



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

**CITY HALL - COUNCIL CHAMBERS  
424 S. CASTELL AVENUE**



**MONDAY, JULY 9, 2012 at 6:00 P.M.**

Gale Pospisil, Mayor  
Richard Zapata, Councilmember (District 1)  
Mark Goodner, Mayor Pro Tem (District 2)  
Ron Reaves, Councilmember (District 3)

Sandy Nolte, Councilmember (District 4)  
Bryan Miranda, Councilmember (District 5)  
Steven Digges, Councilmember (District 6)  
Michael Morrison, City Manager

**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 ADDENDUM**

**4. INDIVIDUAL ITEMS FOR CONSIDERATION**

- (E) Discuss and consider approval of a resolution authorizing an interlocal cooperative agreement between the New Braunfels Industrial Development Corporation and the City of New Braunfels for funding of parks improvement projects.  
(D. Korinchock, Support Services Director) Page 1
- (F) Discuss and consider ratification of a grant application submitted to the FY 2012 Assistance to Firefighters Grant program under the Federal Emergency Management Agency (FEMA) for \$20,000; and authorizing the City Manager to accept funds if awarded and to execute all contract documents associated with the grant awarded.  
(J. Robinson, Fire Chief) Page 19

***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).*

**CERTIFICATION**

I hereby certify the above Notice of Meeting was posted on the Bulletin Board at the New Braunfels Municipal Building on July 6, 2012, at 12:00 p.m.

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Patrick Aten, 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.





## City Council Agenda Item Report July 9, 2012

### Agenda Item No. 4E

**Presenter/Contact – Debi Korinchock, Support Services Director  
(830) 221-4385—[dkorinchock@nbtexas.org](mailto:dkorinchock@nbtexas.org)**

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**SUBJECT:** Discuss and consider approval of a resolution authorizing an interlocal cooperative agreement between the New Braunfels Industrial Development Corporation and the City of New Braunfels for funding of parks improvement projects.

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### **BACKGROUND/RATIONALE:**

On June 21, 2012, the New Braunfels Industrial Development Corporation (NBIDC) approved a request from the City of New Braunfels to pay the debt service associated with \$10 million in park improvement projects. Then, on June 25, 2012, the City Council approved this expenditure by the NBIDC. The proposed interlocal agreement between the City and NBIDC documents this transaction and commitment.

The projects being funded include repairs to the Springfed pool, repair and improvements to the retaining walls in Landa Park along the Comal River and development of Fischer Park. The Springfed pool project includes repairs to the intake area, replacement of the swimming platforms, wall and railing repairs and other needed measure to ensure a safe and enjoyable environment. Construction of the walls in Landa Park will prevent further erosion and loss of banks and provide a safe surface from which to stand at the water's edge. Fischer Park will offer playgrounds, trails, water areas, nature areas, an event center, planetarium and nature center once completed. All three of these projects are included in the proposed 2012 debt issuance currently under consideration by Council.

The NBIDC will set aside \$3.3 million in a debt service reserve. This reserve will be used over the next five years to pay a significant portion of the debt service for the \$10 million in new debt in those years. This means that the NBIDC will have to absorb only about \$100,000 in additional debt service requirements from their annual revenue between now and when they get additional debt capacity in 2018 and 2019. NBIDC adopted this strategy as part of their approval of funding the \$10 million in parks improvement projects through debt.

The tax rate equivalent of \$10 million in debt service is about \$.0202. For the \$8.3 million that would be included in the 2012 debt issuance, the tax impact is \$.0168.

The proposed interlocal agreement is needed to provide documentation to the Attorney General's Office and the purchasers of the debt of the funding for the new debt service requirements. The NBIDC will also be asked to approve a resolution and the agreement at their July 19, 2012 regular meeting.

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

X	Yes	City Plan/Council Priority:	<b>Strategic Priorities:</b> 1. Use a variety of funding sources for operational and capital needs 8. Maintain fiscal stability of City operations

**FISCAL IMPACT:**

As stated, the funding strategy calls for NBIDC to set aside \$3.3 million to fund debt service in the first five years which results in an increase of about \$100,000 in debt service funded from current revenue. Currently the NBIDC has \$8.16 million available to fund projects. This set aside for the debt service for parks projects reduces those available funds to \$4.86 million. The NBIDC has about \$5 million in revenue annually, mainly from sales tax proceeds (3/8 cents goes to the NBIDC).

**BOARD/COMMISSION RECOMMENDATION:**

The NBIDC Board will consider this agreement at their regular meeting on July 19, 2012.

**STAFF RECOMMENDATION:**

Staff recommends approval of a resolution authorizing an interlocal cooperative agreement between the New Braunfels Industrial Development Corporation and the City of New Braunfels for funding of parks improvement projects.

**RESOLUTION BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS AUTHORIZING AN INTERLOCAL COOPERATIVE AGREEMENT BETWEEN NEW BRAUNFELS INDUSTRIAL DEVELOPMENT CORPORATION AND THE CITY OF NEW BRAUNFELS, TEXAS; AND OTHER MATTERS IN CONNECTION THEREWITH**

WHEREAS, the City of New Braunfels, Texas (the *City*) is authorized pursuant to the provisions of the laws of the State of Texas, including Chapters 501 and 505, Texas Local Government Code, (formerly) Texas Revised Civil Statutes Annotated Article 5190.6 (the *Act*) to create a nonprofit industrial development corporation (the *Corporation*);

WHEREAS, the City Council (the *Council*) of the City on February 27, 1995 authorized the calling of an election authorizing the levy of a one-eighth (1/8) of one percent (1%) additional sales and use tax (the *Sales Tax*) within the City in accordance with the provisions of the Act to be used, among other matters, for the purposes of making public project improvements and renovations in the City (the *Sales Tax*);

WHEREAS, the majority of the citizens of the City approved the levy of the Sales Tax at an election held on May 6, 1995 (the *Election*);

WHEREAS, the Council pursuant to a resolution adopted on September 11, 1995 approved the creation of the Corporation in accordance with the provisions of Chapter 321, as amended, Texas Tax Code and the Act and authorized the levy of the Sales Tax;

WHEREAS, the Board of Directors (the *Board*) of the Corporation or the Council is required to hold a public hearing concerning certain projects consisting of the proposed projects for constructing various park improvements and expansions (the "*Project*");

WHEREAS, the City was advised by its financial advisors, Southwest Securities, Inc., that certain of the projects permitted at the aforementioned election could be financed at a lower interest cost by the City through the issuance of certificates of obligation (the *Certificates*);

WHEREAS, the City will receive the proceeds of the Certificates on or about August \_\_, 2012;

WHEREAS, reducing the costs relating to the Project will benefit the Corporation and the City;

WHEREAS, the agreement attached hereto as Exhibit A will be approved by the Board to provide for the transfer of funds, being a portion of the Sales Tax, by the Corporation to the City to pay a portion of the debt service requirements on the Certificates, to maintain and operate the Project and to pay certain other costs of the Project;

WHEREAS, the Council hereby finds and determines the adoption of this Resolution and the execution of the agreement are in the best interests of the citizens of the Council; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS THAT:

SECTION 1. The agreement attached hereto as Exhibit A is incorporated by reference to this Resolution for all purposes.

SECTION 2. The Mayor and the City Secretary of the City are hereby authorized to execute and seal the agreement.

SECTION 3. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the Council.

SECTION 4. All ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

SECTION 5. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 6. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the Council hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 7. 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 such meeting, including this Resolution, was given, all as required by Chapter 551, as amended, Texas Government Code.

SECTION 8. This Resolution shall be in force and effect from and after the date of its adoption, and it is so resolved.

PASSED AND APPROVED, this the \_\_\_\_ day of July, 2012.

CITY OF NEW BRAUNFELS, TEXAS

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Mayor

ATTEST:

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City Secretary

(CITY SEAL)

EXHIBIT A

Interlocal Agreement

See Tab No. \_\_\_\_



**INTERLOCAL COOPERATIVE AGREEMENT BETWEEN NEW BRAUNFELS INDUSTRIAL DEVELOPMENT CORPORATION AND THE CITY OF NEW BRAUNFELS, TEXAS RELATING TO THE ANTICIPATED TRANSFER OF CERTAIN PROCEEDS OF THE SALES AND USE TAX RECEIVED BY THE CORPORATION TO THE CITY TO PROVIDE FOR THE PAYMENT OR REIMBURSEMENT OF CERTAIN COSTS RELATING TO THE CONSTRUCTION OF CERTAIN PUBLIC PROJECTS IN THE CITY; AND OTHER MATTERS IN CONNECTION THEREWITH**

This agreement (the *Agreement*) is made to be effective as of the \_\_\_\_ day of July, 2012 by and between the City of New Braunfels, Texas, a duly incorporated and existing home rule municipality and political subdivision of the State of Texas (the *City*) and the entity known as New Braunfels Industrial Development Corporation, a non-profit industrial development corporation (the *Corporation*) organized and existing under the laws of the State of Texas, including Chapters 501 and 505, as amended, Texas Local Government, Code (formerly) Section 4B of Texas Revised Civil Statutes Annotated Article 5190.6, as amended (the *Act*).

**RECITALS**

WHEREAS, on February 27, 1995 the City Council (the *Council*) of the City called an election concerning the levy of an additional sales and use tax for the benefit of the Corporation pursuant to the provisions of Section 4B of the Act to determine if the qualified voters of the City would approve the levy of this additional sales and use tax in the amount of one-eighth of one percent (1/8 of 1%) (the *Sales Tax*) within the City for the benefit of the Corporation; and

WHEREAS, this election was held on May 6, 1995 (the *Election*), and the qualified citizens of the City approved the levy of the Sales Tax; and

WHEREAS, the Council adopted a resolution on September 11, 1995, approving (i) the creation of the Corporation, (ii) its articles of incorporation, and (iii) its bylaws, and levied the Sales Tax in accordance with the provisions of the Act; and

WHEREAS, the levy of the Sales Tax has been approved by the Comptroller of Public Accounts for the State of Texas (the *Comptroller*) and has been and will be collected by the Corporation in the form, time, and manner as provided in the Act and pursuant to the provisions of Chapter 321, as amended, Texas Tax Code; and

WHEREAS, the Corporation is required to conduct a public hearing and this public hearing was conducted on June 21, 2012 concerning the proposed projects for constructing various park improvements and expansions (the *Initial Projects*), all in accordance with the provisions of Section 505.159 of the Act and the Corporation's bylaws; and

WHEREAS, the City and the Corporation hereby find and determine that the construction, operation, and maintenance of the Initial Projects will promote and develop new or expanded business enterprises in the City; and

WHEREAS, the City and Corporation expressly acknowledge and recognize that any Sales Tax proceeds may only be utilized to pay the “Costs” of “Projects”, each as defined in the Act, including, but not limited to, the Initial Projects and subject to the limitations contained in the Act and the Election; and

WHEREAS, the City will own the Initial Projects and will have full responsibility for the design and construction of the Initial Projects and the Corporation shall have no duties or responsibilities with respect to the Initial Projects other than as provided in this Agreement; and

WHEREAS, under the current policies and procedures established by the Comptroller the 1 and 1/8% sales and use tax belonging to the City and the Sales Tax belonging to the Corporation are collected, commingled, and remitted directly to the City in undivided interests and without allocations or notations of ownership as between the City and the Corporation; and

WHEREAS, it is appropriate and necessary that the City and the Corporation adopt formal procedures by which the City’s 1 and 1/8% sales and use tax and the Corporation’s Sales Tax are collected, deposited, held, identified, allocated, and transferred to or for the benefit of the Corporation; and

WHEREAS, the City can obtain financing for the construction of the Initial Projects on more favorable terms than could the Corporation; and

WHEREAS, the City has authorized the issuance of obligations designated as “City of New Braunfels, Texas Combination Tax and Limited Pledge Revenue Certificates of Obligation, Series 2012” in the principal amount of \$\_\_\_\_\_ (the *Certificates*) to pay for a portion of the Initial Projects and other capital infrastructure improvements in the City;

WHEREAS, this Agreement shall constitute an interlocal cooperative agreement as authorized pursuant to the provisions of Chapter 791, as amended, Texas Government Code;

WHEREAS, the adoption of this Agreement is hereby found and determined to be in the best interest of the citizens of the City and the Corporation;

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. Duties of the City. The City hereby agrees to perform the following duties:

1.1 The City will own and construct the Initial Projects and is responsible for all aspects of the construction, acquisition, design, upkeep, maintenance and operation of the Initial Projects (subject to the provisions of the Act and the Election) and in connection therewith, the City shall comply with all applicable law relating to the construction of public works, including, without limitation, the provisions of Chapter 2253, as amended, Texas Government Code (pertaining to public works performance and payment bonds).

1.2 The City has issued the Certificates to provide the initial capital required to construct the Initial Projects and certain other capital infrastructure projects in the City. The City shall be solely responsible for making the annual payments of principal of and interest on this indebtedness pursuant to terms and conditions for the issuance of the Certificates.

1.3 Any Sales Tax proceeds transferred by the Corporation to the City shall not be pledged to pay any indebtedness of the City in accordance with the provisions of Section 321.506, as amended, Texas Tax Code. Upon receipt of any Sales Tax proceeds from the Corporation, the City may utilize any such funds for any lawful purpose in accordance with the provisions of this Agreement and applicable law.

SECTION 2. Duties of Corporation. The Corporation hereby agrees to perform the following duties:

2.1 In consideration of the City's agreement to undertake the actions set forth in Section 1 hereof, the Corporation shall transfer on an annual basis lawfully available Sales Tax proceeds to the City to pay certain of the debt service requirements on the Certificates (based upon the schedule attached hereto as Exhibit A) that are scheduled to be sold on July 9, 2012 and delivered on August \_\_, 2012, upon a determination by the Board of Directors of the Corporation that any and all financial obligations of the Corporation for the then current fiscal year of the Corporation have been provided for or otherwise satisfied. These obligations include, but are not limited to, the payment of all of the Corporation's administrative expenses, the payment of all debt service requirements on any indebtedness issued by the Corporation, and the funding of all debt service reserve or other funds created in any resolution authorizing the issuance of any indebtedness by the Corporation. Accordingly, any transfer of Sales Tax proceeds to the City by the Corporation shall be at the sole discretion of the Board of Directors of the Corporation and shall only constitute the transfer of surplus Sales Tax Proceeds. These findings must be confirmed by the Board of Directors of the Corporation prior to the transfer of any Sales Tax proceeds to the City.

SECTION 3. Limitation on Use of Sales Tax Proceeds. The City and the Corporation expressly recognize and covenant that any Sales Tax proceeds transferred to the City by the Corporation may only be expended to construct Projects, including the Initial Projects, or to reimburse the City for the construction costs relating to any such Projects, including the Initial Projects all as provided in the Act and applicable law.

SECTION 4. Amendments and Modifications. This Agreement shall be binding upon the City and the Corporation and their respective successors and legal representatives and shall inure solely to the benefit of the City and Corporation and their respective successors and legal representatives. Furthermore, no alteration, amendment, or modification of any provision of this Agreement shall be effective unless (1) prior written consent of such alteration, amendment, or modification shall have been obtained from the parties hereto, and (2) such alteration, amendment, or modification is in writing and signed by the parties hereto. The City and the Corporation may amend this Agreement to address the construction or financing of other Projects (other than the Initial Projects) upon compliance with the provisions of the Act and with applicable law.

SECTION 5. Collection and Transfer of Undivided Sales Tax Receipts. The City hereby requires and orders that all remittances of commingled sales and use tax collections belonging to the City and the Corporation in undivided interests (the *Undivided Sales Tax Receipts*) shall be deposited as received, or transmitted by the Comptroller directly, to the depository account of the City held and maintained by the City at its official depository bank (the *Depository Bank*) designated from time to time by the Council, or as otherwise directed by the City, and the City shall request the Comptroller to transmit such funds by the earliest available and feasible means under the policies of the Comptroller in effect from time to time. The City expressly reserves the right (i) to direct the Comptroller to deposit these funds with an institution other than the Depository Bank and (ii) to invest these funds in accordance with the laws of the State of Texas.

Immediately upon receipt of the Undivided Sales Tax Receipts from the Comptroller, the City Manager, or his designee, shall determine the share of the Undivided Sales Tax Receipts belonging to the Corporation, in accordance with Section 4B of the Act. Such person shall, as soon as possible thereafter, deposit a check drawn on the City's account (or otherwise transfer from such account) to the account of the Corporation at its depository financial institution representing the Corporation's share of the Undivided Sales Tax Receipts. The City shall maintain internal records to document all such transfers of the Corporation's share of the Undivided Sales Tax Receipts.

The Depository Bank shall not have any responsibility to verify or determine the accuracy of the amounts certified to it from time to time according to this Section.

SECTION 6. Receipt and Transfer of Proceeds of Sales Tax. The Corporation agrees, in cooperation with the City, to take such actions as are required to cause the Sales Tax proceeds received from the Comptroller for and on behalf of the Corporation to be transferred and deposited immediately upon receipt by the Corporation to the credit of the banking or monetary fund maintained at the depository designated by the Corporation.

SECTION 7. Acceptance of Depository Responsibilities. The City Manager is authorized and directed to develop procedures pursuant to which the requirements of this Agreement are met, including the incorporation of this Agreement by the City into and as part of the bidding procedures by which the City designates and selects its Depository Bank or Banks from time to time.

Each Depository Bank, by its acceptance of its designation as depository of the City, agrees to abide by the terms and provisions of this Agreement.

All reasonable costs, if any, of the Depository Bank associated with the administration of the terms and provisions of this Agreement shall be paid for by the Corporation as an administrative expense under this Agreement and shall be paid by the Corporation upon receipt of statements therefor from the Depository Bank. Such costs, if any, shall never constitute a cost, liability, or obligation of the City.

SECTION 8. Recognition of Tax Exempt Financing. The Corporation hereby acknowledges and recognizes that the Certificates are being issued as "state or local bonds"

under and pursuant to section 103(a) of the Internal Revenue Code of 1986, as amended, and the Corporation hereby covenants and agrees with respect to the use of proceeds of sale of the Certificates and the use of the Projects as follows:

(a) Definitions. When used in this Section, the following terms have the following meanings:

“*Closing Date*” means the date on which the Certificates are first authenticated and delivered to the initial purchasers against payment therefor.

“*Code*” means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

“*Computation Date*” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“*Gross Proceeds*” means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Certificates.

“*Investment*” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“*Nonpurpose Investment*” means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the Certificates are invested and which is not acquired to carry out the governmental purposes of the Certificates.

“*Rebate Amount*” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“*Regulations*” means any proposed, temporary, or final Income Tax Regulations issued pursuant to sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Certificates. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

“*Yield*” of (i) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (ii) the Certificates has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The Corporation shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Certificate to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the Corporation receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not

adversely affect the exemption from federal income tax of the interest on any Certificate, the Corporation shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Certificates:

(i) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Certificates, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(ii) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Certificates or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Certificates to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (i) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (ii) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (iii) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the Corporation shall not at any time prior to the final Stated Maturity of the Certificates directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Certificates.

(f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Regulations and rulings thereunder, the Corporation shall not take or omit to take any action which would cause the Certificates to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Payment of Rebataable Arbitrage. Except to the extent otherwise provided in section 148(f) of the Code and the Regulations and rulings thereunder:

(i) The Corporation shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last Outstanding Certificate is discharged. However, to the extent permitted by law, the Corporation may commingle Gross Proceeds of the Certificates with other money of the Corporation, provided that the Corporation separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(ii) Not less frequently than each Computation Date, the Corporation shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Regulations and rulings thereunder. The Corporation shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Certificates until six years after the final Computation Date.

(iii) As additional consideration for the purchase of the Certificates by the Purchasers and the use of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the Corporation shall remit to the Corporation for payment to the United States the amount described in paragraph (g)(ii) above and the amount described in paragraph (g)(iv) below, at the times, in the manner and accompanied by such forms or other information as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder.

(iv) The Corporation shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraph (g)(ii), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including the amount remitted to the Corporation for payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

SECTION 9. Default. In the event that either the Corporation or the City should violate any of the terms of this Agreement, the other party shall promptly notify the other respective party of the violation. In the event this violation is not cured within thirty (30) days after the sending of such notice, the party sending the notice may at its discretion notify the other party of its intention to seek any remedies available under the law. Upon such notice, the delinquent party shall have thirty (30) days to cure this violation prior to final action by the other party seeking any available judicial remedy.

SECTION 10. Miscellaneous; Assignment. All the situations, promises, undertaking and agreements herein contained by or on behalf of either the Corporation or the City shall bind the successors and assigns of either party, whether so expressed or not but neither the Corporation nor the City shall have the right to assign this Agreement, or any part thereof except as

hereinafter provided without the written consent of the other party. Either party may waive any default on the part of the opposite affecting any other provision of this Agreement; and a waiver of any one default shall not be deemed a waiver of any other or subsequent default or defaults. No delay by either party in enforcing any of its rights under this Agreement shall be deemed a waiver of such rights.

SECTION 11. Approval and Consent. Unless otherwise provided herein, any approval or consent required by the provisions of this Agreement by the City or the Corporation shall be evidenced by a written resolution adopted by the governing body of the party giving such approval or consent. Upon receipt of such written resolution duly certified by the appropriate party, the City or the Corporation can conclusively act on the matter requiring such approval.

SECTION 12. Addresses and Notice. Unless otherwise provided herein, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by any party to any other party must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegram when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties hereto shall, until changed as hereinafter provided, be as follows:

(a) If to the City, to:

City of New Braunfels, Texas  
424 South Castell Avenue  
New Braunfels, Texas 78130  
Attention: City Manager

(b) If to the Corporation, to:

New Braunfels Industrial Development Corporation  
424 South Castell Avenue  
New Braunfels, Texas 78130  
Attention: Executive Director

The parties hereto shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least ten (10) days' written notice to the other parties hereto.

SECTION 13. Covenants. The City and the Corporation covenant that they will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions contained in this Agreement. The City and the Corporation covenant that they are duly authorized under the laws of the State of Texas to execute and deliver this Agreement, that all



actions on their part as provided herein and the execution and delivery of this Agreement have been duly and effectively taken according to the import thereof as provided in this Agreement.

SECTION 14. Venue. Any damages for the breach of this Agreement shall be paid and be due in Comal County, Texas, which is the County in which the principal administrative offices of the City and the Corporation are located. It is specifically agreed among the parties to this Agreement that Comal County, Texas, is the place of performance of this Agreement; and in the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought in Comal County, Texas.

SECTION 15. Legal Fees. In the event it is necessary for either party to commence legal action of any kind to enforce its rights hereunder, the prevailing party in such litigation shall be entitled to collect all court costs and reasonable attorney's fees and expenses incurred in connection therewith.

SECTION 16. Force Majeure. In the event that either party shall be entirely prevented from completing performance of its obligations hereunder by an act of God or any other occurrence whatsoever which is beyond the control of such party, then such party shall be excused from any further performance of its obligations and undertakings hereunder. In the event that the performance of either party of any obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then he shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

SECTION 17. Holiday. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Agreement, is not a business day, such payment may be made or act performed or right exercised on the next succeeding business day with the same force and effect as if done on the date provided therefor herein.

SECTION 18. Counterparts. This Agreement may be executed in any number of counterparts, each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute one and the same instrument.

SECTION 19. Entire Agreement. This Agreement contains the entire agreement between the parties pertaining to the subject matter hereof and fully supersedes all prior agreements and understandings between the parties pertaining to such subject matter.

SECTION 20. Captions. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.

SECTION 21. Incorporation of Preamble Recitals. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Agreement for all purposes and are adopted as a part of the judgment and findings of the Council and the Board of Directors of the Corporation.

SECTION 22. Inconsistent Provisions. All ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Agreement are hereby repealed to the extent of such conflict, and the provisions of this Agreement shall be and remain controlling as to the matters provided herein.

SECTION 23. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 24. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Agreement and the application of such provision to other persons and circumstances shall nevertheless be valid, and the Corporation and the City hereby declare that this Agreement would have been enacted without such invalid provision.

SECTION 25. Construction. Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Agreement and all the terms and provisions hereof shall be constructed to effectuate the purposes set forth herein and to sustain the validity of this Agreement.

SECTION 26. Compliance with Texas Open Meetings Act. It is officially found, determined, and declared that the meeting of each of the City and the Corporation at which this Agreement 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 such meeting, including this Agreement, was given, all as required by Chapter 551, as amended, Texas Government Code.

*[The remainder of this page intentionally left blank.]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date and year first above written.

NEW BRAUNFELS INDUSTRIAL  
DEVELOPMENT CORPORATION

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President, Board of Directors

ATTEST:

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Secretary, Board of Directors

(Corporation Seal)

CITY OF NEW BRAUNFELS, TEXAS

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Mayor

ATTEST:

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City Secretary

(City Seal)

**EXHIBIT A**

[CORPORATION'S PORTION OF THE DEBT SERVICE REQUIREMENTS  
ON THE CERTIFICATES]



City Council Agenda Item Report  
July 9, 2012

Agenda Item No. 4F  
Presenter/Contact – John Robinson, Fire Chief  
(830) 221-4207 – jrobinson@nbtexas.org

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**SUBJECT:** Discuss and consider ratification of a grant application submitted to the FY 2012 Assistance to Firefighters Grant program under the Federal Emergency Management Agency (FEMA) for \$20,000; and authorizing the City Manager to accept funds if awarded and to execute all contract documents associated with the grant awarded.

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**BACKGROUND/RATIONALE:**

Staff originally began developing a grant application to the FY 2012 Assistance to Firefighters Grant program under the Federal Emergency Management Agency requesting \$92,000 for 20 portable Motorola P-25 Apex 7500 Dual Band Radios with VHF and 700/800 MHz banding to be utilized by emergency responders. This proposed submission was reflected in the original agenda report provided to Council in the packet. However, an addendum to the request for proposals from FEMA was released outlining new funding priorities and requirements. The addendum stated that a contract was awarded to FirstNet to develop technical and operational requirements for the nationwide 700 MHz broadband network. Therefore, to ensure consistency across the national network, FEMA suspended approval of funding for broadband projects including the 700 MHz radios in our original grant proposal.

Staff utilized the unmet needs list developed during the budgeting process to identify a revised request from FEMA. Staff developed and submitted a grant application to the FY 2012 Assistance to Firefighters Grant program for \$20,000. If awarded, grant funds will be used to purchase a 20 foot dive boat to be used by the New Braunfels Fire Department Dive team for underwater recovery such as recovering victims of drowning and evidence collection.

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

	N/A		
X	Yes	<b>City Plan/Council Priority:</b>	<b>Strategic Priorities:</b> Infrastructure Objective 1a - Use a variety of funding sources for operational and capital needs.

**FISCAL IMPACT:**

Total cost of the dive boat is \$25,000. The City's matching requirement for this grant is \$5,000 (20%). Award of this grant avoids a future equipment expenditure of \$25,000.

**BOARD/COMMISSION RECOMMENDATION:**

N/A

**STAFF RECOMMENDATION:**

Staff recommends ratifying the grant application submitted to the FY 2012 Assistance to Firefighters Grant program under the Federal Emergency Management Agency (FEMA) for \$20,000; and authorizing the City Manager to accept funds if awarded and to execute all contract documents associated with the grant awarded.