

THE STATE OF TEXAS §  
§  
COUNTY OF COMAL §

**COMAL COUNTY EMERGENCY SERVICES DISTRICT NO. 7**

THIS AGREEMENT IS ENTERED INTO BY AND BETWEEN COMAL COUNTY EMERGENCY SERVICES DISTRICT NO. 7 (HEREINAFTER REFERRED TO AS THE "DISTRICT") ACTING THROUGH THE DISTRICT'S BOARD OF EMERGENCY SERVICES COMMISSIONERS AND THE CITY OF NEW BRAUNFELS, TEXAS, A TEXAS HOME RULE MUNICIPALITY, (HEREINAFTER REFERRED TO AS THE "SERVICE PROVIDER") ACTING THROUGH THE SERVICE PROVIDER'S GOVERNING BODY.

**Whereas**, the District's commitment is to provide services to assist in the protection of life and property from fire, hazardous materials incidents, accident, disaster, and other emergencies, and for the conservation of natural resources; and

**Whereas**, the Service Provider has available personnel and equipment to provide fire protection and suppression services, hazardous materials incidents, emergency rescue services, and emergency medical first responder services.

**NOW, THEREFORE, BE IT RESOLVED THAT** the parties hereto agree as follows:

**1. CONSIDERATION**

1.01 In consideration for the monies to be provided to the Service Provider under the terms of this Agreement, the Service Provider will provide the following services, as further set forth herein (collectively referred to below as "Fire and EMS Services") within the District's territorial boundaries, or other specific areas within the District as may be agreed to annually by the Parties on a 24-hour per day, seven-day per week basis:

Fire Protection and Suppression;  
Hazardous Materials control;  
Emergency Rescue;  
Emergency Medical Services; and,  
Other emergency assistance to the public at the same level as service within the City of New Braunfels, Texas, as necessary.

1.02 For the consideration set forth herein, the Service Provider shall meet or demonstrate the steps it has taken toward meeting the following guidelines adopted by the District for all services provided within the District:

1. All structure fires within the District will be responded to by the same minimum staffing and response protocols as provided within the City of New Braunfels, and it is understood and agreed by the parties that the Service Provider will make a good faith effort to consistently maintain a minimum staffing of three certified firefighters on engines;

2. All fire fighters of the Service Provider operating under this Agreement will be certified, at a minimum, as a Basic Fire Fighter by the Texas Commission on Fire Protection;
3. Provide all of the emergency services set forth above on an equal basis with any similar services provided by the Service Provider within the territorial limits of the City of New Braunfels, Texas and to the City of New Braunfels, Texas; and
4. Strictly comply with all requirements of this agreement.

## **2. TERMS**

2.01 The term of this Agreement shall be for a period of seven (7) years. The term of this agreement will be April 1, 2021 to March 31, 2028. In consideration for the terms of this Agreement, the District, being a duly created political subdivision of the State of Texas located in Comal County, Texas, agrees to provide the Service Provider with the following sums:

2.01.1 With the consent of the parties, the payment will be calculated based on the City's actual cost of service and the percent of workload the District represents. It is further agreed that, for the term of this contract, the annual payment for services will not exceed 95 percent of the annual collections of the District's ad valorem taxes. To the extent permitted by law, the District agrees to set a tax rate sufficient to generate the funds necessary to meet the terms of this agreement provided that the rate does not exceed constitutional or statutory requirements for the District. Additionally, it is agreed that the District will execute due diligence to pay the amount agreed to by both parties.

2.02 The method of payment of these funds has been approved by the District's Commissioners and City staff for the duration of this contract, subject to annual appropriation by the District. The methodology for calculating the annual payment for services is set forth in the attached "Exhibit A". The funds for the term of this Contract shall be paid to the Service Provider in equal payments on a quarterly basis beginning on the first day of October, January, April, and July, with supporting justification submitted by the Service Provider complying with the approved budget and other obligations as contemplated below. When allocating funds to the Service Provider, the District will consider the citizens' needs for the services provided by the Service Provider, other sources of such services, the Service Provider's annual budget and request for funds, reports by the Service Provider of how previous District funds have been spent, the tax revenues received from the area served by the Service Provider, the results of the previous year's financial audit/financial review, and past compliance by the Service Provider with the terms of agreements between the Service Provider and the District and any other issue deemed relevant by the District. Given that the payment for services is calculated based on the Fire Department's annual operating budget, City staff will complete a reconciliation based on actual cost to determine if an additional payment or reduction is needed. The methodology for this reconciliation process is set forth in the attached "Exhibit B". The District, in making payments hereunder for governmental functions or services, shall make payments from current revenues available to the District.

## **3. PAYMENTS**

3.01 The funds allocated to the Service Provider shall be remitted to the Service Provider in compliance with Chapter 791, Texas Government Code. If the tax revenues collected and held by the District are not sufficient to cover all of the District's obligations under this agreement, the parties agree that the District shall transfer to the Service Provider a lesser amount to be determined by the District's Commissioners after considering the amount of funds available, the District's obligations under this agreement, and the District's financial obligations under applicable local, state, and federal law and administrative regulations and any other issue deemed relevant by the District. Any such deficiency shall be paid as soon as funds are available or as agreed to in writing by the parties.

3.02 Pursuant to Chapter 791, Texas Government Code, and other applicable law, any funds required hereunder to be expended by either party shall be from current revenues.

3.03 Pursuant to Section 775.073, Texas Health & Safety Code, and other applicable law, it is understood and agreed by the parties that any funds allocated by the District to the Service Provider are for maintenance and operation expenses only in the provision of the Fire and EMS Services set forth herein, and the Service Provider, unless otherwise agreed to by the parties hereto in writing, shall not use any District Funds for the purchase, lease, or acquisition of any real or personal property, and any real or personal property of the Service Provider shall remain the sole property of the Service Provider unless District funds are used to purchase, lease, or otherwise acquire real or personal property. The parties further agree that the District does not have any ownership interest in the real and personal property of the Service Provider. The District payments under this Agreement do not create an ownership interest in the real and personal property of the Service Provider. City shall be entitled to additional payments for capital equipment maintenance and operations. These funds will exclusively be utilized to support the capital equipment of the New Braunfels Fire Department, which includes, but is not limited to: Fire apparatus, ambulances, brush trucks, other rescue/support vehicles as well as the inventory of Self Contained Breathing Apparatus (SCBA) . No later than May 31<sup>st</sup> of every calendar year, the Service Provider will work collaboratively with the District to determine the additional payment for the following fiscal year.

#### **4. REPORTING REQUIREMENTS**

4.01 The Service Provider agrees to submit to the District monthly reports, showing monthly activity and performance under this Agreement. Each report shall be delivered to the District on or before the District's next regular meeting immediately following the month in which the report applies, or as otherwise agreed to by the District and the Service Provider.

4.02 As the District must set its ad valorem tax rate pursuant to applicable law, the initial funding request shall be submitted to the District no later than July 15<sup>th</sup>. The District's fiscal year runs from January 1 through December 31. The District's Commissioners shall not consider an allocation of funds to the Service Provider until they have reviewed the completed Exhibit A & B, agree with the figures and have reviewed any additional information they may have requested of the service provider. Additional information may include, but is not limited to: detailed budget reports of the New Braunfels Fire Department, inventory of capital assets, capital equipment replacement schedule, etc.

4.03 Service Provider shall comply with and maintain compliance with all licensing, training, fiscal, and other requirements imposed on the Service Provider by local, state, and federal law or administrative regulations.

4.04 The parties agree that the District shall have the right to review the Service Provider's records as they relate to Service Provider's Fire Department, or as otherwise allowed by law.

## **5. MUTUAL AID**

The Service Provider participates in the statewide mutual aid system pursuant to Texas Government Code section 418.111, as amended. The Service Provider represents it currently participates in mutual aid to all of the emergency services organizations or providers adjacent to the District, and shall continuously maintain those agreements for the benefit of the residents and visitors of the Service Provider and the District. The District may also enter into any and all mutual aid agreements it deems necessary, and the Service Provider agrees to abide by any such agreements for the benefit of the residents and visitors of the Service Provider and the District, so long as such agreement(s) are reasonable. If the Service Provider contends that any such mutual aid agreements are not reasonable, it shall inform the District of its objections in writing prior to any meeting at which the District is deliberating the execution of said agreements.

## **6. STATEMENT OF PARTICULARS**

6.01 The Service Provider agrees to use the funds from the District to provide services set forth in paragraph 1 within the Service Provider's area of responsibility under this Agreement. It is understood and agreed that for the provision of Fire and EMS services by the Service Provider, the Service Provider's area of responsibility will be the entire territorial limits of Comal County Emergency Services District No.7, or as determined on an annual basis by the Parties, and on an equal basis as those services are provided within the City of New Braunfels, Texas, and any increases to the Service Provider's area responsibility beyond that set forth herein will be agreed to by the Service Provider in writing.

6.02 All audit/financial review documents of the Fire Department of the Service Provider will be available to the auditor of the District's choice on or before May 1st of the year after the year for which the audit is conducted. The Service Provider shall provide any open public records requested by the District within ten (10) working days from the date of the request, subject to the Public Information Act.

6.03 Service Provider will implement policies and procedures to ensure that individuals performing services under this Agreement behave in a safe, professional and respectful manner with all other individuals involved in rendering assistance under this Agreement. Service Provider recognizes that the forms of service being provided under this Agreement involve highly dangerous and life-threatening situations and that cooperative and unified action by the individuals providing services under this Agreement is imperative.

6.04 The parties to this Agreement affirm that the District and the Service Provider are separate entities and as such, the Service Provider is responsible for its actions as a Fire and EMS services provider and a home-rule municipality, and the District is responsible for its actions as a political

subdivision of the State of Texas. Neither party shall be responsible for the actions of the other in case of any liability for damages or other relief. Neither the Service Provider, its agents, nor any other person operating under this contract shall be deemed to be an agent or employee of the District, and the District shall not be liable for negligence or other conduct, acts, or omissions of any such person.

## **7. PERFORMANCE STATEMENT**

Service Provider shall:

- Assure all its emergency response personnel are appropriately trained and certified for the levels of service provided;
- Assure that qualified personnel are available to respond to each call to which the Service Provider is dispatched;
- Assist the District with matters related to reducing the Fire Protection Classification of the District;
- Other items that may be agreed to in writing from time to time by the parties.

Provide adequately equipped and operational emergency vehicles, equipment and personnel to respond to each call to which the Service Provider is dispatched. At all times during the term of this Agreement, the Service Provider shall provide services and staffing to the District as it does to the City of New Braunfels, Texas.

## **8. INDEMNIFICATION:**

8.01 The Service Provider shall indemnify to the fullest extent permitted by law and hold the District, as well as its commissioners, officials, agents, volunteers, and employees, harmless from any and all claims of any type, including negligence, and all attorney's fees and related costs, made on account of any loss through personal injuries, deaths, or property damages, arising directly or indirectly out of the sole or concurrent negligence, or the sole or concurrent intentional acts or omissions of the Service Provider or its contractors, officials, agents, employees, volunteers, subcontractors, or representatives, in performing the services required under this Agreement, except where the District is concurrently negligent or has committed concurrent intentional acts or omissions.

8.02 The District shall indemnify to the fullest extent permitted by law and hold the Service Provider, as well as its governing body, officials, agents, volunteers; and employees, harmless from any and all claims of any type, including negligence, and all attorney's fees and related costs, made on account of any loss through personal injuries, deaths, or property damages, arising directly or indirectly out of the sole or concurrent negligence, or the sole or concurrent intentional acts or omissions of the District or its commissioners, officials, agents, employees, volunteers, contractors, subcontractors, or representatives in performing under this Agreement, except where the Service Provider is concurrently negligent or has committed concurrent intentional acts or omissions.



8.03 It is expressly understood and agreed that, in the execution of this agreement, neither party waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against any claims by third parties arising in the exercise of its governmental powers or other powers or functions or pursuant to the Texas Tort Claims Act or other applicable statute, law, rule, or regulation.

8.04 In accordance with Texas Government Code, Section 791.006 regarding assignment of civil liability, and except as otherwise provided by applicable law, including, but not limited to, regulations regarding workers compensation insurance, each party hereto shall be responsible for injuries or death to its employees and volunteers while performing services under this Agreement. A party shall not be liable for benefits or any other compensation for injuries or death of the other party's employees or volunteers while performing services under this Agreement. An employee or volunteer shall be deemed to be performing services when en route to, en route from, or at the scene of a call or emergency. Specifically citing Texas Government Code Section 791.006 (a-1), the parties agree that, for purposes of determining civil liability for non-party claims, the act of any person or persons while fighting fires, providing rescue services, providing EMS services, traveling to or from any type of emergency call or emergency scene, or in any manner furnishing services in accordance with this Agreement, shall be the act of the party performing such act. The payment of any and all civil or other liability, including negligence, resulting from the furnishing of services under this Agreement is the responsibility of the individual party performing such acts. This shall specifically include, but not be limited to, the payment of court costs, expenses, and attorneys' fees resulting from any such claim or lawsuit. It is agreed between the parties that any out-of-pocket deductible paid by the Service Provider as a result of claims related to the provision of the Fire and EMS Services hereunder shall be borne equally between the Service Provider and the District. The Service Provider may pay any such deductibles and invoice the District for same, which invoice shall be due within thirty (30) days after receipt by the District. The parties agree that the assignment of liability described in this Section 8 is intended to be different than liability otherwise assigned under Section 791.006 (a) of the Texas Government Code.

## **9. MISCELLANEOUS:**

9.01 In the event that the District determines that the Service Provider has violated any of the terms of this Agreement, the District may notify the Service Provider of the alleged violation in writing. The Service Provider shall, within thirty (30) calendar days following the date of notice, correct the deficiency and provide the District with written confirmation that the deficiency has been corrected. If the Service Provider contends that the alleged violation has not occurred or that any act or omission does not constitute a violation, it shall provide a written objection to the District of its contention within ten (10) calendar days following the date of the notice of violation. The parties then shall attempt to resolve their differences informally. If the parties cannot reach an agreement within thirty (30) calendar days following the Service Provider's notice of objection, the parties will submit the matter either to mediation, or if both parties agree, to binding arbitration. If arbitration is selected, the matter shall be submitted to an arbitrator with membership in the American Arbitration Association. If mediation is selected, the mediator selected will be by agreement of the parties, or if the parties cannot agree on a mediator, the Comal County Alternative Dispute Resolution Coordinator or similar office shall select the

mediator.

9.02 If the Service Provider is not fully paid as set forth herein by the District, the Service Provider shall provide written notice to the Secretary of the District of the failure of the District to properly pay for the services provided hereunder. The District shall, within thirty (30) calendar days following the date of notice, correct the deficiency or, if the District contends the Service Provider has been paid as set forth herein, it shall provide a written accounting to the Service Provider of its contention within 10 calendar days following the date of the notice of non-payment. If the Service Provider is not fully paid as set forth herein, after this notice and opportunity to cure, the Service Provider may terminate this agreement on sixty (60) calendar days written notice to the District.

9.03 This Agreement is executed in Comal County, Texas, and venue over any action relating to any provision of this Agreement shall be exclusively in Comal County, Texas. This Agreement shall be governed by the laws of the State of Texas.

9.04 The persons signing this Agreement warrant that they are authorized to enter into this Agreement on behalf of the respective entities that they represent and to bind those entities to the provisions of this Agreement.

9.05 In the event that this Agreement is not renewed at the end of its term as stated herein, this Agreement shall remain in full force and effect after such expiration of this Agreement and shall be automatically renewed thereafter on a month-to-month basis until a new agreement is reached between the District and the Service Provider or the Agreement is otherwise terminated by either party hereto, and payments by the District to the Service Provider shall be pro-rated on a monthly basis based on the annual consideration then in effect.

9.06 This Agreement shall remain in effect as stated above, until such time as either party desires to amend or terminate this Agreement, with or without cause. A party wanting to terminate this Agreement will give sixty (60) days written notice to the other party, unless one of the parties is in violation of any provision of this Agreement and the party desiring to terminate this Agreement desires to terminate for cause, in which event the Agreement may be terminated pursuant to written notice and following the notice and cure provisions stated above. The written notice shall be mailed to the below-noted addresses via U.S. certified mail, postage prepaid and return receipt requested, and the date of mailing shall be deemed the date of the postmark. Upon notice of the desire to terminate or amend the agreement, both parties may negotiate any mutually satisfactory amendment or renewal of the Agreement.

9.07 This Agreement contains the entire agreement between the parties and all prior negotiations, statements, or representations are superseded and displaced hereby. A waiver, alteration, or modification of this Agreement shall not be binding unless it is in writing and signed by both parties.

9.08 The headings of the various paragraphs of the Agreement have been inserted for convenient reference only and shall not be construed to enlarge, diminish, or otherwise change the express provisions hereof.

9.09 In the event that any one or more of the provisions contained in the Agreement shall be held to be invalid or unenforceable in any respect by a court of competent jurisdiction, such invalidity of unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision did not exist.

9.10 The governing body of each party to this Agreement shall authorize entry by such party into this Agreement.

9.11 Any notices under this Agreement, excluding reporting requirements by the parties, shall be sent by certified mail, return receipt requested, addressed to the appropriate party at the following addresses:

**If to the District:**

President  
COMAL COUNTY EMERGENCY SERVICES DISTRICT NO. 7  
P.O. Box 311975  
New Braunfels, Texas 78131-1975

**With a copy to:**

Secretary  
COMAL COUNTY EMERGENCY SERVICES DISTRICT NO. 7  
P.O. Box 311975  
New Braunfels, Texas 78131-1975

Ken Campbell  
BURNS ANDERSON JURY & BRENNER, L.L.P.  
PO Box 26300  
Austin, Texas 78755-6300

**If to the Service Provider:**

City Manager  
CITY OF NEW BRAUNFELS  
550 Landa Street  
New Braunfels, Texas 78130

**With a copy to:**

City Attorney  
CITY OF NEW BRAUNFELS  
550 Landa Street  
New Braunfels, Texas 78130

Fire Chief  
CITY OF NEW BRAUNFELS  
550 Landa Street  
New Braunfels, Texas 78130

9.12 Any rights that the Service Provider may have under this Agreement may not be assigned without the express written permission of the District, and nothing in this Agreement precludes or prevents the District from contracting with other entities to provide the same or similar



services during the term of this Agreement.

9.13 Pursuant to § 775.040, *et seq.*, Texas Health & Safety Code, the District and the Service Provider are specifically authorized to charge a reasonable fee for emergency services performed for or on behalf of a person or entity, including a fee for responding to a false alarm or for a fire code inspection, and such fees may be collected as set forth therein, either by the District or the Service Provider, at the rates and under the conditions as may be agreed to from time-to-time by the parties hereto. The City is hereby authorized to charge the established rates and fees as charged within the City for Fire and EMS Services provided within the District.

This Agreement is executed and signed on this \_\_\_\_ day of November , 2021, to be effective as of the dates noted above.

COMAL COUNTY EMERGENCY  
SERVICES DISTRICT NO. 7

CITY OF NEW BRAUNFELS

\_\_\_\_\_  
JAMES FRYE  
PRESIDENT

\_\_\_\_\_  
Robert Camareno,  
CITY MANAGER

ATTEST:

\_\_\_\_\_  
Kim Carroll, Secretary  
COMAL COUNTY EMERGENCY  
SERVICES DISTRICT NO. 7

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Ken Campbell, Attorney for  
COMAL COUNTY EMERGENCY  
SERVICES DISTRICT NO. 7

## EXHIBIT A

### FY 2022 ESD #7 Calculation

| Year                   | Total        | Fire         | EMS          |
|------------------------|--------------|--------------|--------------|
| FY 2017                | 9,422        | 2,246        | 7,176        |
| FY 2018                | 9,861        | 2,169        | 7,692        |
| FY 2019                | 10,177       | 2,160        | 8,017        |
| FY 2020                | 10,338       | 1,983        | 8,355        |
| FY 2021 (October-June) |              |              |              |
| <i>Average</i>         | <b>9,950</b> | <b>2,140</b> | <b>7,810</b> |

| Year                   | Total - ESD #7 | Fire       | EMS        |
|------------------------|----------------|------------|------------|
| FY 2017                | 705            | 174        | 531        |
| FY 2018                | 749            | 195        | 554        |
| FY 2019                | 733            | 181        | 552        |
| FY 2020                | 868            | 191        | 677        |
| FY 2021 (October-June) |                |            |            |
| <i>Average</i>         | <b>764</b>     | <b>185</b> | <b>579</b> |

|   |             |             |             |
|---|-------------|-------------|-------------|
| <b>ESD as a percentage of total calls for service (Five Year Average)</b> | <b>7.7%</b> | <b>8.7%</b> | <b>7.4%</b> |
|---|-------------|-------------|-------------|

|                                       |             |
|---------------------------------------|-------------|
| <b>FY 2022 Fire Department Budget</b> | <b>\$ -</b> |
| <b>Payment for services</b>           | <b>\$ -</b> |
| <b>Vehicle Maintenance Cost</b>       | <b>TBD</b>  |
| <b>Adjusted Net Payment</b>           | <b>TBD</b>  |

## EXHIBIT B

### FY 2021 ESD #7 Calculation (TRUE UP)

| Year                               | Total        | Fire         | EMS          |
|------------------------------------|--------------|--------------|--------------|
| FY 2017                            | 9,422        | 2,246        | 7,176        |
| FY 2018                            | 9,861        | 2,169        | 7,692        |
| FY 2019                            | 10,177       | 2,160        | 8,017        |
| FY 2020                            | 10,338       | 1,983        | 8,355        |
| <b>FY 2021 (Full year Actuals)</b> |              |              |              |
| <i>Average</i>                     | <b>9,950</b> | <b>2,140</b> | <b>7,810</b> |

| Year                               | Total - ESD #7 | Fire       | EMS        |
|------------------------------------|----------------|------------|------------|
| FY 2017                            | 705            | 174        | 531        |
| FY 2018                            | 749            | 195        | 554        |
| FY 2019                            | 733            | 181        | 552        |
| FY 2020                            | 868            | 191        | 677        |
| <b>FY 2021 (Full year Actuals)</b> |                |            |            |
| <i>Average</i>                     | <b>764</b>     | <b>185</b> | <b>579</b> |

|   |             |             |             |
|---|-------------|-------------|-------------|
| <b>ESD as a percentage of total calls for service (Five Year Average)</b> | <b>7.7%</b> | <b>8.7%</b> | <b>7.4%</b> |
|---|-------------|-------------|-------------|

**FY 2021 Fire Department Actuals**                      \$            -

|                             | ADJUSTED        | Actual payments received | True-Up         |
|-----------------------------|-----------------|--------------------------|-----------------|
| <b>Payment for services</b> | \$            - | \$            -          | \$            - |