

**STRATEGIC PARTNERSHIP AGREEMENT BETWEEN  
THE CITY OF BOERNE, TEXAS AND  
KENDALL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 3A**

This Strategic Partnership Agreement ("Agreement") is entered into by and between the City of Boerne, Texas (the "City") and Kendall County Water Control and Improvement District No. 3A (the "District").

**RECITALS**

WHEREAS, the City is a home-rule municipal corporation created and existing under the laws of the State of Texas and situated in Kendall County, Texas; and

WHEREAS, the District is a water control and improvement district created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59 of the Texas Constitution and the applicable provisions of Chapters 49 and 51 of the Texas Water Code; and

WHEREAS, the District was organized, created, and established by a vote of the Board of Directors of Kendall County Water Control and Improvement District No. 3 dated December 10, 2023, dividing Kendall County Water Control and Improvement District No. 3 into Kendall County Water Control and Improvement District No. 3B and the District, for the purpose of providing water, sanitary sewer and drainage facilities, and roads, to serve the land within its boundaries; and

WHEREAS, the City and District are individually referred to as a "Party" and collectively as the "Parties."

WHEREAS, Section 43.0751 of the Texas Local Government Code ("Act") authorizes the City and District to negotiate to enter this Agreement; and

WHEREAS, the District encompasses approximately 332.413 acres, more or less, as depicted on Exhibit A and more fully described on Exhibit B attached to this Agreement ("Development"); and

WHEREAS, BOERNEBAK II, LLC, a Texas limited liability company and PULTE HOMES OF TEXAS, L.P., a Texas limited partnership (collectively the "Owner"), owns the Development; and

WHEREAS, certain areas within the Development may be developed for commercial uses; and

WHEREAS, the City desires to annex the commercial use areas of the Development for the sole and exclusive purpose of imposing and collecting sales and use taxes within such areas; and

WHEREAS, subject to the terms and conditions of this Agreement, the District is willing to allow the City to annex commercial use areas of the Development for the sole and exclusive purpose of imposing and collecting sales and use taxes within such areas; and

WHEREAS, subject to the terms and conditions of this Agreement, Owner is willing to allow the City to annex commercial areas of the Development for the sole an exclusive purpose of imposing and collecting sales and use taxes within such areas; and

WHEREAS, the District is willing to limit its authority to issue bonds for capital improvements and enter into reimbursement contracts with Owner; and

WHEREAS, to facilitate the limited purpose annexation by the City of the commercial areas of the Development, Owner has submitted or will submit to the City a petition ("Limited Purpose Petition") requesting and consenting to the limited purpose annexation, for the sole, exclusive, and limited purpose of imposing sales and use taxes, of (i) commercial land used within portions of the Development that contains eligible commercial activities ("Original Limited Purpose Property"), (ii) land within the Development as of the Effective Date (other than the Original Limited Purpose Property), which land is converted to a commercial use that contains eligible commercial activities ("Additional Limited Purpose Property"), and (iii) land within the Development (up to a maximum width of ten feet), as is reasonably necessary to connect the Original Limited Purpose Property to the corporate boundaries of the City ("Connecting Limited Purpose Property"); and

WHEREAS, the Original Limited Purpose Property, Additional Limited Purpose Property, and Connecting Limited Purpose Property are collectively referred to herein as the "Limited Purpose Property"; and

WHEREAS, the sales and use taxes collected within the Limited Purpose Property is referred to herein as the "Sales and Use Tax Revenues"; and

WHEREAS, the Limited Purpose Petition Owner, on behalf of itself and all present and future owners of land within the Development, has requested that the City annex the Limited Purpose Property solely for the purposes provided in this Agreement and has consented to such annexation, and to the collection of Sales and Use Tax Revenues by the City; and

WHEREAS, pursuant to the Act and the Limited Purpose Petition, the Parties desire to enter into this Agreement to accomplish the annexation by the City of the Original Limited Purpose Property for the sole and exclusive purpose of imposing and collecting sales and use taxes within the commercial use areas of the Original Limited Purpose Property; and

WHEREAS, the District provided notice of two public hearings in accordance with all applicable laws and the board of directors of the District ("Board") conducted such public hearings in accordance with all applicable laws at which members of the public who wished to present testimony or evidence regarding this Agreement were given the opportunity to do so; and

WHEREAS, the Board approved and adopted this Agreement on January 9, 2024 in open session at a meeting held in accordance with all applicable laws; and

WHEREAS, the City provided notice of two public hearings in accordance with all applicable laws and the City Council of the City ("City Council") conducted such public hearings in accordance with all applicable laws at which members of the public who wished to present testimony or evidence were given the opportunity to do so; and

WHEREAS, the City Council approved and adopted this Agreement on \_\_\_, 200\_, in open session in accordance with all applicable laws, which approval and adoption occurred after the Board approved and adopted this Agreement; and

WHEREAS, all notices, hearings and other procedural requirements imposed by law for the adoption of this Agreement have been met; and

WHEREAS, in accordance with the requirements of Subsection (p)(l) of the Act, this Agreement does not require the District to provide revenue to the City solely for the purpose of obtaining an agreement with the City to forego annexation of the District; and

NOW THEREFORE, for and in consideration of the mutual agreements contained in this Agreement, and for the good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the City and the District agree as follow:

## **ARTICLE I. RECITALS**

1.1 The recitals set forth above are true and correct and are incorporated herein and made a part hereof as findings for all purposes.

## **ARTICLE II. ADOPTION OF AGREEMENT AND LIMITED PURPOSE ANNEXATION OF PROPERTY**

- 2.1 Public Hearings. The Parties acknowledge and agree that prior to the execution of this Agreement, the Board and the City Council conducted public hearings to consider the adoption of this Agreement and that such hearings were noticed and conducted in accordance with all applicable laws.
- 2.2 Effective Date. The effective date of this Agreement (the "Effective Date") is the date this Agreement is approved and adopted by the City Council.
- 2.3 Filing in Property Records. This Agreement shall be filed in the Real Property Records of Kendall County, Texas.
- 2.4 Limited Purpose Annexation of Original Limited Purpose Property. The Parties agree that the City may annex the Original Limited Purpose Property for the sole and limited purpose of collecting sales and use taxes authorized by Chapter 321 of the Texas Tax Code (the "Tax Code") to be imposed by the City on sales consummated within the Original Limited Purpose Property. The District acknowledges and agrees that the City Council may adopt a limited purpose annexation ordinance applicable to the Original Limited Purpose Property at a meeting conducted in accordance with Chapter 551 of the Texas Government Code and that no further notices, hearings or other procedures shall be required to adopt such limited purpose annexation ordinance. The City may commence limited purpose annexation of the Original Limited Purpose Property upon the Effective Date.

- 2.5 Limited Purpose Annexation of Additional limited Purpose Property. The Parties agree that the City may annex the Additional Limited Purpose Property for the sole and limited purpose of collecting sales and use taxes authorized by the Tax Code to be imposed by the City on sales consummated within the Additional Limited Purpose Property. The District acknowledges and agrees that the City Council may adopt a limited purpose annexation ordinance applicable to the Additional Limited Purpose Property at a meeting conducted in accordance with Chapter 551 of the Texas Government Code and that no further notices, hearings, or other procedures shall be required to adopt such limited purpose annexation ordinance. The City may commence limited purpose annexation of the Additional Limited Purpose Property upon the Effective Date.
- 2.6 Limited Purpose Annexation of Connecting limited Purpose Property. The Parties agree that the City may annex the Connecting Limited Purpose Property for the sole and limited purpose of collecting sales and use taxes authorized by the Tax Code to be imposed by the City on sales consummated within the Connecting Limited Purpose Property. The District acknowledges and agrees that the City Council may adopt a limited purpose annexation ordinance applicable to the Connecting Limited Purpose Property at a meeting conducted in accordance with Chapter 551 of the Texas Government Code and that no further notices, hearings, or other procedures shall be required to adopt such limited purpose annexation ordinance. The City may commence limited purpose annexation of the Connecting Limited Purpose Property upon the Effective Date. The City consents and agrees that the Connecting Limited Purpose Property shall be located within right of way areas or along lot lines whenever possible.
- 2.7 Consent to Limited Purpose Annexations. THE DISTRICT ON BEHALF OF ITSELF AND ALL PRESENT AND FUTURE OWNERS OF LAND WITHIN THE DEVELOPMENT, HEREBY REQUESTS THAT THE CITY ANNEX THE LIMITED PURPOSE PROPERTY SOLEY FOR THE PURPOSES PROVIDED IN THIS AGREEMENT. THE DISTRICT CONSENTS TO SUCH ANNEXATIONS, FROM TIME TO TIME, AND TO THE COLLECTION OF SALES AND USE TAX REVENUES BY THE CITY WITHIN THE LIMITED PURPOSE PROPERTY. SUCH CONSENT SHALL BIND THE DISTRICT AND EACH OWNER AND FUTURE OWNER OF LAND WITHIN THE DEVELOPMENT.
- 2.8 PRESENT AND FUTURE OWNERS OF LAND WITHIN THE DEVELOPMENT, HEREBY REQUESTS THAT THE CITY ANNEX THE LIMITED PURPOSE PROPERTY SOLEY FOR THE PURPOSES PROVIDED IN THIS AGREEMENT. THE DISTRICT CONSENTS TO SUCH ANNEXATIONS, FROM TIME TO TIME, AND TO THE COLELCTION OF SALES AND USE TAX REVENUES BY THE CITY WITHIN THE LIMITED PURPOSE PROPERTY. SUCH CONSENT SHALL BIND THE DISTRCIT AND EACH OWNER AND FUTURE OWNER OF LAND WITHIN THE DEVELOPMENT.

- 2.9 No Municipal Services. The Parties acknowledge and agree that the limited purpose annexation of the Limited Purpose Property pursuant to this Agreement shall not obligate the City to provide any municipal services to such property; however the sales and use taxes derived from the Limited Purpose Property may be used for any lawful purpose, including economic development, in any geographic portion of the City or otherwise, as permitted by law.
- 2.10 Limited District. The District is not a limited district as a defined in Subsection (a)(2) of the Act.

### **ARTICLE III. TAXATION**

3.1 Collection of Sales and Use Tax Revenues. The City may impose a sales and use tax within the Limited Purpose Property pursuant to Subsection (k) of the Act. The sales and use tax may be imposed on all eligible commercial activities at the rate allowed under the Tax Code. Collection of Sales and Use Tax Revenues shall take effect on the date described in Section 321.102 of the Tax Code. The City shall retain all Sales and Use Tax Revenues.

### **ARTICLE IV. FULL-PURPOSE ANNEXATION AND LIMITATION ON INDEBTEDNESS**

- 4.1 Subsection C Exemption. Annexation of the Development is exempt from the municipal annexation plan requirements pursuant to Section 43.052(h)(3)(B) of the Texas Local Government Code.
- 4.2 Full-Purpose Annexation Conversion Date. Pursuant to Subsection (h) of the Act, the Limited Purpose Property shall be deemed to be within the full-purpose boundary limits of the City upon the full-purpose annexation conversion date without any further action by the City Council. For purposes of this Section 4.2, the "full purpose annexation conversion date" is the date on which the City Council adopts an ordinance that includes the Limited Purpose Property within the full-purpose boundary limits of the City, pursuant to the terms of that certain Development Agreement by and between the City, BOERNEBAK II, LLC, a Texas limited liability company, and Kendall Water Control and Improvement District No. 3A, as amended. The full-purpose annexation conversion date may be altered only by mutual agreement of the District and the City.
- 4.3 Partial Full-Purpose Annexation. In the event the requisite number of voters and property owners submit a petition to the City requesting incorporation pursuant to and in compliance with Section 42.041 of the Texas Local Government Code or successor statute, the City shall have the right, to the extent permitted by law, to full-purpose annex the entire District within which such voters reside, and such property is located, upon the full-purpose annexation conversion date. For purposes of this Section 4.3, the "full-purpose annexation conversion date" is also the date upon which the City Council adopts an ordinance that includes such land within the full-purpose boundary limits of the City.

## ARTICLE V. TERM

- 5.1 Term. This Agreement commences on the Effective Date and continues until the City annexes the Limited Purpose Property for full-purposes or dis-annexes the Limited Purpose Property. For annexation pursuant to Section 4.3 of this Agreement, the Agreement terminates with respect to annexed property on the date such annexation is effective.
- 5.2 Termination of Agreement. In the event the City has not approved and adopted this Agreement and a limited purpose annexation ordinance applicable to the Original Limited Purpose Property, as set forth in Section 2.4 above, within one (1) year after the District's approval and adoption of this Agreement, the District may, in its sole and absolute discretion, terminate this Agreement by Notice thereof to the City.

## ARTICLE VI. BREACH, NOTICE AND REMEDIES

- 6.1 Notification of Breach. If any Party commits a breach of the Agreement, the non-breaching Party shall give Notice to the breaching Party that describes the breach in reasonable detail.
- 6.2 Cure of Breach. The breaching Party shall commence curing the breach within 15 calendar days after receipt of the Notice of the breach and shall complete the cure within 30 days from the date of commencement of the cure; however, if the breach is not reasonably susceptible to cure within such 30-day period, the non-breaching Party shall not bring any action so long as the breaching Party has commenced to cure within such 30-day period and diligently completes the work within a reasonable time without unreasonable cessation.
- 6.3 Remedies for Breach. If the breaching Party does not substantially cure the breach within the stated period of time, the non-breaching Party may, in its sole discretion, and without prejudice to any other right under this Agreement, law, or equity, seek any relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act, specific performance, mandamus and injunctive relief; provided, however, (a) the non-breaching Party shall not be entitled to terminate this Agreement, (b) the Parties specifically waive any right that they have or in the future may have to terminate this Agreement, and (c) damages, if any, to which any non-breaching Party may be entitled shall be limited to actual damages and shall not include special or consequential damages.

## ARTICLE VII. ADDITIONAL PROVISIONS

- 7.1 Voting. Pursuant to Subsection (q) of the Act, Chapter 43, Subchapter F, of the Texas Local Government Code does not apply to the limited purpose annexation of the Limited Purpose Property. Consequently, Section 43.130(a) of the Texas Local Government Code, providing that qualified voters of an area annexed for limited purposes may vote in certain municipal elections, does not apply to the voters with the limited Purpose Property.

- 7.2 Notices. Any notices, certifications, approvals, or other communications ("Notice") required to be given by one Party to another under this Agreement shall be given in writing addressed to the Party to be notified at the address set forth below and shall be deemed given: (i) when the Notice is delivered in person to the person to whose attention the Notice is addressed; (ii) 10 business days after the Notice is deposited in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, and properly addressed; (iii) when the Notice is delivered by Federal Express, UPS, or another nationally recognized courier service with evidence of delivery signed by any person at the delivery address; or (iv) 10 business days after the Notice is sent by FAX (with electronic confirmation by the sending FAX machine) with a confirming copy sent by United States mail within 48 hours after the FAX is sent. If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the Notice shall be extended to the first business day following the Saturday, Sunday or legal holiday. For the purpose of giving any Notice, the addresses of the Parties are set forth below. The Parties may change the information set forth below by sending Notice of such change to the other Party as provided in this Section 7.2.

To the City:

Attn: Ben Thatcher  
447 N. Main Street  
Boerne, Texas 78006  
FAX: 830-249-9264

To the District:

Kendall County Water Control and  
Improvement District No. 3A  
Attn: Julianne Kugle  
1980 Post Oak Blvd., Suite 1380  
Houston, Texas 77056  
FAX: 713-850-1330

- 7.3 No Waiver. Any failure by a Party to insist upon strict performance by the other Party of any provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purpose for which it is given. No waiver by any Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term of condition or subsequent waiver of the same term or condition.
- 7.4 Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, as they apply to contracts

performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The Parties acknowledges that this Agreement is performable in Kendall County, Texas and hereby agree that any such court shall be a proper forum for the determination of any dispute arising hereunder.

- 7.5 Authority to Execute. The City represents and warrants to the District that the execution of this Agreement has been duly authorized by the City Council and that the person executing this Agreement on behalf of the City has been duly authorized to do so by the City Council. The District represents and warrants to the City that the execution of this Agreement has been duly authorized by the Board and that the person executing this Agreement on behalf of the District has been duly authorized to do so by the Board.
- 7.6 Severability. The provisions of this Agreement are severable and, in the event of any word, phrase, clause, sentence, paragraph, section, or other provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held or determined to be invalid, illegal, or unenforceable for any reason, and the extent of such invalidity or unenforceability does not cause substantial deviation from the underlying intent of the parties as expressed in this Agreement, then such provision shall be deemed severed from this Agreement with respect to such person, entity or circumstance, without invalidating the remainder of this Agreement or the application of such provision to other persons, entities or circumstances except to the extent that the severed provision(s) is a dependent substantive term the removal of which affects the intent and effect of the remaining provisions.
- 7.7 Changes in State or Federal Laws. If any state or federal law changes so as to make it impossible for the City or the District to perform its respective obligations under this Agreement, the parties will cooperate to amend this Agreement in such a manner that is most consistent with the original intent of this Agreement as legally possible.
- 7.8 Additional Documents and Acts. The Parties agree that at any time after execution of this Agreement, they will, upon request of the other Party, execute and/or exchange any other documents necessary to effectuate the terms of this Agreement and perform any further acts or things as the other Party may reasonably request to effectuate the terms of this Agreement.
- 7.9 Assignment. No Party shall assign its interest in this Agreement, in whole or in part, without the other Party's written consent. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors, and assigns as permitted by this Agreement.
- 7.10 Amendment. This Agreement may be amended only with the written consent of the Parties and with approval of the governing bodies of the City and the District.



7.11 Interpretation. This Agreement has been negotiated by the Parties, each of which has been represented by counsel; consequently, the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

7.12 No Third-Party Beneficiaries. This Agreement is solely for the benefit of the City and the District, and neither the City nor the District intend by any provision of this Agreement to create any rights in any third-party beneficiaries or to confer any benefit or enforceable rights under this Agreement or otherwise upon anyone other than the City and District.

7.13 Incorporation of Exhibits by Reference. All exhibits attached to this Agreement are incorporated into this Agreement by reference for the purposes set forth herein, as follows:

Exhibit A      Depiction of the Development

Exhibit B      Legal Description of the Development

**[SIGNATURE PAGES FOLLOW]**

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple copies, effective as of the date countersigned by the City, each of which shall be deemed an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

**KENDALL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 3A**

By: *Hunt Winton III*, President

ATTEST:

By: *Wendell Hall*, Secretary

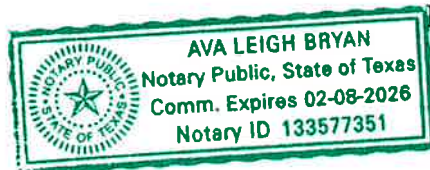


STATE OF TEXAS §  
COUNTY OF Bexar §

This instrument was acknowledged before me this 9th day of January, 2024 by Hunt Winton III, as President, and Wendell Hall, as Secretary, of the Board of Directors of Kendall County Water Control and Improvement District No. 3A, a political subdivision of the State of Texas, on behalf of said political subdivision.

*Ava Leigh Bryan*  
Notary Public in and for the State of Texas

(NOTARY SEAL)



**CITY OF BOERNE, TEXAS**

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Secretary

DATE COUNTERSIGNED: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

STATE OF TEXAS           §  
                                     §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024  
by \_\_\_\_\_, as Mayor, and \_\_\_\_\_, as City Secretary, of the City  
of Boerne, a political subdivision of the State of Texas, on behalf of said political subdivision.

\_\_\_\_\_  
Notary Public in and for the State of Texas

(NOTARY SEAL)

**EXHIBIT “A”**

**EXHIBIT “B”**