or verbal restraint.

Tether means any leash, chain, cord, rope, or other means of restraining an animal or the act of chaining, tying, fastening or otherwise securing an animal to a fixed point so that it can move, lie down or range only within certain limits.

Traceable identification means a type of identification, such as a tag, microchip, or tattoo that can be readily used by an animal control officer or animal welfare personnel to identify the current ownership of an animal.

Trap, neuter and return (TNR) program shall mean a nonlethal, humane alternative to deal with the feral cats which are captured, vaccinated, altered and returned back to their location in order to encourage the stabilization of the free-roaming feral cat population in the city.

Unowned animal means any animal for which an owner has not been identified.

Vaccinated means properly injected with a rabies vaccine licensed for use in the subject species by the United States Department of Agriculture and administered by or under the direct supervision of a licensed veterinarian.

Veterinary hospital means any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis, and treatment of diseases and injuries of animals.

Vicious animal means any animal that attacks, bites, or injures human beings or domesticated animals without adequate provocation, or which, because of temperament, conditioning, or training, has a known propensity to attack, bite, or injure human beings or domesticated animals; or an individual animal which the local health authority has reason to believe has a dangerous disposition, likely to be harmful to humans or other animals.

Water means provision of and access to clean, fresh, drinkable water that is provided in a suitable manner, in sufficient volume, and at suitable intervals appropriate for the weather and temperature, to maintain normal hydration for the age, species, condition, size and type of each animal, except as prescribed by a veterinarian.

Wild animal means any animal except the common domestic species (including, but not limited to, dogs, cats, horses, cattle, swine, sheep, and goats), regardless of the state or duration of captivity.

Wild state means living in its original, natural condition; not domesticated.

Wildlife means any animal that occurs naturally in the wild state.

Zoological park means any facility operated by a person, partnership, corporation, or government agency, other than a pet shop or kennel, displaying or exhibiting one or more species of no domesticated animals.

(Code 1961, § 3-1; Ord. No. 2006-51, § I, 6-12-06; Ord. No. 2014-58, § 2, 8-11-14; Ord. No. 2019-54, § 2, 8-13-19)

Cross reference— Definitions generally, § 1-2.

State Law reference— Definitions pertaining to rabies, V.T.C.A., Health and Safety Code § 826.002.

SECTION 3

THAT Chapter 6, Animals, Section 6-2 Animal Control Officer is hereby amended with deletions as stricken:

Sec. 6-2. - Animal control officer.

An animal control officer(s) shall be appointed to enforce all provisions of this chapter, including gathering ~~up~~ and impounding or quarantining any livestock, fowl, cats, dogs, or other domestic and nondomestic animals found running at large (stray) within the city limits.

(Code 1961, § 3-2)

SECTION 4

THAT Chapter 6, Animals, Section 6-5 Penalty for Violation of Chapter; Schedule of Fines, is hereby amended with additions as underlined and deletions as stricken:

Sec. 6-5. - Penalty for violation of chapter; schedule of fines.

- (a) Any person who shall violate any of the provisions of this chapter, or fail to comply therewith or with any of the provisions thereof, shall be guilty of a misdemeanor, and upon conviction shall be fined in a sum not less than \$25.00 and not more than \$2,000.00~~\$500.00~~, unless specifically listed on the minimum penalty schedule in subsection (b), and each and every day's violation shall constitute a separate and distinct offense. Subsequent convictions for any violation of this chapter within a 12-month period shall double the minimum applicable fine listed in subsection (b), up to and including the maximum allowed by law. If any person is found guilty of violating

section 6-76, pertaining to animal care, such person's permit to own, keep, harbor, or have custody of animals shall be deemed automatically revoked and no new permit may be issued.

(b) Upon conviction of the specific ordinance violation listed, the minimum fine imposed shall be as follows:

- (1) Animal abandonment\$ ~~100.00~~ 50.00
- (2) No rabies vaccination50.00
- (3) Not registered/licensed30.00
- (4) Failure to obtain permit before opening200.00
- (5) Failure to renew permit by due date30.00
- (6) Allowed to run at large, stray:
 - a. Unneutered dog or cat40.00
 - b. Neutered dog or cat25.00
 - c. Any other animal25.00
- (7) More than four dogs or cats, per animal30.00
- (8) Unconfined and/or non-muzzled vicious animal200.00
- (9) Unconfined female dog or cat in heat30.00
- (10) Failure to surrender animal for rabies observation200.00
- (11) ~~Reserved.~~ Failure to comply with section 6-76100.00
- (12) Failure to comply with section 6-79500.00

(Code 1961, § 3-29; Ord. No. 2019-54, § 2, 8-13-19)

SECTION 5

THAT Chapter 6, Animals, Section 6-76, Animal Care Generally, is hereby amended with additions as underlined and deletions as stricken:

ARTICLE IV. – Care and Keeping

Division 1. – Generally

Sec. 6-76. - Animal care ~~generally.~~

- (a) No owner shall fail to provide his~~their~~ animals with: ~~sufficient wholesome and nutritious food, water in sufficient quantities, adequate ventilation, shelter space and protection from the weather, veterinary care when needed to prevent suffering, and humane care and treatment.~~

(1) Food;

- a. Storage of feed: All feed provided for animals shall be stored and kept in a ratproof, fly tight building, box, container, or receptacle. Persons in charge of horse stables must carry out a continuous, active rat control program.

(2) water in sufficient quantities;

(3) adequate ventilation;

(4) shelter/protection from the weather:

- a. Minimum space requirements for both indoor and outdoor enclosures shall include the following.
 - i. The housing facilities shall be structurally sound and maintained in good repair to protect the animal from injury and to contain the animal.
 - ii. Enclosures shall be constructed and maintained to provide sufficient space to allow each animal adequate freedom of movement.
 - iii. Inadequate space may be indicated by evidence of overcrowding, debility, stress or abnormal behavior patterns.
 - iv. When sunlight is likely to cause heat exhaustion if an animal is outside, without sufficient shade by natural or artificial means, the owner must provide sufficient shade to protect the animal from direct sunlight.
- b. An owner may not leave an animal outside and unattended whether they are restrained or not if the following weather conditions have been issued for the jurisdiction by the National Weather Service:
 - i. a winter weather advisory, or the actual or effective outdoor windchill is below 32 degrees Fahrenheit,
 - ii. a heat advisory, or
 - iii. a hurricane, tropical storm, flash flood or tornado warning.
- c. Exemptions
 - i. If owner can provide shelter as indicated in section 6-76(a)(4)a., or as defined in definitions under shelter, no violation exists
 - ii. this section shall only apply to domesticated companion pets (e.g. cats and dogs) and does not apply to Zoo's, Zoological parks, or livestock.

(5) veterinary care when needed to prevent suffering, and

(6) humane care and treatment.

- (b) No person shall beat, cruelly treat, torment, overload, overwork, or otherwise abuse an animal, or cause, instigate, or permit any cockfight, bullfight, or other combat between animals or between animals and humans.

- (c) No owner of an animal shall abandon such animal. If an owned animal has been impounded by the animal control officer, no owner shall allow the animal to remain in the animal shelter beyond the 120-hour maximum for a licensed animal or the 72-hour maximum for an unlicensed animal, for the purpose of adopting the animal at a lower cost than the fine and fee(s).
- (d) Chickens, ducklings, or rabbits younger than eight weeks of age may not be sold in quantities of fewer than 25 to a single purchaser during traditional holiday times of the year.
- (e) No person shall give away any live animal, fish, reptile, or bird as a prize for, or as an inducement to enter, any contest, game or other competition; as an inducement to enter a place of amusement; or as an incentive to enter into any business agreement whereby the offer was for the purpose of attracting trade.
- (f) No person shall expose any known poisonous substance, whether mixed with food or not, so that the substance shall be liable to be eaten by any animal; provided, that it shall be lawful for a person to expose on his own property common rat poison mixed only with vegetable substance.
- (g) No person, except a person licensed by the state parks and wildlife department, shall place or set out steel jaw leg and/or neck traps with the intent of trapping any animal.
- (h) Any person who, as the operator of a motor vehicle, strikes a domestic or nondomestic animal shall as soon as practicable report such injury or death to the animal control officer or the humane society so that the animal may be picked up.
- (i) No person shall sell, trade, lease, rent, or give away any live animal on any roadside, public right-of-way, commercial or private parking lot, or on the premises of any licensed food service establishment located within the city limits.

(j) Tethering animals.

(1) A person commits an offense if they tether an animal to a stationary object for any length of time except, as allowed by this subsection.

(2) A "skyline" type aerial trolley consisting of a line that is strung between two (2) fixed points that are at least twenty (20) feet apart with a down line that is at least five (5) feet in length is allowed as long as the following are met.

- a. The skyline is attached to a properly fitting collar or harness. Choke or prong-type collars are prohibited; and
- b. The skyline does not allow the animal to move outside the person's property or come within eight (8) feet of public property if tethered outside a fenced area.
- c. The area must be free and clear of debris or obstructions within ten (10) feet of the restrained animal.
- d. The area must have adequate shade and shelter for the animal.
- e. The area must have adequate food and water for the animal

(3) An owner may not leave a dog outside and unattended by use of any restraint, tether or skyline/trolley system:

- a. between the hours of 10 p.m. and 6 a.m.;
- b. within 500 feet of the premises of a school;
- c. in the case of extreme weather conditions, including conditions in which:
 - i. the actual or effective (wind chill) outdoor temperature is below 32 degrees Fahrenheit,
 - ii. a heat advisory has been issued by a local or state authority or jurisdiction, or
 - iii. a hurricane, tropical storm, flash flood, or tornado warning has been issued for the jurisdiction by the National Weather Service.

(4) A defense to the prosecution is if an animal is being restrained by the designated custodian in the absence of the owner by use of a tether for veterinary treatment, grooming, training, law enforcement activity, or any other animal related service agreed upon with the owner.

(k) Removal of animal waste.

(1) The owner of every animal shall be responsible for the removal of any excreta deposited by his animal(s) on public walks, recreation areas, or private property including the property of the owner.

(2) Minimum standards of sanitation necessary to provide humanely clean conditions for both indoor and outdoor enclosures shall include periodic cleanings to remove excretions and other waste materials, and trash to minimize health hazards.

(Code 1961, § 3-10; Ord. No. 2006-51, § IV, 6-12-06)

State Law reference— Cruelty to animals, V.T.C.A., Penal Code § 42.09;
dogfighting, V.T.C.A., Penal Code § 42.10.

SECTION 6

THAT Chapter 6, Animals, Section 6-77, Keeping of Domestic Animals is hereby amended with additions as underlined and deletions as stricken:

Sec. 6-77. - Keeping of domestic animals.

(a) It shall be unlawful for any person to own, keep, or harbor more than four dogs, ~~or~~ cats, or rabbits over three months of age at any one address or location within the city limits. It shall be an affirmative defense to prosecution under subsection 6-77(a), that the cats are feral cats in a sponsor approved trap, neuter, and return feral cat colony program.

(b) All persons residing in the city who own one or more dogs must keep such dogs at

the residential premises permanently occupied and inhabited by the dog owners. It shall be unlawful for such dog owners to keep their dogs at any other location within the city limits.

- (c) It shall be unlawful for any person who is the owner of any hog, or any person who has any hog under his management or control, to keep such hog, or allow such hog to remain, in any pen or in any other place within the city limits.
- (d) Household pets which are normally and customarily kept as household pets (including pigeons, but excluding chickens, pheasants, cows, horses, sheep, goats, ~~rabbits~~, and other fowl and livestock) will be allowed in any zoning district. No person shall keep, harbor or maintain more than 75 pigeons on a single lot, parcel or tract of land. All pigeons so kept shall be confined at all times in a clean, sanitary cage or loft located at least 50 feet from any residence on adjacent property. Pigeons bearing a seamless leg band issued by a recognized association of pigeon fanciers may be released for exercise or performance, upon the condition that the owner or person having possession of such pigeons shall not permit them to alight on any structure or property of others. Livestock or other fowl may be kept in any zoning district on a tract of land containing a minimum of 40,000 square feet. Up to 50 fowl or one head of livestock may be kept for each 40,000 square feet of land on the tract. No fractional measurements of land will be allowed in computing such required land area, nor shall such fowl or livestock be allowed to roam, graze, or be housed within 100 feet of any residence on adjacent property or within 500 feet of any food service establishment or food processing establishment, regardless of ownership or occupancy of such establishments.

A person who wishes to keep or house chickens on his or her property, where that property encompasses an area of less than 40,000 square feet, shall register with the city's animal control services division and shall comply with all of the following requirements:

- (1) Keep no more than four chicken hens per lot.
- (2) The principal defined use of the person's property shall be single-family or two-family dwelling.
- (3) No person shall keep any rooster.
- (4) No person shall slaughter any hens on his or her property.
- (5) The chicken hens shall be provided with and housed inside of a covered structured enclosure at all times, which is located within the rear yard inside of a fenced perimeter enclosure. The rear perimeter fence shall be securely constructed so to keep the chicken hens separated from other animals.
- (6) A person shall not keep chicken hens in any location on the property other than in the rear yard. For purposes of this section, "rear yard" means that portion of a lot enclosed by the property's rear lot line and the side lot lines to the points where the side lot lines intersect with an imaginary line established by the rear of the single-family or two-family structure and extending to the side lot lines.

- (7) No covered enclosure shall be located closer than ten feet to any property line of an adjacent property.
- (8) All enclosures for the keeping of chicken hens shall be so constructed or repaired as to prevent rats, mice, or other rodents from being harbored underneath, within, or within the walls of the enclosure. The covered enclosure shall not be located closer than 30 feet to any residential structure on an adjacent property. Additionally, where two primary residential structures are located on a single lot, a covered enclosure shall not be located closer than 30 feet to any residential structure on the same lot, or adjoining lots.
- (9) For purposes of this section, adjacent property means all parcels of property that the property comes into contact with at one or more points, except for parcels that are legally adjacent to but are in fact separated from the property by a public or private street or waterway.
- (10) All feed and other items associated with the keeping of chickens that are likely to attract or to become infested with or infected by rats, mice, or other rodents shall be protected so as to prevent rats, mice, or other rodents from gaining access to or coming into contact with them.
- (11) If the above requirements are not complied with, the city may revoke any registration granted under this section and/or initiate prosecution for a criminal infraction violation.

(e) Rabbits:

- (1) A person who wishes to keep or house rabbits on his or her property, where that property encompasses an area of less than 40,000 square feet, shall register with the city's animal control services division and shall comply with all of the following requirements.
- (2) A person commits an offense if they keep, harbor, or maintain on the premises of a single residence within the city more than four rabbits and one litter of rabbits at any one time. The total number of rabbits shall not exceed the total number of animals allowed within the city limits of four. It is an exception to prosecution that the owner of the rabbits and the subject premises meet the requirements below.
 - a. Rabbits shall be kept within the residence, pens, coops, dens or hutches which meet the requirements of this chapter. A fenced yard shall not qualify as a pen, coop or hutch for purposes of compliance with this subsection.
 - b. No person shall slaughter any rabbits on his or her property.
 - c. The rabbits shall be provided with and housed inside of a covered structured enclosure at all times, which is located within the rear yard inside of a fenced perimeter enclosure. The rear perimeter fence shall be securely constructed so to keep the rabbits separated from other animals.

- d. No covered enclosure shall be located closer than ten feet to any property line of an adjacent property.
- e. All enclosures for the keeping of rabbits shall be so constructed or repaired as to prevent rats, mice, or other rodents from being harbored underneath, within, or within the walls of the enclosure. The covered enclosure shall not be located closer than 30 feet to any residential structure on an adjacent property. Additionally, where two primary residential structures are located on a single lot, a covered enclosure shall not be located closer than 30 feet to any residential structure on the same lot, or adjoining lots.
- f. For purposes of this section, adjacent property means all parcels of property that the property comes into contact with at one or more points, except for parcels that are legally adjacent to but are in fact separated from the property by a public or private street or waterway.
- g. All feed and other items associated with the keeping of rabbits that are likely to attract or to become infested with or infected by rats, mice, or other rodents shall be protected so as to prevent rats, mice, or other rodents from gaining access to or coming into contact with them.

(~~ef~~) Subsections (a), (b), (c), ~~and~~ (d), and (e) of this section shall not apply to animal shelters, veterinary establishments, animal hospitals operated by a licensed veterinarian, or commercial animal establishments located on property zoned for such purposes. Such establishments, however, must meet sanitation requirements and keep animals securely caged or penned. The provisions of such subsections shall not be construed to prohibit any person engaged in operating any abattoir, packinghouse or stockyard from keeping livestock for a reasonable length of time while awaiting their use in connection with the operation of such abattoir, packinghouse or stockyard which had been zoned for such use.

(~~f~~g) It is a defense to prosecution for violations of the distance and number requirements of this section, if the violating animals were kept at the violation location on the date said location was annexed by the city.

(Code 1961, § 3-11; Ord. No. 2006-51, § V, 6-12-06; Ord. No. 2013-6, § II, 1-28-13; Ord. No. 2014-58, § 8, 8-11-14)

SECTION 7

THAT Chapter 6, Animals, Section 6.80 Removal of Animal Waste and Section 6.81 Storage of Feed is hereby amended with deletions as stricken:

~~Sec. 6-80. Removal of animal waste.~~

~~The owner of every animal shall be responsible for the removal of any excreta deposited by his animal(s) on public walks, recreation areas, or private property including the property of the owner.~~

~~(Code 1961, § 3-14)~~

~~Sec. 6-81. Storage of feed.~~

~~All feed provided for animals shall be stored and kept in a ratproof, fly tight building, box, container, or receptacle. Persons in charge of horse stables must carry out a continuous, active rat control program.~~

~~(Code 1961, § 3-15)~~

SECTION 8

THAT it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

SECTION 9

THAT all provisions of the Code of Ordinances of the City of New Braunfels not herein amended or repealed shall remain in full force and effect.

SECTION 10

THAT all other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict only.

SECTION 11

THAT in accordance with the provisions of the City Charter, this Ordinance may be read and published by descriptive caption only. This Ordinance has been publicly available in the office of the City Secretary prior to its adoption.

SECTION 12

THAT this Ordinance shall become adopted and effective upon its second reading, signature required by City Charter, and filing with the City Secretary's Office. This Ordinance must also be published in a newspaper of general circulation at least one time within ten (10) days after its final passage, as required by the City Charter of the

City of New Braunfels.

PASSED AND APPROVED: First reading this the 8th day of March, 2021.

PASSED AND APPROVED: Second reading this the 22nd day of March, 2021

CITY OF NEW BRAUNFELS

RUSTY BROCKMAN, Mayor

ATTEST:

CAITLIN KROBOT, City Secretary

APPROVED AS TO FORM:

VALERIA M. ACEVEDO, City Attorney

Minutes from May 14, 2019, Animal Services Advisory Board

b) Chairman Dr. Rierson read the agenda caption; "Discussion and possible recommendation regarding draft ordinance of allowing rabbits within the city limits."

i. Discussion was started by staff describing the previous meeting with the board agreeing to model the potential rabbit ordinance around the current chicken ordinance. Staff discussed the draft ordinance for rabbits is similar to the chicken ordinance but if rabbits are allowed, they would count towards the number of domesticated animals someone can keep (4 dogs, cats, or rabbits). Additional discussion was around section 2 (b); which indicates if rabbits are to be allowed only in this section which is restricted to single or two-family dwellings. The board discussed this and decided to remove section 2 (b) from the draft. The board approved the draft ordinance and recommended approval to city council.

ii. John Velasquez made a motion to recommended approval to city council.

iii. Sarah Hammond made a motion to second.

Minutes from July 23, 2019, Animal Services Advisory Board

a) Board Member Sarah Hammond read the agenda caption, Discussion and recommendation regarding proposed draft ordinance of tethering rules

i. All members read through the ordinance and discussion followed. Bryan Ruiz explained the definitions that were added due to questions from the last meeting. Eric Trager had a question pertaining to a line being long enough for a dog to lie down and asked if we should make appropriate changes per species. Nathan Brown, Attorney, suggested we add "commonly accepted practices" to cover some questions asked. John Velazquez suggested we change the word "care", which was discussed to use "supervised". The board approved the draft ordinance changes and recommended approval to city council. within the city limits.

ii. John Velasquez made a motion to recommended approval to city council.

iii. Tanya Palmer made a motion to second.

3/8/2021

Agenda Item No. F)

Presenter

Christopher Looney, AICP, Planning and Development Services Director
clooney@nbtexas.org

SUBJECT:

Public hearing and first reading of an ordinance regarding a proposed amendment to Chapter 66 Historic Preservation for the protection and preservation of trees within historic districts and historic properties.

BACKGROUND / RATIONALE:

Council Districts: All

Staff Contact: Caleb Gasparek
Historic Preservation Officer
(830) 221-4086
cgasparek@nbtexas.org

In the summer of 2020, residents of the Sophienburg Hill Historic District and Commissioners on the Historic Landmark Commission (HLC) requested to amend Chapter 66 of the City's Code of Ordinances to include guidelines and protection measures for historic and heritage trees within the City's historic districts and historic landmarks. The HLC and residents of the Sophienburg Hill Historic District have been concerned about removal of historic trees. In response, staff prepared some draft edits to the Historic Preservation Ordinance to provide protection measures for certain trees in historic districts and landmarks, while providing a framework for the removal and modest replacement of trees.

There are currently two tree preservation ordinances active in New Braunfels. Both ordinances include a process for the removal of protected trees. The first is found in Chapter 144 Zoning, Subsection 5.3. The ordinance was first adopted in 1999, and though there have been several amendments over the past 22 years, the ordinance remains largely unchanged. The ordinance includes a process for the removal of protected trees on commercial properties only, while residential properties are exempt from the ordinance. This ordinance already applies to any commercial properties located within the City's four Historic Districts.

The second tree preservation ordinance is found within Chapter 34 Vegetation Protection Code of the Veramendi Development & Design Control Document (DDCD). The DDCD was adopted in 2013 and applies only to the Veramendi WCID area. The DDCD requires that a preliminary tree survey, a tree replacement plan, and a tree protection plan be submitted at the time of a Veramendi Sector Plan or when a building permit is submitted. Chapter 34 includes a program for off-site replacement of protected trees, and a payment in lieu of replacement should replanting not be possible.

The proposed amendment to Chapter 66 would create a series of standards and protection measures for trees found within historic districts and on historic properties. Unlike Chapter 144, the amendment would apply to residential properties with historic zoning overlay. Like Chapter 34 of the Veramendi DDCCD, the amendment includes the option for the replanting of new trees on or offsite and the option for a payment in lieu of replacement should replanting not be possible.

The proposed amendment does not add new protected trees, but instead uses existing Appendix A from Chapter 144, which lists protected trees within City Limits. Similarly, the amendment to Chapter 66 uses existing Appendix B of Chapter 144, which lists undesirable trees that would not require a tree removal permit and not be subject to the ordinance. These two existing ordinance appendices are included as attachments in this agenda packet for your reference.

After receiving feedback from residents, industry experts, and recommending boards and commissions, staff has revised several sections of the proposed ordinance accordingly, most notably to be more consistent with the City's existing tree preservation ordinance.

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

City Plan/Council Priority: Envision New Braunfels Comprehensive Plan	Action 1.11: Update policies and codes to achieve development patterns that implement the goals of this plan. Action 1.2: Create plans for neighborhoods and transitional areas to maintain quality of life. Action 2.2: Prioritize areas that are best suited for conservation and preservation. Action 2.25: Increase resources for historic preservation. Action 5.17: Review and update Tree and Landscape ordinances to ensure New Braunfels remains a green city and expands its tree canopy. Action 7.14: Increase tree canopy for increased shade to encourage walking.
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FISCAL IMPACT:

The proposed draft includes a tree mitigation fund as an option which can be used to plant and maintain trees.

COMMITTEE RECOMMENDATION:

The draft ordinance amendments were reviewed and recommended for approval unanimously by the Historic Landmark Commission at their November 10, 2020 meeting.

The draft ordinance amendments were reviewed and recommended for approval unanimously by the Parks Board (which also serves as the City's Tree Board) at their December 15, 2020 meeting.

After a briefing at their January 5, 2021 meeting, the draft ordinance amendments were reviewed and recommended for approval unanimously by the Planning Commission at their February 2, 2021 meeting.

STAFF RECOMMENDATION:

Staff recommends approval of the proposed amendments to Chapter 66. The proposed amendments were drafted using best practices from other tree preservation ordinances in Texas, and are a hybrid of two existing ordinances already in place in New Braunfels. The natural landscape, like the built environment, is a character defining feature of many historic neighborhoods, contributing to the

overall character of New Braunfels' historic neighborhoods. Additionally, the proposed amendment aligns with the City's goal of maintaining its status as a recognized Tree City by the Arbor Day Foundation, and would implement several Actions in Envision New Braunfels, the City's Comprehensive Plan.

Public Notice

Though mailed public notice is not required for amendments to ordinances, city staff mailed 332 drafts of the proposed amendment to owners of historic properties within City Limits. Staff has received twelve (12) written responses in favor, and seven (7) written responses in objection.

ATTACHMENTS:

1. Draft Ordinance
2. Appendix A - Approved Plant List
3. Appendix B - Undesirable Trees
4. Public Response

ORDINANCE NO. 2021 - _____

AN ORDINANCE OF THE CITY OF NEW BRAUNFELS, TEXAS AMENDING CHAPTER 66, HISTORIC PRESERVATION, OF THE NEW BRAUNFELS CODE OF ORDINANCES, BY INSERTING SECTION 66-69, FOR THE PURPOSE OF PROTECTING HISTORIC AND HERITAGE TREES OF PROPERTIES AND/OR STRUCTURES DESIGNATED AS HISTORIC LANDMARK STRUCTURES, OR LOCATED WITHIN THE BOUNDARIES OF AN ESTABLISHED HISTORIC DISTRICT, BY THE CITY OF NEW BRAUNFELS; REPEALING ALL ORDINANCES IN CONFLICT; CONTAINING A SAVINGS CLAUSE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, The State of Texas has enacted legislation empowering municipalities to preserve and protect historic places, structures, buildings, and areas of historical and cultural importance and significance; and

WHEREAS, the City Council of the City of New Braunfels, Texas is aware of the numerous places, structures, buildings, and areas having historical and cultural importance and significance which reflect the heritage of the City, State and its people; and

WHEREAS, the City Council is committed to promoting and protecting the heritage of New Braunfels for the future; and

WHEREAS, the City Council knows that the promotion and protection of such a rich heritage can be encouraged and accomplished by creating and adopting a tree protection ordinance for its designated historic landmarks and historic districts; and

WHEREAS, the Comprehensive Plan, Envision New Braunfels, has multiple action items supporting tree preservation and promoting our historic and cultural districts, including Action Item 1.11: Update policies and codes to achieve development patterns that implement the goals of this plan. Action Item 1.2: Create plans for neighborhoods and transitional areas to maintain quality of life. Action Item 2.2: Prioritize areas that are best

suited for conservation and preservation. Action Item 2.25: Increase resources for historic preservation. Action Item 5.17: Review and update Tree and Landscape ordinances to ensure New Braunfels remains a green city and expands its tree canopy. Action 7.14: Increase tree canopy for increased shade to encourage walking.; and

WHEREAS, the Historic Landmark Commission encourages stabilization, restoration, and improvements of such properties and their values; and

WHEREAS, the Historic Landmark Commission believes that historic and heritage trees are character defining assets that are unique to designated historic landmarks and historic districts and are worthy of preservation; and

WHEREAS, the preservation of our city's cultural and historic resources is vital to our community's heritage; and

WHEREAS, the Historic Landmark Commission recommended approval of the following amendments at their November 10, 2020 regular meeting; and

WHEREAS, the Parks/Tree Board recommended approval of the following amendments at their December 15, 2020 regular meeting; and

WHEREAS, the Planning Commission heard a briefing on the following amendments at their January 5, 2021 regular meeting, and held a public hearing and recommended approval of the following amendments at their February 2, 2021 regular meeting.

NOW THEREFORE, BE IT ORDANIED BY THE CITY COUNCIL OF NEW BRAUNFELS, TEXAS:

SECTION 1

THAT, Section 66, Historic Preservation, of the New Braunfels Code of Ordinances, City of New Braunfels, Texas is hereby amended by adding the following thereto:

Section 66-69 Tree Preservation and Protection within Designated Historic Districts and Historic Landmarks

Section 66-69.1 Purpose

The purpose of this section is to encourage the protection and preservation of existing protected, heritage, and historic trees located within the boundaries of designated local historic districts and local historic landmarks. In addition to the numerous benefits trees provide to the urban landscape, trees provide signification contributions to the unique character of historic districts and properties. Protection and preservation of historic assets within historic districts and historic landmarks is essential to preserving the character of the local community.

Section 66-69.2 Jurisdiction

The terms and provisions of this article shall apply to all properties within designated local historic districts and designated local historic landmarks within the city limits of the City of New Braunfels.

Section 66-69.3 Definitions

For the purposed of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Certified Arborist means any individual that has obtained the necessary education, experience, and qualification and is familiar with local fauna to accurately identify, assess, and provide recommendations on trees in the New Braunfels area.

Diameter at breast height or DBH generally means the diameter in inches of a tree as measured through the main trunk at four and a half feet above the ground level. If there are multiple trunks, diameter at breast height is calculated as the diameter of the largest trunk plus one-half the sum of all subsequent trunks. If there is branching that creates a widening of the trunk at four and a half feet above the ground level, measure diameter at the narrowest point directly below the branching.

Heritage Tree means any tree that is unique to the individual historic district or landmark because of its size, age, or historic association as determined by the City Horticulturist/Arborist/Forester, Historic Preservation Officer and/or Historic Landmark Commission.

Historic Tree means any tree which has reached a DBH of 35 inches or is 75 years of age or older.

Protected Tree means any tree which is found within Appendix A Approved Plant List of Section 144-5.3 Landscaping, tree preservation, public trees and screening.

Unprotected or Undesirable Tree means any tree that is found in Appendix B of Chapter 144-5.3-1 Landscaping, Tree Preservation, Public Trees, Screening, Fences, Buffering and Lighting.

Section 66-69.4 General Provisions

- (1) It shall be unlawful for any person or corporation to recklessly remove, or cause the removal of any protected, heritage, or historic tree without first submitting the appropriate application for a permit and securing approval in the form and manner specified by this chapter. An approved tree removal permit is required prior to any person conducting activities.
- (2) A tree removal permit is not needed if:

 - a) The protected, heritage, or historic tree(s) is diseased or sustained damage, which was not recklessly inflicted by the owner, his agents or employees, in the form of a broken trunk, broken limbs or uprooting. Additionally a tree removal permit is not required if the tree creates a hazard to life or property.

 - i. Evidence showing that the tree is diseased, damaged, or is a hazard to life property shall be submitted to the Historic Preservation Officer for the removal of such trees. For these types of situations, no review by the Historic Landmark Commission is required.
 - b) The tree to be removed is an unprotected or undesirable tree as found in Appendix B of Section 144-5.3 Landscaping, tree preservation, public trees and screening

Section 66-69.5 Tree Removal Permit Approval Authority and Appeal

- (1) The Historic Landmark Commission shall have the authority to approve a tree removal permit as it pertains to this ordinance.
- (2) If a request to remove a protected, heritage, or historic tree(s) is denied by the Historic Landmark Commission, the applicant may appeal the denial to the Zoning Board of Adjustment, by filing written notice of such appeal, along with a nonrefundable fee of \$75.00, with the Planning and Development Services

Department, within 60 days of the notice of denial. Hearings shall be conducted in compliance with the Texas Open Meetings Act.

- (3) The Historic Landmark Commission and the Zoning Board of Adjustment may seek the testimony of a certified arborist. If such expert testimony is requested by the Commission, it shall be provided by the City.

Section 66-69.6 Application and Process for Tree Removal Permit

- (1) Prior to the commencement of any work that directly impacts or causes the removal of or of a heritage, protected, or historic tree, the owner/applicant shall file an application for tree removal with the Historic Preservation Office.
- (2) An application for tree removal permit must provide the following information:
- a) A survey indication of the location of the tree(s)
 - b) A tree inventory including:
 - i. The diameter of the tree as measured at DBH
 - ii. The approximate drip-line area of the tree
 - iii. The species/common name of the tree
 - iv. If trees are to be preserved or removed, the reason for removal
 - c) A certified arborist report is highly recommended to verify condition of all trees and ensure viability and protection of preserved trees.
 - d) In the case of a Historic Tree, removal or impacts that may severely damage the tree will not be approved without a hardship provision. Evidence of a hardship provision must be provided by the application based on the following factors:
 - i. Whether there is a unique physical circumstance that requires the removal of the Historic Tree.
 - ii. Whether the preservation or mitigation of a Historic Tree unduly burdens the property.
 - iii. Whether the removal of a Historic Tree is necessary to preserve a historic dwelling, building, or other historic asset of the property or district in question.
- (3) Where practical, an application for the removal of a heritage, historic, or protected tree shall be combined with any other applications applicable to review by Chapter 66.

- (4) Upon receipt of an application to remove a heritage, protected, or historic tree the Historic Landmark Commission shall review the application at a regularly scheduled meeting within 45 days from the date the completed application is received. An application cannot be considered until it has been deemed complete by the Historic Preservation Office. The Commission has the authority to approve, deny, or approve with modifications the application, after a public hearing and testimony from the applicant and the public on the request. In the event the commission does not move to consider the application within 90 days of its receipt, the application shall be granted.
- (5) All decisions of the Commission shall be in writing and a copy shall be sent to the applicant.

Section 66-69.7 Heritage, Protected, and Historic Tree Replacement

Removal of any protected, heritage, or historic tree(s) will require a tree removal permit and replacing or replanting of the tree(s) on site, or within a Historic District or at a Historic Landmark.

- 1) As much as is feasible, replanting shall be made to restore the natural landscape of the area
 - a) Removed Protected Trees shall be replanted at a replacement ratio of one half inch (1/2) DBH for each one inch DBH of the removed tree.
 - b) Removed Heritage Trees shall be replanted at a replacement ratio of one half inch (1/2) DBH for each one inch DBH of the removed tree.
 - i. Heritage trees must be of the same species or another tree species predominant in the district.
 - c) Historic trees shall be preserved and cannot be removed without a hardship provision as defined in Section 66-69.6-f is applied for and the tree removal permit is approved by the Historic Landmark Commission.
 - d) In the case of removal, Historic Trees shall be replanted at a ratio of one inch DBH for each one inch DBH of removed tree.
- 2) Protected, heritage, or historic tree(s) can be transplanted on the subject site, within a designated historic district, or at a historic landmark as a condition of the tree removal permit approval. Transplanting trees requires a transplanting and tree care plan as part of the application packet provided by a certified arborist.

- 3) Tree replacement must occur at the completion of construction projects or within 6 months of the removal of a protected, heritage, or historic tree. The Historic Preservation Officer may grant extensions up to 6 months at a time upon request of the applicant, for issues such as construction delays.
- 4) Replacement trees that do not survive for a period of at least 24 months shall be replaced by the original applicant for removal until they survive a 24-month period.
- 5) Tree Replacement Mitigation Fund. In the event that a protected, heritage, or historic tree cannot be replanted, a payment in lieu of replacement can be reviewed and approved by the Historic Landmark Commission. The funds shall be used for the purchasing, planting, and maintenance of trees on site, within a historic district, or within an approved location such as open space or a city park.
 - a) The amount of payment required shall be determined by the per caliper inch of tree being removed and the average cost of planting the tree as determined by the City Arborist or City Forester. A payment schedule of fees shall be published by the Parks and Recreation department every 3 years with the update of the Parks Ordinance.
 - b) Should the replacement tree be located on city property or city park/open space, the city shall be responsible for the purchasing, planting, and maintenance of the tree(s) after the applicant has paid the required amount into the Tree Replacement Mitigation Fund.
 - c) Tree replacement mitigation fees shall be paid prior to the issuance of a tree removal permit.

Section 66-69.8 Penalties. The violation of any provision of this Section shall be a misdemeanor and shall be punishable, upon conviction, by a fine of not more than \$2,000.

SECTION 2

THAT it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable

and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

SECTION 3

THAT all provisions of the Code of Ordinances of the City of New Braunfels not herein amended or repealed shall remain in full force and effect.

SECTION 4

THAT all other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict only.

SECTION 5

THAT in accordance with the provisions of the City Charter, this Ordinance may be read and published by descriptive caption only. This Ordinance has been publicly available in the office of the City Secretary prior to its adoption.

SECTION 6

THAT this Ordinance shall become adopted and effective upon its second reading, signature required by City Charter, and filing with the City Secretary's Office.

PASSED AND APPROVED: First reading this the 8th day of March, 2021.

PASSED AND APPROVED: Second reading this the 22nd day of March, 2021.

CITY OF NEW BRAUNFELS

RUSTY BROCKMAN, Mayor

ATTEST:

Caitlin Krobot, City Secretary

APPROVED AS TO FORM:

VALERIA M. ACEVEDO, City Attorney

APPENDIX A

APPROVED PLANT LIST

* denotes recommended species.

Shade

Scientific Name

* *Carya illinoensis*
 * *Catalpa bignonioides*
 * *Ehretia anacua*
Fraxinus Pennsylvanica
 * *Fraxinus texensis*
 * *Juglans major*
Juglans microcarpa
 * *Juglans nigra*
 * *Maclura pomifera*
 * *Magnolia grandiflora*
 * *Platanus mexicana*
Platanus occidentalis
 * *Quercus buckleyi (texana)*
 * *Quercus canbyi*
 * *Quercus durandii*
 * *Quercus fusiformis*
Quercus glaucooides
 * *Quercus gravesii*
 * *Quercus laceyi (glaucooides)*
 * *Quercus macrocarpa*
Quercus mohriana
 * *Quercus muhlenbergii*
 * *Quercus polymorpha*
Quercus pungens var. vaseyana
 * *Quercus virginiana*
Quercus texana
 * *Sapindus drummondii*
 * *Taxodium distichum*
 * *Taxodium mucronatum*
Tilia caroliniana
 * *Ulmus Americana*
 * *Ulmus crassifolia*

Ornamental

* *Acacia roemeriana*
 * *Acer grandidentatum*
Arbutus xalapensis
 * *Bauhinia congesta*
 * *Cercis canadensis var. texensis*
 * *Cercis reniformis*
 * *Chilopsis linearis*
 * *Condalia hookeri*
Cordia boissieri
 * *Cotinus obovatus*
 * *Diospyros texana*
 * *Eriobotrya japonica*

TREES

Common Name

Pecan
 Catalpa
 Anaqua
 Green ash
 Texas ash
 Arizona Walnut
 Nogalillo, river walnut
 Black walnut
 Osage Orange, Bois d'Arc,
 Magnolia
 Mexican sycamore
 Texas sycamore
 Texas red oak
 Canby's oak
 Durand oak
 Escarpment live oak
 Lacey oak
 Chisos red, Graves
 Lacey's oak
 Bur oak
 Shin oak
 Chinkapin or Chinquapin oak
 Mexican live or Monterrey oak
 Vasey oak
 Southern live oak
 Red oak
 Soapberry
 Bald cypress
 Montezuma cypress
 Carolina basswood
 American elm
 Cedar elm

Roemer's acacia
 Bigtooth maple
 Texas madrone
 Anacacho orchid tree
 Texas or Oklahoma redbud
 Mexican redbud
 Desert willow
 Condalia, brazil
 Wild olive, Mexican wild olive
 American smoketree
 Texas persimmon
 Loquat (exotic)

* *Fraxinus cuspidate*
Hamamelis virginiana
 * *Ilex deciduas*
Ilex vomitoria
 * *Juglans microcarpa*
 * *Koelreuteria bipinnata*
 * *Lagerstroemia indica, fauriei, & X's*
 * *Leucaena retusa*
Malus sp.
 * *Myrospermum sousanum*
Parkinsonia aculeate
 * *Pistacia texensis*
Prunus barbonia
 * *Prunus caroliniana*
 * *Prunus mexicana*
 * *Prunus virginiana*
 * *Pyrus calleryana*
Pyrus ioensis
 * *Rhamnus caroliniana*
 * *Rhus lanceolata*
Rhus virens
 * *Sophora affinis*
 * *Sophora secundiflora*
 * *Ungnadia speciosa*
 * *Viburnum rufidulum*
Vitex agnus-castus
Zizyphus jujuba

EVERGREEN

* *Cupressus arizonica*
 * *Juniperus virginiana*
Pinus cembroides
Pinus eldarica
 * *Pinus halepensis*
 * *Pinus pinea*

PALMS

* *Chamaerops humilis*
 * *Phoenix canariensis*
 * *Sabal mexicana*
 * *Sabal texana*
 * *Washingtonia filifera*

Fragrant ash
 Witch hazel
 Possum-haw holly
 Yaupon holly
 Little, Texas walnut
 Goldenrain tree (exotic)
 Crepe myrtle, etc. (exotic)
 Goldenball leadtree
 Blanco crabapple
 Arroyo sweetwood
 Retama, Jerusalem Thorn
 Texas pistache
 Redbay
 Cherry laurel
 Mexican plum
 Chokeberry
 Callery pear (exotic)
 Blanco crabapple
 Carolina buckthorn
 Flameleaf sumac
 Evergreen Sumac
 Texas sophora or Eve's
 Mountain laurel or mescal bean
 Mexican buckeye
 Rusty blackhaw
 Lavender tree
 Chinese date, Jujube

Arizona cypress
 Eastern red cedar
 Mexican pinyon pine, Remote pine
 Afghan pine
 Aleppo pine (exotic)
 Italian stone pine (exotic)

Mediterranean fan palm (exotic)
 Canary Island or false date (exotic)
 Mexican or Texas sabal
 Palm, sabal and dwarf sabal
 California fan (exotic)

APPENDIX B

UNDESIRABLE TREES

Scientific Name

Acacia farnesiana
Acer negundo
Ailanthus altissima
Albizia julibrissin
Broussonetia papyrifera (L.) L=Hér. ex. Vent.)
Celtis laevigata
Eriobotrya japonica
Firmiana simplex
Fraxinus velut
Koeleria paniculata
Juniperus ashei
Ligustrum japonicum
Melia azedarach L.
Populus nigra "italica"
Prosopis glandulosa
Prunus salicina
Pyrus calleryana
Sapium sebiferum
Tamarix ramosissima Ledeb.

Common Name

Huisache or Sweet Acacia
Box Elder
Tree of Heaven
Mimosa
Paper Mulberry
Sugarberry or Hackberry
Chinese Loquat or Loquat
Chinese Parasol/Varnish Tree
Arizona Ash
Golden-Rain Tree
Ashe-Juniper or Mountain Cedar
Ligustrum or Privet
Chinaberry tree
Lombardy Popular
Mesquite
Japanese Plum
Bradford Pear
Chinese Tallow
Saltcedar

YOUR OPINION MATTERS - DETACH AND RETURN

Case: ORD20-268 (CG)

Name: Tamer Investments

Address: 532 Rock St.

I favor: ☒

I object: ☐

(State reason for objection)

Comments: (Use additional sheets if necessary)

Signature: Lina Lisa Tang



YOUR OPINION MATTERS - DETACH AND RETURN

Case: ORD20-268 (CG)

Name: Steffanie & Tom Jones

Address: 584 W. M. II St.

I favor: ☒

I object: ☐

(State reason for objection)

Comments: (Use additional sheets if necessary)

Signature: Steffanie Jones Tom Jones

Tom Jones
(210) 792-2147
tomjonesnbt@gmail.com

YOUR OPINION MATTERS - DETACH AND RETURN

Case: ORD20-268 (CG)

Name: Brock Blomberg

Address: 564 Hill Ave,

I favor: X

I object: _____
(State reason for objection)

Comments: (Use additional sheets if necessary)

Signature: [Signature]

YOUR OPINION MATTERS - DETACH AND RETURN

Case: ORD20-268 (CG)

Name: Susan & Jay Brewer

Address: 415 So Academy & 453 So Academy

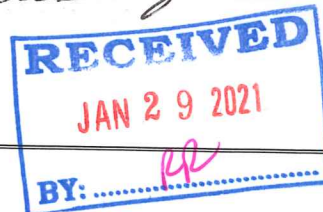
I favor: ✓

I object: _____
(State reason for objection)

Comments: (Use additional sheets if necessary)

Really take exception to the very onerous requirements outlined in 66-69.7 1. a B & c 5.

Signature: [Signature]



YOUR OPINION MATTERS - DETACH AND RETURN

Case: ~~ORD20-268~~ (CG)Name: Daniel TamezAddress: 532 Rock St.I favor: ☒

I object: _____

(State reason for objection)

Comments: (Use additional sheets if necessary)

Signature: [Signature]

YOUR OPINION MATTERS - DETACH AND RETURN

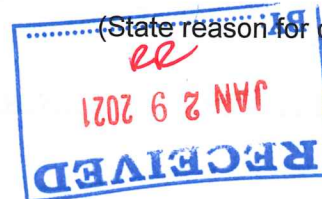
Case: ORD20-268 (CG)

Name: Communication ProfessionalsAddress: PO Box 211322New Braunfels, TX 78131I favor: ☒

I object: _____

(State reason for objection)

Comments: (Use additional sheets if necessary)

Signature: [Signature]

Case: ORD20-268 (CG)

Name: Joy AlexanderAddress: 195 Fredericksburg Rd.I favor: ☒

I object: _____

(State reason for objection)

Comments: (Use additional sheets if necessary)

Signature: [Signature]

YOUR OPINION MATTERS - DETACH AND RETURN

Case: ORD20-268 (CG)

Name: BONNIE LEITCH

I favor: ☒

Address: 548 Hu Ave.

I object:

(State reason for objection)

Comments: (Use additional sheets if necessary) attached

Signature: Bonnie Leitch

The city of New Braunfels is a designated Tree City USA for many reasons. We value our trees. That is why what occurred on Magazine Avenue last year is particularly devastating. If we wish to protect our landmark buildings in the only residential historic district in old New Braunfels, surely the trees that make that district as lovely as it is are also important to preserve.

As a member of the Historic Landmark Commission and a neighborhood resident who walks down Magazine almost daily, the transformation of the property that prompted the proposed the amendment to the tree protection ordinance was particularly sad for me. Given that four old-growth trees were removed in this instance, I would also ask that the penalty be per tree or raised so that it does not become just another expense of doing business.

Below are before and after pictures of the incident:



Before



After



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT

NOTICE OF PUBLIC HEARING

The New Braunfels Planning Commission will hold a public hearing at the request of the **Historic Landmark Commission & Historic Property Owners** to consider the following amendment to Chapter 66, Historic Preservation.

Request: An amendment to Chapter 66 Historic Preservation to provide some regulatory protections and procedures for the protection and removal protected trees.

Background: The City of New Braunfels's existing tree protection ordinance does not apply to residential historic properties. The proposed amendment would provide a framework for the protection and removal of protected trees on historic properties, while providing some alternative options if tree protection is not feasible.

The public hearing process allows an opportunity to provide comments on the request. This aids the Commission in making a recommendation to City Council.

Public hearings for this request are scheduled before the Planning Commission on **Tuesday, February 2, 2021**, and tentatively before City Council on **Monday, February 22, 2021**. Both meetings begin at 6:00 p.m. and will be held virtually via **Zoom Meeting** and are open to the public. Additional information on how to join the meeting is included with this notice.

To submit written comments complete the information below, including your signature, and return to:

Mail: City of New Braunfels
Planning Commission
550 Landa Street
New Braunfels, TX 78130

Email: CGasperek@nbtexas.org

If you have questions, please email Caleb Gasperek at CGasperek@nbtexas.org

Caleb Gasperek

Caleb Gasperek, Historic Preservation Officer

YOUR OPINION MATTERS - DETACH AND RETURN

Case: ORD20-268 (CG)

Name: Sophieburg Memorial Assoc

Address: 401 W. Coll, NB, TX

I favor: ☒

I object: ☐

(State reason for objection)

Comments: (Use additional sheets if necessary)

Signature: *[Signature]*



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Caleb Gasperek

Caleb Gasperek, Historic Preservation Officer

YOUR OPINION MATTERS - DETACH AND RETURN

Case: **ORD20-268 (CG)**

Name: CAROLAN DAVIS

Address: 388 Comal Ave, NB 78130

I favor: ✓

I object: _____

(State reason for objection)

Comments: (Use additional sheets if necessary)

Signature: *Carol Davis*

FEB 01 2021

Caleb Gasperek

From: Tara Kohlenberg <director@sophienburg.com>
Sent: Friday, February 5, 2021 3:26 PM
To: Caleb Gasperek
Subject: Proposed Tree Amendment
Attachments: Notice of Public Hearing.jpg

Caution: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

City Planning Commission,

It is our belief that the purpose of historical districts is to preserve the integrity of the designated neighborhood, including the style of homes, building placement on the property and the preservation of century old trees, many of which predate the historic buildings. The neighborhood is seen as a whole. Without the beautiful large trees, the neighborhood becomes just real estate. No amount of new landscape can reinstate the integrity of a historic property after the loss of heritage trees.

We strongly favor the amendment to Chapter 66 Historic Preservation for the protection of our historic properties/neighborhoods. Please help us maintain the integrity of our beautiful 176 year old town!

Tara V. Kohlenberg

Executive Director

830-629-1572

www.sophienburg.com

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Share your legacy while sustaining the Sophienburg's future. Donate Today!



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT

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If you have questions, please email Caleb Gasperek at CGasperek@nbtexas.org

Caleb Gasperek

Caleb Gasperek, Historic Preservation Officer

YOUR OPINION MATTERS - DETACH AND RETURN

Case: ORD20-268 (CG)

Name: Perry Torngvist

I favor: ✓✓✓

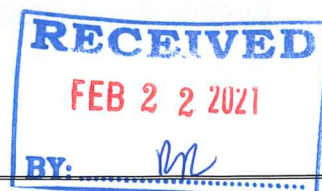
Address: 581 S. Academy

I object: _____

(State reason for objection)

Comments: (Use additional sheets if necessary)

Signature: [Signature]





PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT

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Background: The City of New Braunfels's existing tree protection ordinance does not apply to residential historic properties. The proposed amendment would provide a framework for the protection and removal of protected trees on historic properties, while providing some alternative options if tree protection is not feasible.

The public hearing process allows an opportunity to provide comments on the request. This aids the Commission in making a recommendation to City Council.

Public hearings for this request are scheduled before the Planning Commission on **Tuesday, February 2, 2021**, and tentatively before City Council on **Monday, February 22, 2021**. Both meetings begin at 6:00 p.m. and will be held virtually via **Zoom Meeting** and are open to the public. Additional information on how to join the meeting is included with this notice.

To submit written comments complete the information below, including your signature, and return to:

Mail: City of New Braunfels
Planning Commission
550 Landa Street
New Braunfels, TX 78130

Email: CGasperek@nbtexas.org

If you have questions, please email Caleb Gasperek at CGasperek@nbtexas.org

Caleb Gasperek

Caleb Gasperek, Historic Preservation Officer

YOUR OPINION MATTERS - DETACH AND RETURN

Case: **ORD20-268 (CG)**

Name: *Victor R. Rodriguez*

Address: *1306 Fieldcrest*

New Braunfels TX. 78130

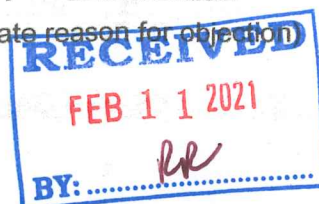
I favor: *✓*

I object: _____

(State reason for objection)

Comments: (Use additional sheets if necessary)

Signature: _____



YOUR OPINION MATTERS - DETACH AND RETURN

Case: ORD20-268 (CG)

Name: Katrina & Charles Storch

Address: 217 Rhine Rd., New Braunfels, Tx
78130

Comments: (Use additional sheets if necessary)

Signature: Katrina Storch

RECEIVED

JAN 29 2021

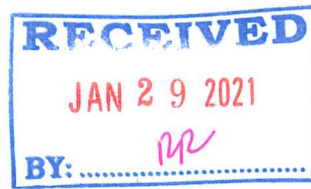
BY: PR

I favor: _____

I object: ✓

(State reason for objection)

Too much government oversight. People should be able to decide what they want to do with their property.



Addendum to ORD20-268 (CG)

We are certainly in favor of the tree protection initiative and the "re-focused" effort to increase attention and awareness to the value of such a program. However, there are a couple of stipulations included in the area of tree replacement found in Section 66-69.7 that, as I understand them, are a bit onerous and we find reaches beyond a reasonable response.

le Section (1) A calls for a one inch to one inch ratio, which we find unrealistic. We now of a tree that was removed around here that we 14' around at about the area you refer to as the DBH - - does that mean one would have to replace it with a 14' tree??

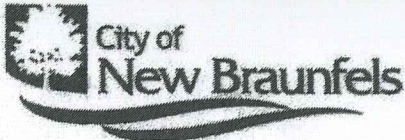
Section (1) B calls for two inches to one inch ration??! And why would/should it have to be a tree of the same - or predominant - species for the neighborhood. That seem overly restrictive - and what if the "family/owners" have a "favorite" species which they would choose to plant that would be quite compatible with the neighborhood?

Section (1) C same "replacement size" requirement??

Section (4) Do not necessarily agree with the 24 month standard and the requirement of replacing a re-planted tree. Are there allowances made for periods of drought and reduced watering restrictions? The applicant would have made the "good faith" effort and spent a fair amount of money to replace the tree and would likely want to do what it takes to be certain that investment survives.

Section (5) Need to have a lot more information relating to this requirement!

Section 66-69.8 If there's more than one tree involved - - is it \$2,000. Per tree??!



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT

NOTICE OF PUBLIC HEARING

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Caleb Gasperek

Caleb Gasperek, Historic Preservation Officer

YOUR OPINION MATTERS - DETACH AND RETURN

Case: ORD20-268 (CG)

Name: ANN AYRES JOHNSON

Address: 589 Magazine Ave.

I favor: BY: *pp*

I object: X

(State reason for objection)

Comments: (Use additional sheets if necessary)

Signature: *Ann Ayres Johnson*

I generally agree with providing some protections for trees on historic properties in New Braunfels, especially related to new construction in historic and landmark areas of the city. However, I am concerned that the language of this amendment too severely limits the rights of conscientious homeowners to manage the trees on their historic property. As an example, I feel it is an undue burden for a homeowner to be required to obtain a permit just to cut down a single tree on their own land.

Caleb Gasperek

From: Tobin Hoffmann <tchoffmann@hotmail.com>
Sent: Tuesday, February 2, 2021 10:10 AM
To: Caleb Gasperek
Subject: chapter 66 public hearing

Caution: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Tuesday night has been a Scouting night for me for the last 37 years so being unable to zoom tonight, here are just a few thoughts on the tree protection ordinance....

I think the inclusion of residential property in the ordinance is a bit too far... most residential property owners in the historic area already know the value of their trees and for the most part take the time to trim, prune and nurture their trees. As they have no constraints for parking and fire access like the commercial property owners, my observations have been that if anything, they try to maintain a tree far longer than they sometimes should, sometimes to the detriment of the tree,(cabling, chaining, limb props). To add additional process via permitting, replanting, fines and indulgences, not to mention the requirement to hire and use a licensed arborist will strain the budgets of many of our community that live on fixed incomes within the historic boundaries.

The downside of this is that we will occasionally lose a large "historic tree" from (1) neglect or disease and (2) sometimes due to the shortsightedness of the intrinsic value to the residential property owner, but, for the first part, no part of this amendment address current care of an existing tree and for the second part, you can't fix stupid.

as an alternative, could we not just identify the trees within the historic districts that meet the criteria of "historic" and:
1. inform and congratulate the property owner on having the tree(s) 2. offer an evaluation by a city arborist on the health and care of same 3. remind the property owner of the value of the tree(s) 4. thank them for their help in keeping those trees healthy and whole.

I think folks by nature want to do the "right" thing and just need a little positive reinforcement and guidance to become part of the team.

you can reach me by cell 8306208519 or email... Thank you for your time and efforts!

Tobin C Hoffmann, CFP

YOUR OPINION MATTERS - DETACH AND RETURN



Case: ORD20-268 (CG)

Name: Monica Jergin

Address: 456 Magazine Dr

311 Comal Ave

I favor: _____

I object: ☒ _____

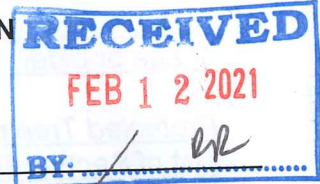
(State reason for objection)

Comments: (Use additional sheets if necessary)

Signature: Monica Jergin

Property Rights

YOUR OPINION MATTERS - DETACH AND RETURN



Case: ORD20-268 (CG)

Name: Ernyto Jergin

Address: 220 Seguin Ave

I favor: _____

I object: ☒ _____

(State reason for objection)

Comments: (Use additional sheets if necessary)

Signature: [Signature]

Property Rights

I object to the proposed Case ORD20-268 (CG) because:

1. I don't believe the city should be imposing even more restrictions on citizens making improvements to their properties;
2. This ordinance would impose a thinly-veiled additional property tax burden on citizens;
3. It will be an undue burden for a citizen to wait up to 4.5 months to receive approval to remove a diseased or damaged tree that might be about to fall:
 - a. On their home or other structure on their property,
 - b. On a citizen walking along the sidewalk or street in front of their property, or
 - c. On a citizen on their own property; and
4. The city is giving every appearance that they do not trust the citizens of this city who own historic properties to make good decisions regarding preservation and maintenance of said properties.

YOUR OPINION MATTERS - DETACH AND RETURN

Case: ORD20-268 (CG)

Name: DOREEN FISHER

Address: 708 W MILL ST

I favor: _____

I object: X

(State reason for objection)

Comments: (Use additional sheets if necessary)

SEE ATTACHED

Signature: 

YOUR OPINION MATTERS - DETACH AND RETURN

Case: ORD20-268 (CG)

Name: Kevin Fisher

Address: 708 West Mill Street

I favor: _____

I object: ✓

(State reason for objection)

Comments: (Use additional sheets if necessary)

I believe it is a severe infringement of private property rights.

Signature: 

3/8/2021

Agenda Item No. A)

Deliberate issues regarding economic development negotiations in accordance with section 551.087 of the Texas Government Code.

- Project Broadband
- Project Locked
- CGT

3/8/2021

Agenda Item No. B)

Deliberate the purchase, exchange, lease or value of real estate in accordance with Section 551.072 of the Texas Government Code; and, Deliberate pending/contemplated litigation, settlement offers, and matters related to privileged and unprivileged client information deemed confidential by Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct in accordance with Section 551.071 of the Texas Government Code, specifically

- Tolle Street ROW Abandonment