

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF BOERNE, TEXAS AND KENDALL COUNTY, TEXAS FOR
CONSTRUCTION AND FUNDING OF DRAINAGE IMPROVEMENT PROJECTS**

This Interlocal Agreement (this “Agreement”) is made and entered into by and between Kendall County, a political subdivision of the State of Texas (“the County”), and the City of Boerne, Texas (“the City”), a home-rule municipality situated wholly within the County (collectively referred to as “the Parties”).

For and in consideration of the mutual agreements herein exchanged, the Parties hereby contract as follows:

Article I: Purpose and Legal Authority.

1.1 The purpose of this Agreement is to set forth the agreement of the Parties regarding the construction and funding of potential stormwater improvement projects (hereinafter collectively referred to as “the Projects”) that include the following:

1.1.1 Project 1 - design and construction of stormwater improvements, to convey stormwater in Currey Creek and in No Name Creek under Adler Road.

1.1.2 Project 2 – design and construction of stormwater improvements to convey stormwater in Menger Creek under Old San Antonio Road.

1.2 The Parties, as units of local government, are authorized by §791.011 of the Texas Government Code to contract with each other to perform certain governmental functions and services. As defined in §791.003 of the Texas Government Code, such governmental functions and services include construction of drainage projects.

1.3 The duties and obligations of the Parties under this Agreement shall be performed with funds from the sources listed in Article IV of this Agreement.

1.4 This Agreement has been approved by the Kendall County Commissioner’s Court and

the Boerne City Council.

Article II: Term of Agreement.

- 2.1 The term of this Agreement shall be from the date of execution of this Agreement by the authorized representative of each Party and shall remain in effect until the purposes of this Agreement have been achieved. The Parties agree that the Projects will be substantially complete not later than the later of: July 1, 2026, or six months prior to the deadline for returning any unexpended ARPA funds allocated to the Projects, as that date may be amended from time to time by the federal agencies responsible for ARPA funding,, and the Parties agree to use their best efforts to comply with that deadline.

Article III: Duties and Responsibilities of the Parties.

- 3.1 The County shall cooperate with the City in entering into any further transactions, agreements, documents, or permits needed for the construction of the Projects and shall contribute to the funding and construction of the Projects as mutually agreed upon by the Parties.
- 3.2 The City will manage and coordinate the Projects, shall cooperate with the County in entering into any further transactions, agreements, documents, or permits needed for the construction of the Projects, will lead the design, bidding and construction process, per typical requirements of the City, and shall contribute to the funding and construction of the Projects as mutually agreed upon by the Parties. The Projects may be designed and constructed as separate projects. The Projects will move forward with design in twelve (12) months from the date of execution by the Parties below and construction will follow immediately once any rights-of-way or

easements are acquired.

Article IV: Sources and Uses of Funds.

4.1 A total amount of \$1,500,000 taken exclusively from funds received by the County pursuant to the American Rescue Plan Act (ARPA) will be provided to the City for use in completing the Projects. The County's contribution will not exceed this \$1,500,000 amount. Within thirty (30) days of approval of this Agreement, the County shall provide a minimum of \$_____ in funds to a separate project account maintained by the City. After receipt by the County of the second tranche of American Rescue Plan Act (ARPA) funding, the County will provide the remaining \$_____ in funds to the City within thirty (30) days of receiving the funds. The City will use these funds only for items related to the Projects such as, but not limited to, land/easement acquisition, consultant fees, and contractor invoices. Should the City determine one or both of the Projects are not feasible or otherwise decide not to construct the Project(s), the City shall refund to the County its share of the unexpended funds provided by the County in same proportion as the County funds provided for the Project(s) bears to the Estimated Cost of the Project(s).

4.2 Neither the City nor the County shall have any obligations to each other under this Agreement unless and until such funds exist or become available after a reasonable time and due diligence by the Parties. It is the intention of the Parties that such funds will then become current revenues, and, as required by Section 791.011 of the Government Code, each Party paying for the performance of governmental functions or services under this Agreement must make those payments from current revenues available to the paying party.

Article V: Amendments.

- 5.1. This Agreement may be amended only by written approval of the Kendall County Commissions Court and the Boerne City Council.

Article VI: Authorization to Sign and Notice.

- 6.1 For purposes of this Agreement, the individuals listed below shall be the contact persons for each of the Parties and all communications and notices between the Parties shall be directed to the designated contact person listed and shall be deemed sufficient if in writing and hand delivered or mailed, registered or certified mail, postage prepaid, to the following:

CITY

Ben Thatcher
City Manager
City of Boerne
447 E. Main St.
Boerne, Texas 78006

COUNTY

Hon. Darrell L. Lux
County Judge
Kendall County
201 E. San Antonio Street, Suite 200
Boerne, Texas 78006

- 6.3 Notice of change of the designated contact person and/or the address of such representative by either Party must be made in writing and delivered to the other Party's last known address within five (5) business days of such change.

Article VII: Severability.

- 7.1 If any clause, sentence, paragraph or article of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such determination shall not be deemed to impair, invalidate, or nullify the remainder of this Agreement if the Agreement can be given effect without the invalid portion. To this extent, the provisions of this Agreement are declared to be severable.

Article VIII: Entire Agreement.

8.1 This Agreement contains the entire agreement between the parties respecting the subject matter hereof and supersedes all prior understandings and agreements between the Parties regarding such matters. This Agreement may not be modified or amended except by written agreement duly executed by the City and the County and approved in the manner provided above.

Article IX: Applicable Law and Venue.

9.1 This Agreement shall be construed in accordance with the laws of the State of Texas. All obligations hereunder are performable in Kendall County, Texas, and venue for any action arising hereunder shall be in Kendall County, Texas.

EXECUTED IN DUPLUICATE ORIGINALS THIS ____ DAY OF _____, 2021.

CITY OF BOERNE, TEXAS
TEXAS

KENDALL COUNTY,

Ben Thatcher
CITY MANAGER

Hon. Darrel L Lux
COUNTY JUDGE

ATTEST:

ATTEST:

Lori A. Carroll
CITY SECRETARY

Darlene Herrin
COUNTY CLERK

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Barbara L. Quirk

Bill Ballard

CITY ATTORNEY

COUNTY ATTORNEY

Final Draft