
INTERLOCAL COST SHARING AGREEMENT BETWEEN
COMAL COUNTY, TEXAS AND GUADALUPE COUNTY, TEXAS
REGARDING THE DRY COMAL CREEK FLOOD RETARDING STRUCTURE PROJECT

WHEREAS, Comal County, Texas (“Comal County”) has constructed a flood retarding structure known as the “Dry Comal Creek Flood Retarding Structure” (the “DCCFRS”); and

WHEREAS, the DCCFRS also serves to benefit the health, safety and welfare of the citizens of Guadalupe County, Texas in that Guadalupe County has, in the past, suffered loss of life and property damage from flood conditions due to major rain events in Comal County and the consequent downstream runoff; and

WHEREAS, the topography of Guadalupe County is generally not suitable for the construction of additional dams in that large acreages would have to be submerged in order to achieve even a nominal reduction in flood consequences; and

WHEREAS, Chapter 791 of the Texas Government Code grants the authority to Comal County and Guadalupe County to enter into this Interlocal Agreement; and

WHEREAS, Comal County and Guadalupe County desire to enter into an agreement wherein Guadalupe County will contribute funds towards the cost of the DCCFRS;

NOW THEREFORE,

In consideration for the mutual promises and covenants given and the mutual benefits received, which is hereby acknowledged by Comal County and Guadalupe County, the parties agree as follows:

1. **Comal County:**

Comal County will be responsible for compliance with all contractual or other obligations relative to the DCCFRS including but not limited to funding and maintenance.

2. **Guadalupe County:**

Guadalupe County will contribute to Comal County the sum of \$125,000.00 to be applied to the cost of the DCCFRS. In connection herewith, Guadalupe County will pay the sum of \$125,000.00 within thirty days of receiving an invoice from Comal County. Guadalupe County will consider additional funds in the future. It is further understood and agreed that the payment of said sums by Guadalupe County constitutes the sole involvement of Guadalupe County with respect to the DCCFRS.

3. **Notice:** Any notice required under the provisions of this Agreement shall be in writing and delivered in person, by fax or deposited in the United States Mail, registered or certified, return receipt requested. Any such notice must be addressed to the following addresses. Any notice shall be deemed received three days after the date of deposit in the United States Mail, unless proof is offered to the contrary. Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

<p><u>COMAL COUNTY:</u> Comal County Judge 150 N. Seguin Ave. New Braunfels, Texas 78130</p> <p>With a copy to: Comal County Auditor 150 N. Seguin Ave., Suite 201 New Braunfels, Texas 78130</p> <p>Chief Civil Prosecutor 150 N. Seguin Ave., Suite 307 New Braunfels, Texas 78130</p> <p>Comal County Engineer 195 David Jonas Drive New Braunfels, Texas 78130</p>	<p><u>GUADALUPE COUNTY:</u> Guadalupe County Judge 211 W. Court St. Seguin, Texas 78155</p> <p>With a copy to: Guadalupe County Auditor 307 W. Court St. Seguin, Texas 78155</p> <p>Guadalupe County Attorney Attn: Civil Prosecutor 211 W. Court St. Seguin, Texas 78155</p>
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Either party may designate a different address by giving the other party written notice.

4. **Termination:** This Agreement shall terminate upon the complete satisfaction in payment of the costs by Guadalupe County. Either party may terminate this agreement at any time with 30 days written notice to the other party.
5. **Remedies:** This agreement shall not be considered as specifying an exclusive remedy for any default, but either party may avail itself of any remedy existing at law or in equity, and all remedies shall be cumulative.
6. **Amendment:** This Agreement may not be amended except in a written instrument specifically referring to this Agreement and signed by the parties hereto.
7. **Binding Agreement:** This Agreement has been duly executed and delivered by both parties and constitutes a legal, valid and binding obligation of the parties. Each person executing this Agreement on behalf of each party represents and warrants that they have full right and authority to enter into this Agreement.
8. **Funding Out Clause:** Notwithstanding any contrary provision of this agreement, each payment obligation of Guadalupe County created by this agreement is conditioned upon the availability of funds that are appropriated or allocated for the Dry Comal Creek Retention Dam Project. If such funds are not allocated, this agreement may be terminated by Guadalupe County at the end of the period for which funds are allocated. Guadalupe County shall notify Comal County at the earliest possible time before such termination. No penalty shall accrue to the Guadalupe County in the event this provision is exercised, and Guadalupe County shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.
9. **Severability:** In the event that one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent

jurisdiction, this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, but shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

10. **Immunity:** No provision of this agreement shall affect or waive any sovereign or governmental immunity available to either party and/or its elected officials, officers, employees and agents under Federal or Texas law nor waive any defenses or remedies at law available to either party and/or its elected officials, officers, employees and agents under Federal or Texas law.
11. **Venue:** This agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Texas, without regard to its conflict of laws principles. Exclusive venue shall be in a court of competent jurisdiction in Comal County, Texas.
12. **Effective Date:** This Agreement becomes effective when signed by the both of the authorized representatives for Comal County and Guadalupe County.

COMAL COUNTY, TEXAS: _____, 2016 _____ COUNTY JUDGE, SHERMAN KRAUSE _____ ATTEST: COMAL COUNTY CLERK BOBBIE KOEPP	GUADALUPE COUNTY, TEXAS: _____, 2016 _____ COUNTY JUDGE, KYLE KUTSCHER _____ ATTEST: GUADALUPE COUNTY CLERK TERESA KIEL
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