

AGREEMENT

CITY OF BOERNE AND BOERNE KENDALL COUNTY ECONOMIC DEVELOPMENT CORPORATION AGREEMENT

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THE STATE OF TEXAS :
 : KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF KENDALL :

This Agreement made effective the ____ day of October, 201~~6~~⁵, by and between the CITY OF BOERNE, TEXAS, a home-rule municipal corporation located in Kendall County, Texas, (sometimes hereinafter called "City") and the BOERNE KENDALL COUNTY ECONOMIC DEVELOPMENT CORPORATION (sometimes hereinafter called "BKCEDC") (collectively referred to as the "Parties"), each acting herein by and through its duly authorized officers.

WHEREAS, the City, by authority of its general governmental powers reserved under the Texas Constitution, has provided certain public funds for the accomplishment of a public purpose; and

WHEREAS, the City has adopted a budget for the expenditure of such funds, and included therein is an allocation of General Funds and Utility Funds for programs of the BKCEDC; and

WHEREAS, the BKCEDC is an entity whose mission is to promote desirable economic development that will support and enhance the quality of life in Kendall County and the City of Boerne; and

WHEREAS, the BKCEDC will assist the City in the pursuit of the Parties' common goals of diversifying the ad valorem tax base, creating new jobs, increasing the hotel motel, sales tax and utility revenue and encouraging capital investment;

WHEREAS, the BKCEDC will reach these common goals by providing ~~:- (1)~~ information and assistance to: (1) prospective commercial/business enterprises and developers interested in locating and expanding in the City limits, its extra-territorial jurisdiction and Kendall County; (2) retaining existing commercial/business enterprises in the City limits and its extra-territorial

jurisdiction; and (3) assisting with coordination and negotiations between the City and other affected entities to craft incentives consistent with applicable laws and/or ordinances (hereinafter collectively and/or individually referred to as "Projects"); and

WHEREAS, the focus of the BKCEDC activities will be on Projects including the following:

1. Retention and Expansion of Existing Businesses
2. Recruitment of Appropriate Commercial Development to include:
 - a. Small to medium corporate headquarters
 - b. Office space
 - c. Medical and healthcare facilities
 - d. Light manufacturing
 - e. Retail and mixed use developments, which may include retail, office, hotel, medical, commercial, and/or other uses which are predominately commercial in nature;

WHEREAS, the BKCEDC is a Public/Private Partnership sponsored by the County of Kendall, City of Boerne, ~~Comfort Chamber of Commerce, Greater Boerne Chamber of Commerce~~ and private investors whose purpose will be enhanced by public funds; and

WHEREAS, the City Council has found and determined that the above mission, goals, projects and functions of the BKCEDC accomplish a valuable and important public purpose for the citizens of Boerne and surrounding areas.

NOW THEREFORE:

The parties hereto agree as follows:

1. The BKCEDC will provide, oversee, administer, and carry out all Projects, programs and services to accomplish the mission described above in a manner satisfactory to the City as is outlined in this Agreement.
2. The BKCEDC agrees that any funds paid to it by the City shall be used only in the

performance of Projects, programs and services described above.

3. The City hereby agrees to pay to the BKCEDC SEVENTY FIVE THOUSAND AND NO/100 DOLLARS (\$75,000.00) from the General Fund and Utility Funds as set forth below:

- A. The first payment of \$18,750 shall be made in November, ~~2015~~;
- B. The second payment of \$18,750 shall be made in February, ~~2016~~;
- C. The third payment of \$18,750 shall be made May, ~~2016~~; and
- D. The final payment of \$18,750 shall be made in August, ~~2016~~.

4. It is expressly understood and agreed by and between the parties that the BKCEDC is hired and engaged as an independent contractor and is not an officer, agent or employee of the City.

5. It is understood and agreed by and between the parties that a fiduciary duty is created in the BKCEDC with respect to expenditure of revenue provided in accordance with the approved proposal.

6. Therefore, in exchange for the obligation of the City set forth herein, the BKCEDC agrees to the following:

- A. The BKCEDC shall provide to the City Council ~~quarterly a~~ written reports ~~thirty (30) days after at~~ the ~~end conclusion~~ of the ~~second~~ calendar quarter beginning with the quarter ending ~~December 31, 2015~~ March 31. This written report will include activities that are conducted to benefit the City and Kendall County, current projects underway and expenditures made hereunder. To the extent that confidentiality is required by contractual agreement, the BKCEDC may redact the use of identifying characteristics or names. Additionally, and to the extent necessary, the BKCEDC may refrain from describing the exact location the prospect is considering. At the request of the City, the BKCEDC President and Chief Executive Officer will present this written report to the City Council during a

regularly scheduled City Council meeting.

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- B. The BKCEDC shall maintain complete and accurate financial records of each expenditure of funds by the Corporation and, upon request of the City Council or City Manager, will make the records available for inspection and review. The BKCEDC will provide to the City Manager a quarterly financial report to include balance sheet and income statements along with the written report identified in 6(A) above to the extent such is not already provided to the City Manager as a member of the BKCEDC Executive Committee per the terms of Section 7 below.
- C. It is further understood that the funds paid by the City to the BKCEDC will be contributed to the general fund of the BKCEDC and that said funds, while being used for the purposes contemplated by this Agreement, may also be used in conjunction with additional funds to accomplish the mission and goals of the BKCEDC.

7. The City of Boerne shall appoint two members (the "Appointees") to the BKCEDC Board of Directors according to the bylaws of the BKCEDC. The terms of the appointees shall be three (3) year ~~staggered terms~~. Additionally, the City of Boerne may appoint ~~one additional City employee or~~ the Mayor as an ex officio (non-voting) member of the Board of Directors to the BKCEDC.

- A. The City Manager. The City Manager shall serve as a one of the two appointed members, ~~or the ex-officio member,~~ of the Board of Directors and as a ~~n~~ ex-officio (non-voting) member of the BKCEDC Executive Committee. ~~Should the City Manager be elected to the BKCEDC Executive Committee according to the bylaws of the BKCEDC, the City Manager's ex-officio membership to the BKCEDC Executive Committee shall cease. If the City Manager's term as an elected~~

~~member of the BKCEDC Executive Committee ceases, the City Manager shall be reappointed as an ex-officio member of the BKCEDC Executive Committee.~~

- (1) Should the City Manager be ~~elected to the BKCEDC Executive Committee and should the City Manager be~~ unable to attend an Executive Committee meeting, the Deputy City Manager shall have the authority to attend the Executive Committee meeting and cast the City Manager's proxy vote[s].

- B. The Mayor. Should the Mayor serve as the ex officio member of the Board of Directors then the Mayor shall also serve as an ex officio member of the BKCEDC Executive Committee. The ex officio position shall have no voting authority.

~~C. City Appointees to the BKCEDC Board of Directors may ask an ex-officio member of the City to attend the Board meeting or to a meeting of a committee in the Appointee's absence.~~

8. It is expressly understood and agreed by and between the Parties that the BKCEDC will not pursue projects located in the City limits and the City's ETJ which are outside the mission of the BKCEDC as described in this Agreement. ~~The BKCEDC may pursue Economic Development projects located in the City limits and the City's ETJ, which include residential developments considered to be home inventory diversity enhancement for the City of Boerne, in conjunction with qualifying business and commercial developments.~~

9. This Agreement is in full force and effect ~~becomes effective~~ upon the date of approval by both Parties ~~until and shall expire the conclusion of the third calendar quarter on (September 30), 2016~~ if one Party gives the other Party written notice of its desire not to renew or to amend the Agreement not later than August 31 of the current Agreement year. If such written notice is not provided by either Party by August 31, this ~~Thereafter, the Parties may renew the~~ Agreement will automatically renew for two additional annual terms ~~on an annual basis beginning at the start of~~

~~the fourth calendar quarter (-on October 1 of the current year, 2016). The yearly renewal shall be automatic upon the expiration of the preceding term, unless one of the parties gives the other party written notice of its desire not to renew the Agreement at least thirty (30) days prior to the expiration of the then current term. This Agreement shall automatically renew no more than two annual terms.~~

10. Any notice relative to this Agreement shall be effective when hand-delivered or deposited in the United States mail, either certified or registered mail, postage prepaid and addressed to the City Manager of the City of Boerne, City Hall, 402 East Blanco, Boerne, Texas 78006 or to the BKCEDC, 1221 S. Main, Suite 100, Boerne, Texas 78006.

11. No part of this Agreement may be assigned or delegated, and any attempted assignment of benefits or rights or delegation of duties or obligations shall be a breach of this Agreement.

12. It is expressly agreed that by executing this Agreement with the BKCEDC, the City does not bind itself in the future as to any action of the City Council in connection with the alteration or repeal or amendment of the City of Boerne, Texas budget, fund allocation, or appropriation of funds, and in the event, for any reason, that the funds are not available, the City shall not be obligated under this Agreement to pay any funds of the City to the BKCEDC. It is also understood between the parties to the Agreement that in the event that no funds are available from the City of Boerne, Texas budget for any reason, this Agreement shall terminate, any provisions contained herein notwithstanding, and that the BKCEDC shall have no right or demand upon the City for funds payable under this Agreement if such funds are not available, for any reason.

13. Each Party warrants and represents that it has approved this Agreement by motion duly adopted at a meeting of its governing body by a majority of those present and voting and that the chief executive officer of each Party is duly authorized to enter into this Agreement on behalf of such party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year

first above written.

(Signatures appear on the following page)

CITY OF BOERNE, TEXAS

BY: _____
RONALD C. BOWMAN
City Manager

ATTEST:

LORI CARROLL
City Secretary

**BOERNE KENDALL COUNTY ECONOMIC
DEVELOPMENT CORPORATION**

BY: _____
MISTY MAYO President/CEO

ATTEST:

BY: _____
PRINT NAME: _____
OFFICE HELD: _____