

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN
COMAL COUNTY EMERGENCY SERVICES DISTRICT NO. 7
AND
THE CITY OF NEW BRAUNFELS, TEXAS**

This Interlocal Cooperation Agreement (“Agreement”) is made and entered into this ____ day of _____, 2024 by and between Comal County Emergency Services District No. 7 (“ESD No. 7”), a political subdivision of and within the State of Texas, and the City of New Braunfels, Texas (“City”), a home-rule municipality.

WITNESSETH

WHEREAS, the governing bodies of ESD No. 7 and the City have each met in duly posted meetings and authorized their respective representatives to enter into this Agreement; and,

WHEREAS, City is the contracted service provider of ESD No. 7 for the provision of certain emergency services set forth in that certain agreement between the City and ESD No. 7; and,

WHEREAS, ESD No. 7 is purchasing certain fire trucks, vehicles and equipment (referred to as “Fire Trucks”), and more fully set forth in attached Exhibit A, attached hereto and incorporated herein for all purposes; and

NOW, THEREFORE, for the consideration hereafter agreed to be paid by City as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ESD No. 7 and City mutually agree as follows:

- 1. Term.** Unless otherwise terminated as provided herein, this Agreement shall be for a term being the same term as the service provider agreement entered into by and between ESD No. 7 and City, and shall automatically terminate, with no further action necessary by either ESD No. 7 or City, upon the termination of the service provider agreement between ESD No. 7 and City. This Agreement will be considered for renewal by mutual agreement of ESD No. 7 and City prior to the end of the Term at the regular meeting of ESD No. 7 and at the regular meeting of City. ESD No. 7 may terminate this Agreement at any time by giving City ten (10) days notice. City may terminate this Agreement at any time by giving ESD No. 7 ten (10) days notice. Upon termination, City shall immediately return Fire Trucks to ESD No. 7.

- 2. Consideration.** The mutual covenants, terms and provisions herein, as well as the consideration between the parties hereto, the adequacy and sufficiency of such consideration being acknowledged and confessed herein for all purposes.

3. No Warranties; Ownership.

ESD No. 7 does hereby provide to City, and City does hereby agree to accept, "AS IS," "WHERE IS," "WITH ALL FAULTS," and with no express or implied warranties of any kind or nature whatsoever, including, but not limited to, any warranties of merchantability or fitness for a particular purpose, it being understood and agreed by the parties that the City has specified, selected, and accepted, from ESD No. 7, the Fire Trucks identified in Exhibit A. The Fire Trucks are to be owned by ESD No. 7, however, they will be utilized and maintained by City in the provision of emergency services to the ESD No. 7, subject to the terms, provisions, covenants and conditions contained in this Agreement.

4. Use of Fire Trucks. It is understood and agreed that at no time shall the Fire Trucks become the property of City and shall at all times remain the property of ESD No. 7. The Fire Trucks shall be used for conducting and carrying out the provision of public safety and related firefighting activities and services of City to ESD No. 7. In addition, at its sole cost, expense, and liability, the City may utilize the Fire Trucks for local and regional mutual aid incidents or alarms to which the City may respond, or other mutual aid responses if consented to by the President of the District in their sole discretion, City alarms for which the Fire Trucks is appropriate, and the training of City fire suppression personnel who will operate or work with the Fire Trucks. City shall not use the Fire Trucks for any other purpose.

5. Maintenance and Insurance. City acknowledges that it, at its sole cost and expense, will provide regular and routine service and maintenance of said Fire Trucks in compliance with any documents, manuals, or other requirements related to the use, maintenance, operation, or repair of the Fire Trucks. In addition, City shall maintain, either through self-insurance or otherwise, appropriate and necessary liability and casualty insurance on the Fire Trucks for City's use and operation of the Fire Trucks.

In addition, any Fire Trucks purchased with ESD No. 7 funds will be insured for an "Agreed Value" in an amount agreeable by City and ESD No. 7, and ESD No. 7 shall be named as an additional insurance and loss payee, as the case may be and as ESD No. 7's interest may appear on all such insurance policies. Copies of all insurance policies, or certificates evidencing such policies, shall be provided to ESD No. 7 within 10 days of receipt by City.

6. Maintenance and Operation. City further agrees it shall, at its sole cost and expense: (a) house, insure, maintain, repair, operate, use, and maintain the Fire Trucks in good condition and working order, in accordance with manufacturer's instructions, and supply and install all replacement parts or other devices when required to so maintain the Fire Trucks or when required by applicable law or regulation, which parts or devices shall automatically become part of the Fire Trucks; and (b) use and operate the Fire Trucks in a high state of readiness and a careful manner in the normal course of its operations and only for the purposes for which it was designed in accordance with the manufacturer's warranty and other requirements, and comply with all laws and regulations relating to the Fire Trucks. If Fire Trucks is customarily covered by a maintenance agreement, City will furnish ESD No. 7 with a maintenance agreement by a

party reasonably satisfactory to ESD No. 7. No maintenance or other service for Fire Trucks will be provided by ESD No. 7. City will not make any alterations, additions or improvements ("Improvements") to Fire Trucks without ESD No. 7's prior written consent unless the Improvements may be readily removed without damage to the operation, value or utility of Fire Trucks, but any such Improvements not removed prior to the termination of the applicable Term shall automatically become part of the Fire Trucks. It is understood and agreed that City shall staff and maintain the Fire Trucks only with trained and qualified personnel, and that City is responsible for all costs of operating, maintaining, and repairing the Fire Trucks. ESD No. 7 shall have the right to inspect the Fire Trucks at any time. Once a Fire Truck that is subject to this Agreement is no longer useful in the opinion of the City, the vehicle will be returned to the ESD No. 7.

7. Right of First Refusal and Third-Party Determination of Value. In the event this agreement is terminated for any reason, the City shall have the right of first refusal to purchase one or more of the Fire Trucks from the ESD No. 7, at a price to be determined by a third-party appraiser or Siddons-Martin Emergency group retained by the City at its sole cost. The City will share a copy of the vehicle appraisal with ESD No. 7. The City will have up to sixty (60) days from the date the contract is terminated to submit its offer to ESD No. 7. In the event the parties cannot agree upon the purchase price of the vehicle(s), the ESD No. 7 will remove the vehicle(s) from City property after providing the City prior written notice at least 120 days prior to repossession.

8. Assignments. City shall not have the right to assign or transfer any interest in this Agreement or the Fire Trucks without the prior written consent of ESD No. 7. Any purported assignment or transfer in violation of this Agreement shall be void and of no effect and further, at ESD No. 7's election, shall constitute a default by City entitling ESD No. 7 to terminate this Agreement or any other agreements between ESD No. 7 and City.

9. Liability Insurance. During the term of this Agreement, the City agrees to obtain and maintain the insurance coverage on the Fire Trucks.

10. Notices. Any notice provided by any party to the other shall be in writing and may be either (1) delivered by hand to the party or the party's designated agent; (2) deposited in the United States mail, postage paid; or (3) delivered by a reputable courier service, to the following address:

ESD No. 7: Comal County Emergency Services District No. 7
P.O. Box 311975
New Braunfels, Texas, 78131

City: City of New Braunfels
550 Landa Street
New Braunfels, Texas 78130

Either party may designate a different agent or address for notice purposes by giving the other party ten (10) days written notice in the manner provided above.

11. Amendments. This Agreement may be supplemented or amended under terms and conditions mutually agreeable to the parties, provided that all such changes, amendments, supplements or modifications shall be of no force or effect unless reduced to writing and signed by authorized representatives of each party.

12. Waiver. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision. No delay in acting with regard to any breach of any provision shall be construed to be a waiver of such breach. No party to this Agreement waives or relinquishes any immunity or defense on behalf of themselves, their trustees, commissioners, officers, employees, and agents as a result of its execution of this Agreement and performance of the functions and obligations described herein. This Agreement does not create any rights or interests of or in any third party, and each party hereto paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

13. Section Headings. The section headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope of the meaning of the various sections.

14. Applicable Law. The Agreement shall be construed and enforced in accordance with the laws of the state of Texas and the county of Comal, including the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code, and shall be binding upon and insure to the benefit of the parties hereto and their respective legal representative, successors, and permitted assigns.

15. Attorneys' Fees. Subject to applicable law, in the event that either party commences any legal action or proceeding, including actions for declaratory or specific performance, by reason of failure of the other party to perform or keep any term, covenant, or condition of this Agreement, the prevailing party shall be entitled to recover, in addition to court costs, reasonable and necessary attorney's fees as determined by a court of competent jurisdiction.

16. Entire Agreement. This Agreement represents the entire and integrated agreement between ESD No. 7 and City and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both ESD No. 7 and City.

17. Severability. If any of the terms and provisions of this Agreement are found to be void, voidable, unenforceable, or invalid, that fact shall not affect the validity and enforceability of the remainder of the terms and provisions of this Agreement and this Agreement shall remain valid and enforceable and shall be construed as though the void, voidable, unenforceable, or invalid

terms and provisions were never included.

18. Execution and Miscellaneous Provisions. This Agreement is executed in multiple originals as of the day and year first written above, and shall be binding upon and shall inure to the benefit of the parties and their respective successors, assigns, and legal representatives. Each party represents and affirms by its execution that it has been duly authorized to enter into this Agreement, that it has authorized the below individuals to act as its authorized agents in executing this Agreement, and that it is binding on the parties.

IN WITNESS WHEREOF, the undersigned parties acting under the authority of their respective governing boards have caused this Agreement to be duly executed in Comal County, Texas.

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COMAL COUNTY EMERGENCY SERVICES DISTRICT NO. 7

By: James Frye
James Frye, President

Date: 6/27/2019

ATTEST:

By: Kim Carroll
Secretary, Kim Carroll

Approved as to Form:

By: _____
Ken Campbell, Attorney for ESD No. 7

CITY OF NEW BRAUNFELS

By: _____
Robert Camareno, City Manager

Date: _____

ATTEST:

By: _____
Gayle Wilkinson, City Secretary

Approved as to Form:

By: _____
Valeria M. Acevedo, City Attorney

EXHIBIT A- DESCRIPTION OF VEHICLES

The vehicles being purchased by ESD No. 7 for the City's use are generally described as follows:

1. Fire Rescue Vehicle:

VIN#: 4P1CC01M66A006210

MODEL: Pierce Custom Contender

YEAR: 2006