

LOOKING INTO THE FORMS FILE  
OF A CITY ATTORNEY

BY BARBARA L. QUIRK

PRESENTED AT THE TCAA SUMMER CONFERENCE

GALVESTON, TEXAS

JUNE 15, 2022 2:30 P.M.

## Speaker Bio

**Barbara L. Quirk** currently holds the position of Assistant City Attorney for the City of San Marcos. Before joining the City of San Marcos this month Ms. Quirk had the honor of being appointed to the position of City Attorney for the City of Boerne, beginning in January of 2020, and of serving that City for two and one-half years, throughout the COVID19 pandemic.

Ms. Quirk has thirty years of experience providing legal representation to Texas cities, having received her license to practice in 1991. She began her career serving as an Assistant City Attorney for the City of San Antonio for several years. After leaving the City to go into private practice she continued her passion for representing cities across Texas in a City Attorney, Assistant City Attorney, or Litigation Counsel capacity. Ms. Quirk served as a partner with the McKamie law firm for many years before joining the firm of Shahan Guevara Decker Arrott in 2018. After leaving the Guevara firm to return to an in-house position she is looking forward to the years to come as a member of the San Marcos team.

Ms. Quirk is a native of San Antonio where she achieved her Juris Doctor Degree from St. Mary's University School of Law in 1991. She also holds a Bachelor's in Business Administration from Southern Methodist University in Dallas. Ms. Quirk is licensed to practice in the State Courts of Texas, in the United States District Courts for the Eastern, Northern, Southern and Western Districts of Texas, and in the United States Court of Appeals for the Fifth Circuit. she has previously earned the Texas City Attorney's Association Merit Certification in Municipal Law and the designation of Local Government Fellow from the International Municipal Lawyers Association.

In her free time Ms. Quirk enjoys hiking in the Hill Country with her dog Dove.

## TABLE OF CONTENTS

I.	Introduction.....	4
II.	Considerations When Using Contract Forms.....	4
III.	Overview of Forms in Appendix.....	6
IV.	Conclusion.....	8
	Appendix – CITY ATTORNEY FORMS FILE.....	8
	A. Annexation Forms.....	9
	A-1 Annexation Types Chart.....	9
	A-2 Form notice of Annexation to Owner of Roadway.....	15
	B. Audit Letter Form.....	16
	C. Council Abstention Affidavit Form and Agenda Note.....	18
	D. Contract Forms.....	19
	D-1 Review Checklist for General Contracts.....	19
	D-2 Professional Services Contract for Architects and Engineers.....	27
	D-3 Services Agreement Form (Small, Not Architect or Engineer).....	33
	D-4 Goods Purchase Agreement Form (Small Contract).....	38
	E. Employee Separation and Release Agreement Form.....	42
	F. Litigation Form – Plaintiff’s Original Petition.....	46
	G. Ordinance Form – Speed Limit Ordinance .....	52
	H. Public Information Forms.....	54
	H-1 Request for Clarification Form.....	54
	H-2 Letter to Attorney General Form.....	55
	H-3 Cost Estimate Letter.....	59
	I. RFP Form – Checklist for What Goes Into RFP.....	61
	J. Real Estate Forms.....	63
	J-1 Special Warranty Deed Form.....	63
	J-2 Utility Easement Form.....	66
	J-3 Lease Form for Economic Development Purpose.....	69

## I. INTRODUCTION

This paper is designed to provide you with a sampling of some basic forms I have used in my practice as a municipal attorney. As municipal attorneys we practice in so many areas of law. I have often found myself working on several types of documents in one day with very little time to create the document. At any given time you may be working on several different types of documents. One of the most useful tools I have found is my forms file, full of those tried and true forms I turn to every day and those mysterious old documents I put in there just in case I might need them again some day. I have picked one or two of my forms from each of the types of forms in my file to include in this paper.

I offer this with a caveat. I use these forms as a starting point for my legal projects and they are by no means complete without modification. I make no representations or warranties of suitability for any purpose. **Do not use these forms without reviewing them and modifying them as you see fit.** Please do not share these forms with non-attorneys without modifying them first as they will almost always need some type of modification before use.

Although I have adapted and used these forms over the years, I did not draft all of them myself and wish to give credit to all of those generous attorneys who have shared their forms with me. Unfortunately, I have tinkered with these so much that recalling the origination of the forms is no longer possible. I have been lucky enough to have received many of the forms from attorneys I worked with over the years, including Mick McKamie, Mike Guevara, and others, and have modified each of them as I went along. I also compiled many of the forms you will see in this paper with input from staff and others while serving as City Attorney for the City of Boerne. I have gathered additional information from materials and advice offered on the TML and TMLIRP websites. Now it is my turn to share. I hope some of you will find this paper's glimpse into my forms file useful.

## II. CONSIDERATIONS WHEN USING CONTRACT FORMS

By far the forms I use the most are those for contract drafting. My files contain various forms for the different types of contracts as well as for different sizes of projects. A select few of these contract forms are included in this paper. You will notice my contract review checklist. I use this checklist for review of contracts sent by third parties in projects or matters where there is low risk to the City and we do not have the time or the leverage to require a City form be used for whatever reason.

I have not attached the larger contract forms for moderate to high risk matters or for construction contracts for use in moderate to large construction projects which would be too voluminous for inclusion in this paper. For these large construction projects in Boerne City staff started with the forms that are available from the construction industry (ie., EJCDC) and we would make modifications more favorable to the City and specific to the particular project.

I have included tips on considerations for modification to construction contracts on this page below and in my contract checklist further down in the paper. For more detail on the following considerations see Scott Houston's Stronger Together Podcast on contract protections at [www.tmlirp.org](http://www.tmlirp.org) as well as papers he references where I learned some of these tips. The following are some of the most important provisions to look at when reviewing or drafting contracts:

1. INDEMNIFICATION, DEFENSE, AND HOLD HARMLESS CLAUSE –
  - a. Check that the Contractor indemnifies, defends, and holds harmless the City (you need all three) for claims and liabilities, including for property damage and personal injury, arising from the performance of the contract, whether partially or wholly due to the Contractor's fault.
  - b. Strike any clause that requires the City to indemnify the contractor. There are a couple of types of contracts with banks and I.T. companies where it will not be possible to negotiate this and the third party will usually suggest a modification such as adding, "To the extent allowed by law..."
  - c. Check that the indemnification language does not violate statutory provisions in those few cases where the City cannot ask for indemnification for its own negligence, particularly professional Architect and Engineer agreements.
  - d. SURVIVAL OF OBLIGATIONS BEYOND TERMINATION OF CONTRACT – Include provisions that these obligations survive termination of contract.
  - e. Include phrase, "these obligations are not limited by Comparative Negligence Doctrine and are independent of the Contractor's insurance."
  
2. INSURANCE CLAUSES –
  - a. Check that Worker's Compensation and Liability Insurance are required of the Contractor, not the City, and that the Contractor is required to list the City as an additional insured for all relevant liability policies.
  - b. Check that the insurance requirement is sufficient to cover the risks of the contract. Require commercial general liability, property, workers' compensation, and umbrella coverage. Consider a builder's risk policy requirement where applicable.
  - c. Check that the Contractor is required to require the same insurance of subcontractors.
  - d. WAIVER OF SUBBROGATION – Check that the Contractor has waiver of subrogation requirements on Liability and Workers Compensation insurance.
  - e. CERTIFICATES OF INSURANCE AND POLICY DOCUMENTS – Check that someone reviews the certificates of insurance and policy documents (to verify coverage and to check that the policy is endorsed to add the City as additional insured). Require that City be provided with new documentation for policy changes,

I have attached certain forms for lower risk contracts or smaller dollar contracts in the Appendix. I developed these forms for quick use with less need for negotiation with vendors, so they may not always contain all of the provisions I have discussed above. Please adapt them as you see fit.

### **III. OVERVIEW OF FORMS IN THE APPENDIX**

#### **A. Annexation Forms**

A-1 Annexation Types Chart – I developed this chart for use in working with staff on the different types of notice, hearings, and service plan documents needed for the different types of annexation.

A-2 Notice of Annexation to Owner of Roadway – For use in providing the annexation notice allowed for in Section 43.1056 LGC in order to annex a roadway without further need for consent once a notice is sent.

#### **B. Audit Letter Form - For use in responding to the annual auditor's request.**

#### **C. Council Abstention Affidavit Form - for use by City Council member in abstaining from participation on item for which they have a substantial interest**

Agendas Form note: I have not included an agenda form because every City has its own form that the Mayor or City Manager prefers. However, I have made a change since the Open Meetings suspension was lifted after the COVID emergency which you may find helpful. Add the following language at the beginning of the agenda in order to comply with the Open Meetings Act in the event a Council member decides to appear remotely by Zoom or other videoconference program: “A quorum of the City Council will be present during the meeting at the following address.”

#### **D. CONTRACT FORMS**

D-1 Review Checklist for General Contracts – Use this primarily for review of the many contracts sent by third parties when they are needed quickly and we will not be able to use a city form. This can also be used to check forms you are drafting to be inclusive.

D-2 Professional Services Contract for Architects and Engineers – This is a form I developed with staff for the purpose of having more uniform Architect and Engineer contracts. Each firm was sending over their own format. We negotiated with our most frequent professionals to develop this form, so it does not have everything we wanted.

D-3 Services Agreement Form (Small Contracts, Not Architect or Engineer) – For use when purchasing general services. Allows attachment of Scope and Price sheets.

D-4 Goods Purchases Contract Form – For use with small to moderate purchasing agreements when you have the Scope and Price sheets to attach.

- E. Employee Separation and Release Agreement Form - contains 21 day and 7 day waiting periods for age discrimination and suitable for release of other types of claims.
- F. Litigation Form - Plaintiff's Original Petition - for City suit against Surety, Contractor, and Developer for defects in street construction in a subdivision. The lawsuit I created this form for was settled and the streets were redone.
- G. Ordinance Form - Speed Limit Ordinance Form - for use when passing a new speed limit based on studies.
- H. Public Information Forms – See Public Information Section of Attorney General's Website for more information.
  - G-1 PIA Form - Request for Clarification / Narrowing – Use when request is too vague or overbroad to interpret without clarification or narrowing. May not ask why requestor wants records. If stated in letter, time for City response will be tolled until Requestor replies and ten business day deadline will restart from date of clarification or narrowing.
  - G-2 PIA Form – Letter to Attorney General – Contains examples of exceptions that may be raised in letter to Attorney General. Must be sent by 10<sup>th</sup> business day from request.
  - G-3 PIA Form – Cost Estimate Letter – This form must contain all of the magic language required by the Attorney General's Office to be effective. If included in the letter, the City may wait to respond to the request until the Requestor responds to the cost estimate.
- I. Purchasing, RFP Form – Checklist for What Goes in an RFP – I use this to check the RFPs that are sent over by purchasing to see if any key provisions are omitted.
- J. Real Estate Forms
  - I-1 Special Warranty Deed Form – Always use a special warranty deed instead of a general warranty deed when the City is selling property if possible since the City is not agreeing to protect from chain of title issues before the City took the property.
  - I-2 Utility Easement Form – Use this form for small utility easements that are needed quickly.
  - I-3 Lease Form for Economic Development Purposes – Use when a lease is needed for an economic development project. Contains performance measures.

UDC Note – The City of Boerne passed a Unified Development Code in 2021. This Code was a collaborative effort involving input from several attorneys and many different City staff, Council and Board members and community members. Forms related to this UDC and the many related ordinances are too large to discuss in this paper, but you may wish to view the code on the City of Boerne website.

#### **IV. CONCLUSION**

Municipal attorneys need a treasure trove of forms at their finger tips for the multitude of tasks they are asked to accomplish each day. I hope you will find this glimpse into my forms file helpful.

## **APPENDIX**

### **FORMS FILE OF A CITY ATTORNEY**

### **FOLLOWS THIS PAGE**



## A-1 ANNEXATION TYPES CHART

B.

<b>LGC SUBSEC.</b>	<b>C-1</b>	<b>C-3*</b>	<b>C-4</b>	<b>C-5</b>
<b>ANNEX. TYPE</b>	EXEMPT from consent such as navig. Stream or Rd or ROW (by req)	BY REQUEST	BY PETITION < 200 units	BY ELECTION > 200 units
<b>LGC SEC.</b>	43.061 – 43.065	43.0671 – 43.0673	43.0681 – 43.0688	43.0691 – 43.0699
<b>INITIAL DOC</b>	Can be Resolution	REQUEST (sometimes called Petition) by Owner	RESOLUTION by City with intent to annex, description and map of area and listing all services with schedule of when to be provided See LGC §43.0682	RESOLUTION under §43.0692
<b>If appraised as Ag., Wildlife Mgmt or Timber Mgmt</b>	<b>Document §43.016 Offer of DA first</b>	<b>Document §43.016 Offer of DA first</b>	<b>Document §43.016 Offer of DA first?</b>	<b>Document §43.016 Offer of DA first?</b>
<b>Preliminary Map Requirements SB1303, 2019</b>	<b>Post Digital Map of ETJ expansion before initiate annexatn.</b>			

<b>REQ'D SERVICES DOC.</b>	<b>SERVICE PLAN</b> for provision of full services as provided to any other area in City by the annexation date, other serv. within 2 and ½ years – 43.056	Negotiate and execute <b>SERVICE AGREEMENT</b> with owner listing services, if any, with schedule of when to be provided	<b>SEE RESOLUTION ABOVE</b>	<b>RESOLUTION</b> listing services with schedule of when to be provided
<b>Council Action to set Hearing(s)</b>	Council sets 2 Public Hrgs	Council sets 1 Public Hrg	Council sets Initial Public Hrg	(See Statute for the remainder of requirements)
<b>Mailed Notice Requirements</b>	Notice to areas to be included in expanded etj	Notice to School Districts and Public Entities before newspaper notice	Not later than 7 <sup>th</sup> day after Resolution adopted - mail to each resident and owner in the area to be annexed notice of: the proposed annexation, the public hearing, the 180-day petition period, and list and schedule of services to be provided.	

			When 180 days ends, City Secretary verifies petition and notifies residents and owners of the result.	
<b>NEWSPAPER NOTICE</b>		On or after the 20th day but before the 10th day before the date of the hearing		
<b>WEBSITE NOTICE</b>		on or after the 20th day but before the 10th day before the date of the hearing and must remain posted until hearing		
<b>INITIAL HRNGS. Held</b>	2 hrgs	1 Hrg.	First hrg. not earlier than 21st day and not later than 30th day after adoption of resolution	
<b>NEXT STEP AFTER INITIAL HEARING</b>			PETITION PERIOD – City collects signatures on or after the 31st day after the Resolution	

			<p>is adopted and ending on the 180th day after the date the resolution is adopted - by &gt; 50% registered voters in area to be annexed, or, if reg. voters don't own more than 50% of land, &gt; 50% owners – must say each signer is consenting to annexation, whether each is owner, reg. voter, or both – include map - If during the Petition Period at least 50 percent of the reg. voters who voted in the most recent election sign a petition protesting the annexation, it may only be passed by majority of voters in an election.</p>	
--	--	--	--	--

<p><b>OTHER REQS.</b></p>	<p>43.054 (width of strip), 43.0545 (width of connection strip), 43.055 (maximum per year), 43.056(b)-(o) (service plan), and 43.057 (if surrounds area)</p>	<p>NO Width req.</p>	<p>If enough signatures on petition, hold 2 hrs. Final hearing not earlier than the 10th day after the date of the first hearing</p> <p>No Width req.</p>	
<p><b>FINAL STEP To annex</b></p>		<p><b>ORDINANCE ANNEXING THE AREA – Can be ADOPTED at the public hrg.</b></p>	<p>If no opposition petition filed, at final hrg. <b>ORDINANCE ANNEXING THE AREA</b> may be adopted. If not enough signatures are obtained, City may not annex and may not pass another annexation resolution for 1 yr after last day of Petition Period.</p>	
<p><b>SEE POST-ANNEXATN CHART BELOW</b></p>				

\*Note: Subchapter C-2 Consent annexations are omitted from the above annexation types chart as they were not available to the City of Boerne.

**POST-ANNEXATION ACTIONS REQUIRED FOR ALL TYPES:**

Update City boundary and etj map at City Sec, Engineer, and website LGC §41.001
Notify TX Comptroller by cert mail w/cert copy of ord. and map of city w/ change mkd. Tax Code §321.102
Notify Appraisal Dist within 30 days of annexation Tax Code §6.07
File cert. copy of ord w/ County Clerk within 30 days of annexation LGC §41.0015
Notify Certif. Telecom. Providers that if the CTP has access lines in the new area must compensate City under LGC Ch 283.
Notify Public Utility Commn
Contact Electric (Util Code 33.008), Cable (Util Code Ch 66), Gas, and Water Suppliers to discuss whether franchise fees will change or need agmt.

**A-2 NOTICE OF ANNEXATION TO OWNER OF ROADWAY**

Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(Name and address of TXDOT or other roadway owner’s designated rep.)

RE: City of \_\_\_\_\_ Notice of Intent to Annex the following Road Right of  
Way: \_\_\_\_\_

Dear Roadway Owner Representative,

This letter is being sent pursuant to Texas Local Government Code Section 43.1056 to notify the owner of the above referenced road right of way (“Owner”) that the City of \_\_\_\_\_ (“the City”) intends to annex the following road right of way on or after the 61<sup>st</sup> day after delivery of this notice: \_\_\_\_\_. The right of way is contiguous to other property being annexed by the City and is contiguous to the City’s boundaries. The annexation is expected to be considered by City of \_\_\_\_\_ City Council on the \_\_\_ day of \_\_\_\_\_, 202\_. If Owner objects to this annexation, you must notify the undersigned of the objection in writing on or before that date at the following address:

\_\_\_\_\_  
\_\_\_\_\_

With courtesy e-mail copies to the following: \_\_\_\_\_

You have received this notice because the City has been informed that you are the person designated by Owner for receipt of notice under Section 43.1056. If this is not correct, or if the designated person or location for delivery has changed, please inform the undersigned immediately. If we do not here from you the City will proceed with annexation proceedings in accordance with the law.

Best Regards,

\_\_\_\_\_

**B. AUDIT RESPONSE LETTER**

\_\_\_\_\_, 202\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: *City of \_\_\_\_\_ Audit Response Letter from Legal*

Dear \_\_\_\_\_,

As the \_\_\_\_\_ Attorney for the City of \_\_\_\_\_ (“the City”), I advise you as follows in connection with your examination of the accounts of the City as of September 30, 202\_. I am providing this information pursuant to correspondence I received from \_\_\_\_\_, \_\_\_\_\_ for the City of \_\_\_\_\_ on \_\_\_\_\_, 202\_, requesting that I reply to you and provide the requested information (“the Audit Inquiry Letter”).

I call your attention to the fact that in my role as the \_\_\_\_\_ Attorney I had supervision of the following legal affairs of the City for the period in question: \_\_\_\_\_ (general supervision of legal matters or specific assigned litigation). In such capacity, I have reviewed litigation and claims threatened or asserted involving the City and consulted with outside legal counsel with respect thereto where I have deemed appropriate.

Subject to the foregoing and to the last paragraph of this letter, I advise you that since October 1, 202\_, neither I, nor other of the City’s attorneys of whose work I have been made aware, have given substantive attention to, or represented the City in connection with, material loss contingencies coming within the scope of Paragraph 5 of the Statement of Policy referred to in the last paragraph of this letter, except as follows:

\_\_\_\_\_  
\_\_\_\_\_

I am aware of no claim, either asserted or unasserted, against the City, which is probable of assertion and which, if asserted, would have at least a reasonable possibility of an unfavorable outcome, which must be disclosed in accordance with Statement of Financial Accounting Standards No. 5 (“SFAS No. 5”) (recodified at FASB Accounting Standards Codification 450-20).

The information set forth herein is as of the date of this letter, except as otherwise noted, and I disclaim any undertaking to advise you of changes which thereafter may be brought to my attention or to the attention of other attorneys of the City.

This response is limited by, and in accordance with, the ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information (December 1975); without limiting the generality of the foregoing, the limitations set forth in such Statement on the scope and use of this response (Paragraphs 2 and 7) are specifically incorporated herein by reference, and any description herein of any "loss contingencies" is qualified in its





**C. COUNCIL ABSTENTION AFFIDAVIT**

THE STATE OF TEXAS

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, as a member of the City Council of the City of \_\_\_\_\_ make this affidavit and hereby on oath state the following: I, and/or a person or persons related to me, have a substantial interest and/or economic interest in a business entity that would be particularly affected by a vote or decision concerning \_\_\_\_\_ as those terms are defined in Section 171.002 of the Texas Local Government Code.

Reference to agenda item: \_\_\_\_\_.

I, \_\_\_\_\_, have a substantial interest in this business entity because, within the past twelve months, I have directly engaged in negotiations with this business entity pertaining to business opportunities.

Upon the filing of this affidavit with the City Secretary for the City of \_\_\_\_\_, I affirm that I will abstain from voting on any decision involving this business entity and from any further participation on this matter whatsoever.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Official

\_\_\_\_\_  
Title

BEFORE ME, the undersigned authority, this day personally appeared \_\_\_\_\_ and on oath stated that the facts hereinabove stated are true to the best of (his/her) knowledge or belief.

Sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
*Notary Public in and for the State of Texas*

My Commission expires: \_\_\_\_\_.

**D-1 GENERAL CONTRACT REVIEW CHECKLIST**

<b>CONTRACT REQUIRED TOPICS</b>	<b>YES/NO</b>	<b>COMMENTS</b>
CHECK THE TYPE OF CONTRACT		Goods contracts and services contracts have some differences. Contracts for public works and professional services contracts, like architects and engineers have different provisions. See City's Standard Form Contracts.
CHECK THAT BIDDING/PURCHASE LAWS WERE FOLLOWED		<p>Local Gov't Code requires purchases of goods and services (and personal property leases) which exceed \$50,000 (for the entire term of the contract) must be made by sealed bids, competitive sealed proposals, reverse auction, or alternative construction procurement methods unless they are excepted from this requirement.</p> <p>Some exceptions include: Gov't cooperative purchasing, sole source items, unforeseen damage to public equipment, machinery or property, and planning services. Certain professional services, including architect and engineer services and accounting services, may not be awarded by bidding and must follow other procedures.</p> <p>For contracts between \$3,000 and \$50,000, HUB list should be checked.</p>
PARTIES		Check names, addresses, and types of entity are listed and correct.
EFFECTIVE DATE		Can be at beginning or end of contract.
PURPOSE (STATEMENT OF WORK)		Specific to project.
SCOPE OF SERVICE, SCHEDULE FOR COMPLETION, AND OBLIGATIONS OF CONTRACTOR		Can be in the contract or added as exhibits, provided the exhibits are properly referenced and incorporated in the main contract document. If additional on-line documents, bid documents, or other documents will be part of contract, be sure

<b>CONTRACT REQUIRED TOPICS</b>	<b>YES/NO</b>	<b>COMMENTS</b>
		there is a statement including all of them in the “Contract Documents.”
STANDARD OF CARE FOR PROFESSIONAL ARCHITECT OR ENGINEER		If contract is for architect or engineer services it must include only the standard of care from LGC 271.904: “Professional agrees to perform services: (1) with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license; and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.”
COMPENSATION, PAYMENT TERMS, AND OBLIGATION OF CITY		May be in contract or an attachment if properly referenced and incorporated. Payment terms should include procedures for invoicing and location for and timing of payments.
IF THE CONTRACT ALLOWS FOR INCREASE IN QUANTITY OF WORK OR GOODS		Any provision in the contract which allows for an increase in the amount of the work or goods supplied, if any, should clarify that extra items will not be paid for by the City unless approved in advance in writing, and should set a maximum increase in the contract price. For a contract requiring bidding, any increase in the original contract price by more than 25 percent would trigger bidding requirements.
TERM AND RENEWALS, IF ANY		Avoid excessively long terms due to potential changes in market conditions. Avoid automatic renewals unless advance notice is provided to the City with an opportunity to cancel the renewal term.
TERMINATION (and City’s right to terminate, remedies)		Wherever possible clause should allow termination by the City in the event the City does

CONTRACT REQUIRED TOPICS	YES/NO	COMMENTS
		not appropriate funds for the contract in any given year. If contract requires advance payment by City, City should be able to get refund if contractor terminates contract early.
INSURANCE		Require all contractors and vendors to maintain insurance and provide proof to the City and name the City as an additional insured. Can leave this out for simple purchases of goods if there is no potential risk to the City. Example: “Contractor shall procure, at its own expense, general liability insurance with a minimum per occurrence limit of one million dollars (\$1,000,000.00) and additional coverage sufficient to cover the Services being provided under this Agreement as determined by the City. Contractor shall provide the City with written notice of any coverage limit change on the insurance. Contractor shall provide the City with proof of insurance required hereunder. The City shall be named as an additional insured on the policy.”
DEFENSE OF CITY IF CONTRACT IS FOR PROFESSIONAL ARCHITECT OR ENGINEER SERVICES		See LGC 271.904 – “Professional will name the City as an additional insured under Professional’s general liability insurance policy and provide for the City any defense provided by the policy.” SEE FORM BELOW.
INDEMNIFICATION - CHECK THAT THERE IS <b><u>NO</u></b> INDEMNIFICATION BY <b><u>THE CITY</u></b>		No Indemnification by the City of the other party may be included by law unless the City sets up a sinking fund. The City will not agree to do this. Strike this clause if you see one. Some large companies with standard form contracts, such as software agreements, or banking agreements may refuse to change this. If so, speak with City Attorney.
INDEMNIFICATION BY VENDOR OR CONTRACTOR <b><u>CAUTION; THIS PROVISION SHOULD NOT BE USED IN CASES</u></b>		<b>Most contractors and vendors must indemnify, defend, and hold harmless the City from liability. Should be in Bold and ALL CAPS. Example: VENDOR HEREBY AGREES TO INDEMNIFY DEFEND, AND HOLD HARMLESS THE CITY, ITS ELECTED OFFICIALS, OFFICERS,</b>

CONTRACT REQUIRED TOPICS	YES/NO	COMMENTS
<p><b><u>WHERE STATUTE PROHIBITS INDEMNIFICATION OF CITY FOR ITS OWN NEGLIGENCE. SEE ARCHITECT AND ENGINEER BELOW.</u></b></p>		<p><b>AGENTS AND EMPLOYEES AGAINST ANY AND ALL CLAIMS BY VENDOR OR ANY THIRD PARTY, INCLUDING ANY LAWSUITS, JUDGMENTS, COSTS, LIENS, LOSSES, EXPENSES, FEES (INCLUDING REASONABLE ATTORNEY FEES), PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT THAT MAY ARISE OUT OF OR BE OCCASIONED OR CAUSED BY VENDOR'S ACTIONS OR ANY NEGLIGENT ACT, ERROR OR OMISSION OF VENDOR, OR OF ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, VOLUNTEER OR SUBCONTRACTOR OF VENDOR WHILE IN THE EXERCISE OR PERFORMANCE OF THIS AGREEMENT. NOTHING HEREIN SHALL WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO THE CITY UNDER LAW. OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY VENDOR UNDER THIS AGREEMENT, WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES, AND THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.</b></p>

CONTRACT REQUIRED TOPICS	YES/NO	COMMENTS
INDEMNIFICATION BY PROFESSIONAL ARCHITECT OR ENGINEER		<p>If the contract is for architect or engineer professional services, we may only use the language from Local Gov't Code Section 271.904: "Professional indemnifies and holds harmless the City, its officers, employees, and agents, from liability for damage to the extent that the damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by Professional or Professional's agent, consultant under contract, or another entity over which Professional exercises control. Professional agrees to reimburse the City for its reasonable attorney's fees in proportion to Professional's liability." SEE FORM BELOW.</p>
PAYMENT AND PERFORMANCE BONDS REQUIRED FOR PUBLIC WORKS CONSTRUCTION CONTRACTS		<p>Gov't Code requires a payment bond for any public works contract costing over \$50,000 to secure payment to suppliers of materials or labor under contract to the contractor. A performance bond is required if the contract for public works will cost over \$100,000 to protect the City in the event of contractor default. See Chapter 2253 Gov't Code: Sec. 252.044. CONTRACTOR'S BOND. (a) If the contract is for the construction of public works, the bidder to whom the contract is awarded must execute a good and sufficient bond. The bond must be:</p> <ol style="list-style-type: none"> <li>(1) in the full amount of the contract price;</li> <li>(2) conditioned that the contractor will faithfully perform the contract; and</li> </ol>

CONTRACT REQUIRED TOPICS	YES/NO	COMMENTS
		(3) executed, in accordance with Chapter <u>2253</u> , Government Code, by a surety company authorized to do business in the state.
WORKERS COMPENSATION REQUIRED FOR PUBLIC WORKS CONSTRUCTION CONTRACTS		If the contract is for a City building, road, or other public works construction project, the contract must require the general contractor to certify in writing they provide workers' compensation insurance to all employees involved in the project and require each subcontractor to provide the same written certification to the City: See TEX. LAB. CODE §§ 504.014; 406.096. Example: "Contractor shall be fully responsible for its employees, including meeting all state and federal requirements for minimum wage, income tax withholding, workers' compensation, insurance, and all city, state, and federal requirements governing employer/employee relations. Contractor hereby certifies that it shall be and is in compliance with all such regulations, laws and requirements. Contractor shall require its subcontractors on this project to provide this same certification to the City."
CONFIDENTIALITY		Contractor/Vendor should be required to keep any confidential information received from the City confidential. This is only required for contracts involving sensitive information such as employee information, financial information, computer security information, etc.  On the other hand, any requirement that the City keep information confidential should state, "except as required by law," or otherwise indicate that the City is subject to the Public Information Act and may release records when required by that Act.
RETAINAGE		See HB692 – Regulates percentage of money withheld for public works contractor. Requires provisions in public works contracts saying when substantially complete and when will release retainage, For construction contracts, check the



CONTRACT REQUIRED TOPICS	YES/NO	COMMENTS
		City's retainage provision to be sure it allows the City to withhold retainage up to amount allowed by law, but insure compliance with new statutory change.
SEVERABILITY		Standard language.
GOVERNING LAW		Laws of the State of Texas should apply, doing business in Texas. Venue for suit should lie in _____ County
COMPLIANCE WITH LAWS		Example: "Contractor shall comply with all applicable federal, state, and local laws applicable to the services to be performed under this Agreement."
NON-DISCRIMINATION		Example: "Contractor hereby agrees to refrain from any activity in the performance of this Agreement that discriminates against any person or persons based upon race, color, creed, national origin, religion, or sex, in accordance with present federal and state laws."
INDEPENDENT CONTRACTOR		Standard language.
CHECK EXHIBITS		Are exhibits attached, properly referenced, and makes sense?
NO AMENDMENT OR ASSIGNMENT W/O CONSENT OF CITY		Standard language.
EXECUTED IN DUPLICATE ORIGINALS		Standard language.
CONTACT INFORMATION FOR NOTICE		Usually add City Manager contact information for City.
SIGNATURE LINES FOR BOTH PARTIES		Contractor sig line and City Manager sig line and info

CONTRACT REQUIRED TOPICS	YES/NO	COMMENTS
NO DISCRIM AGAINST FIREARMS IF CONTRACT IS FOR OVER \$100,000		If the contract is for over \$100,000 (except sole-source), and the Contractor/Vendor has at least 10 full-time employees, contract must include the following: “Contractor hereby verifies that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.”
NO BOYCOTT ISREAL CLAUSE IF CONTRACT IS FOR OVER \$100,000		If funds over \$100,000 are being utilized.
PIPELINE ALCOLHOL MUSUSE AND CONTROLLED SUBSTANCES PLAN FOR TXDOT PROJECTS		Pipeline Alcolhol Mususe and Controlled Substances Plan language required for contractors and subcontractors working in safety sensitive positions, primarily relates to Department of Transportation projects or funding.

**D-2 AGREEMENT TO PROVIDE PROFESSIONAL SERVICES  
OF ARCHITECTS AND ENGINEERS - FORM**

**THIS AGREEMENT** (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ (“PROFESSIONAL”) and the CITY OF \_\_\_\_\_, TEXAS, a municipal corporation of the State of Texas (“CITY”). For convenience, the PROFESSIONAL and the CITY may sometimes be referred to herein collectively as “parties” and individually as a “party.”

WITNESSETH

**WHEREAS**, CITY desires to engage PROFESSIONAL to provide professional services as more fully described on Exhibit “A” attached hereto and incorporated herein by reference; and

**WHEREAS**, PROFESSIONAL agrees to provide such work and services for CITY in accordance with the terms of this Agreement;

**NOW, THEREFORE**, for the mutual promises set forth herein, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto mutually agree as follows:

1. **Employment of PROFESSIONAL.**

(a) CITY agrees to engage PROFESSIONAL and PROFESSIONAL hereby agrees to perform the services described in Exhibit “A” attached hereto and incorporated herein by reference.

(b) Notwithstanding anything to the contrary contained in this Agreement, CITY and PROFESSIONAL agree and acknowledge that CITY is entering into this Agreement in reliance on PROFESSIONAL’s special and unique abilities. PROFESSIONAL accepts the relationship of trust and confidence established between it and CITY by this Agreement. PROFESSIONAL acknowledges that PROFESSIONAL shall be solely responsible for determining the methods for performing the services described in Exhibit “A” attached hereto. PROFESSIONAL covenants with CITY to use its best efforts, skill, judgment, and abilities to perform the work required by this Agreement and to further the interests of CITY in accordance with CITY’s requirements, in compliance with applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. PROFESSIONAL warrants, represents, covenants, and agrees that all of the work to be performed by PROFESSIONAL under or pursuant to this Agreement shall be done (i) with the professional skill and care ordinarily provided by competent engineers or architects, as the case may be, practicing under the same or similar circumstances and applicable professional license; and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect, as the case may be.

(c) PROFESSIONAL will be responsible for supplying all tools and equipment necessary for PROFESSIONAL to provide the services set forth in Exhibit "A" attached hereto.

2. **Compensation.** CITY agrees to pay PROFESSIONAL the fees set forth in Exhibit "A" attached hereto. Within fifteen (15) days of the end of the month within which services were rendered, PROFESSIONAL shall provide City an invoice specifying the services provided during the previous month and the total amount owed by City. Payment will be made by CITY within thirty (30) days of receipt of an invoice from PROFESSIONAL.
3. **Changes.** CITY may, from time to time require changes in the scope of services of PROFESSIONAL to be performed hereunder. Such changes, which are mutually agreed upon by and between CITY and PROFESSIONAL, shall be incorporated in written amendment to this Agreement.
4. **Services and Materials to be Furnished by CITY.** CITY shall furnish PROFESSIONAL with all available information and data PROFESSIONAL requests pertinent to the execution of this Agreement. CITY shall cooperate with PROFESSIONAL in carrying out the work herein and shall provide adequate staff for liaison with PROFESSIONAL.
5. **Ownership of Documents.** All reports, plans, specifications, computer files and other documents prepared by PROFESSIONAL for which PROFESSIONAL has been compensated pursuant to this Agreement shall be the property of CITY. PROFESSIONAL will deliver to CITY copies of the prepared documents and materials. PROFESSIONAL shall make all documents and related data and material utilized in developing the documents available to CITY for inspection whenever requested. PROFESSIONAL may make copies of any and all such documents and items and retain same for its files. PROFESSIONAL shall have no liability for changes made to or use of the drawings, specifications, and other documents by anyone other than PROFESSIONAL subsequent to delivery of the prepared documents and materials. However, any such change or other use shall be sealed by the individual making the change or use and shall be appropriately marked to reflect what was changed or modified.
6. **Term and Termination of Agreement.** This agreement will be for a period of \_\_\_\_\_ [insert term] beginning on \_\_\_\_\_ [insert beginning date], and expiring on \_\_\_\_\_ [insert ending date]. Either party may terminate this agreement at any time by providing thirty (30) days written notice to the other party.
7. **Completeness of Contract.** This Agreement and the documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this contract or any part thereof shall have any validity or bind any of the parties hereto. If there is any conflict between the terms of this Agreement and the documents attached hereto, the terms of this Agreement shall control. This Agreement may not be subsequently modified except by a writing signed by both parties.

8. **CITY Not Obligated to Third Parties.** CITY shall not be obligated or liable hereunder to any party other than PROFESSIONAL.
9. **Final Decisions.** Serving as a PROFESSIONAL to CITY, PROFESSIONAL shall advise all parties that final decisions shall be made by the City Council and/or City Manager.
10. **Indemnification.** PROFESSIONAL DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, INDEMNIFY, AND HOLD HARMLESS CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, WHICH MAY ARISE BY REASON OF DEATH OR INJURY TO PERSONS OR PROPERTY, CAUSED BY OR RESULTING FROM THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBPROFESSIONAL OR SUPPLIER COMMITTED BY PROFESSIONAL, ITS AGENTS, OR CONSULTANTS UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH PROFESSIONAL EXERCISES CONTROL, SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002 (b) AND PROFESSIONAL WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT CITY AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS.

THE INDEMNIFICATION UNDER THIS SECTION SHALL INCLUDE REASONABLE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO PROFESSIONAL'S LIABILITY.

PROFESSIONAL'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY PROFESSIONAL UNDER THIS AGREEMENT. THIS SECTION (INDEMNIFICATION) SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

11. **Insurance.** PROFESSIONAL shall, at its own expense, purchase, maintain and keep in force throughout the duration of this Agreement and for a period of four (4) years thereafter the following minimum insurance:
  - A. Commercial general liability insurance, including personal injury liability, blanket contractual liability, and broad form property damage liability in an amount of not less than \$1,000,000.
  - B. Automobile bodily injury and property damage liability insurance with a limit of not less than \$1,000,000.
  - C. Statutory workers' compensation and employers' liability insurance as required by state law.
  - D. Professional liability insurance (Errors and Omissions) with a limit of \$1,000,000 per claim/annual aggregate.

PROFESSIONAL shall provide CITY with proof of insurance required hereunder prior to commencing work for CITY and CITY shall be named as an additional insured on the policy. PROFESSIONAL shall provide CITY with written notice of any coverage limit change on the insurance. Such policies shall name CITY, its officers, and employees as an additional insured and shall provide for a waiver of subrogation against CITY. PROFESSIONAL shall insure that all subcontractors comply with the same insurance requirements.

12. **Client Objection to Personnel.** If at any time after entering into this Agreement, CITY has any reasonable objection to any of PROFESSIONAL's personnel, or any personnel, professionals and/or consultants retained by PROFESSIONAL, PROFESSIONAL shall promptly propose substitutes to whom CITY has no reasonable objection, and PROFESSIONAL's compensation shall be equitably adjusted to reflect any difference in PROFESSIONAL's costs occasioned by such substitution.
13. **Timeliness of Performance.** PROFESSIONAL shall perform its professional services with due and reasonable diligence consistent with sound professional practices.
14. **Personnel.** All of the services required hereunder will be performed by PROFESSIONAL or under PROFESSIONAL's supervision, and all personnel engaged in the work shall be qualified to perform such services.
15. **Independent Contractor.** In performing the services under this Agreement, PROFESSIONAL is acting as an independent contractor. No term or provision hereof be construed as making PROFESSIONAL the agent, servant, or employee of CITY or as creating a partnership or joint venture relationship between PROFESSIONAL and CITY.
16. **Assignability.** The parties hereby agree that PROFESSIONAL may not assign, convey or transfer its interest, rights and duties in this Agreement without the prior written consent of CITY.
17. **Successors and Assigns.** Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.
18. **Governing Law/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action brought to interpret or enforce the terms of this Agreement shall lie in \_\_\_\_\_ County, Texas.
19. **No Third-Party Beneficiary.** For purposes of this Agreement, including its intended operation and effect, the parties specifically agree and contract that: (1) this Agreement only affects matters/disputes between the parties to this Agreement, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with CITY and PROFESSIONAL, or both; and (2) the terms of this Agreement are not intended to release,

either by contract or operation of law, any third person or entity from obligations they owe to either CITY or PROFESSIONAL.

20. **Exhibits.** The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.
21. **HB 89 and SB 252 Certifications.** If this Agreement provides for payment to Professional of over \$100,000, PROFESSIONAL hereby certifies that Professional does not and will not boycott Israel during the term of this Agreement in accordance with Chapter 2270, Texas Government Code. Additionally, PROFESSIONAL hereby certifies that the PROFESSIONAL is not included on the website of the Texas Comptroller for entities doing business with foreign terrorist organizations pursuant to Chapter 2252, Texas Government Code.
22. **Conflicts of Interest.** By signature of this Agreement, PROFESSIONAL warrants to CITY that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including business or personal financial interests, direct or indirect, in property abutting the proposed project and business relations with abutting property owners, or with elected officials or employees of CITY. PROFESSIONAL further warrants that it will make disclosure in writing of any conflicts of interest that develop subsequent to the signing of this Agreement and prior to final payment under the Agreement. PROFESSIONAL warrants that it has submitted to CITY a completed Conflicts of Interest Questionnaire as required by Chapter 176 of the Texas Local Government Code.
23. **Government Code Chapter 2274 Certification** If this Agreement provides for payment to Professional of over \$100,000 and if Professional employs ten or more people full-time, then Professional, by signing below, certifies that:
  1. Professional does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and
  2. Professional will not discriminate during the term of this Agreement against a firearm entity or firearm trade association as those terms are defined in Texas Government Code, Chapter 2274.
24. **Authority to Sign.** The parties hereby warrant and represent that the undersigned persons have full authority and are duly authorized to sign on behalf of their respective principals and that such principals have duly authorized the transaction contemplated by this Agreement.
25. **Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

**IN WITNESS WHEREOF**, CITY and the PROFESSIONAL have executed this Agreement as of the date first written above.

**CITY OF \_\_\_\_\_, TEXAS**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
**[PROFESSIONAL'S NAME]**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A: SCOPE OF SERVICES AND PRICING**



**D-3 SERVICES AGREEMENT FORM**

**(SMALL CONTRACT, NOT FOR ARCHITECT OR ENGINEER)**

This Agreement for \_\_\_\_\_ Services (this "Agreement") is made and entered into by and between the City of \_\_\_\_\_ Texas, a home-rule Texas Municipal Corporation ("the City") and \_\_\_\_\_ ("Contractor"), a \_\_\_\_\_ located at \_\_\_\_\_ (collectively, "the Parties").

WITNESSETH:

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and the City, agree as follows:

1. Scope of Services. Contractor shall undertake and complete the following services as more specifically described in the document attached hereto and incorporated herein by reference as Exhibit A ("the Services"):

\_\_\_\_\_

2. Commencement and Completion of Services. Contractor shall begin Services immediately upon receipt of a fully executed copy of this Agreement. Contractor shall complete the Services by the following date unless such date is otherwise extended pursuant to the terms of this Agreement: \_\_\_\_\_.

3. Term. This Agreement shall be for a term ("the Initial Term") beginning on the Effective Date entered below and ending on the earlier of: a) (if applicable) the date all of the Services are complete, the Compensation has been fully paid, the warranty period has expired, and any warranty work required has been completed and accepted by the City; or b) \_\_\_\_\_ year(s) from the Effective Date. Either Party may extend the Initial Term for an additional period of \_\_\_\_\_ year(s) by notifying the other Party in writing of its request to extend the term, such notice being sent at least sixty (60) days prior to the end of the Initial Term. The Party receiving the request for extension may reject the extension by notifying the requesting Party in writing of its rejection of the requested extension, such notice being sent at least thirty (30) days prior to the end of the Initial Term.

4. Compensation. In consideration for the Services performed by Contractor, the City agrees to pay Contractor in the amounts and manner indicated on the document attached hereto and incorporated herein as Exhibit "B", provided that the total amount for services under this Agreement shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The City shall pay properly invoiced amounts for Services

performed within thirty (30) days of receipt of the invoice, except where the City has raised an objection to the invoice.

5. **WARRANTY AND DEGREE OF CARE.** CONTRACTOR WARRANTS THE MATERIALS USED SHALL BE FREE OF DEFECT OR FAILURE FOR A PERIOD OF AT LEAST ONE YEAR FROM THE DATE OF COMPLETION OF THE SERVICES AND THAT ALL SERVICES PROVIDED BY CONTRACTOR SHALL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER IN ACCORDANCE WITH THE SPECIFICATIONS OF THIS AGREEMENT AND IN ACCORDANCE WITH THE DEGREE OF CARE AND SKILL ORDINARILY EXERCISED UNDER SIMILAR CIRCUMSTANCES BY COMPETENT CONTRACTORS IN TEXAS APPLICABLE TO THE TYPE OF SERVICES CONTEMPLATED HEREUNDER. IN THE EVENT ANY DEFECT IS DISCOVERED OR DEVELOPS IN MATERIALS PROVIDED BY CONTRACTOR OR WORK PERFORMED BY CONTRACTOR WITHIN ONE YEAR AFTER COMPLETION OF THE SERVICES, CONTRACTOR WILL REPAIR OR REPLACE ANY SUCH MATERIALS OR WORK SO THAT IT IS NOT DEFECTIVE AND MEETS THE REQUIREMENTS OF THIS AGREEMENT.

6. Confidentiality and Ownership of Documents. Contractor shall keep confidential information and documents provided by the City confidential and shall not release them without the consent of the City. Upon completion of Services and payment of the Compensation owed, all documents created for the City pursuant to this Agreement shall be the property of the City and shall be provided to the City by Contractor.

7. Insurance. Contractor shall procure, at its own expense, general liability insurance with a minimum per occurrence limit of one million dollars (\$1,000,000.00) and additional coverage sufficient to cover the Services being provided under this Agreement as determined by the City. Contractor shall provide the City with written notice of any coverage limit change on the insurance. Contractor shall provide the City with proof of insurance required hereunder. The City shall be named as an additional insured on the policy.

**INDEMNIFICATION.** CONTRACTOR SHALL INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS THE CITY AND ITS OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CAUSES OF ACTION, FINES, JUDGMENTS, LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, JOINT OR SEVERAL, WHETHER THEY BE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER TYPE OF CLAIM, WHICH MAY BE ASSERTED AGAINST ANY OF THEM ARISING OUT OF OR RELATED TO (I) ANY ACTION BY CONTRACTOR OR ITS AGENTS IN THE CARRYING OUT OF THE SERVICES DURING THE TERM OF THIS AGREEMENT; (II) THE NEGLIGENCE OR WILLFUL OR

**WANTON MISCONDUCT OF CONTRACTOR OR ITS AGENTS; (III) ANY VIOLATION OF ANY REQUIREMENT APPLICABLE TO CONTRACTOR OR ITS AGENTS UNDER ANY FEDERAL, STATE, OR LOCAL LAW OR REGULATION, (IV) THE FAILURE OF CONTRACTOR TO PERFORM SPECIFIED DUTIES UNDER THIS AGREEMENT, OR (V) THE BREACH OF THIS AGREEMENT BY CONTRACTOR, EXCEPT IN EACH CASE TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL OR WANTON MISCONDUCT OF THE CITY. OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY CONTRACTOR UNDER THIS AGREEMENT AND WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

8. Termination. Either Party may terminate this Agreement by providing sixty (60) days written notice to the other Party.

9. Non-Discrimination. Contractor hereby agrees to refrain from any activity in the performance of this Agreement that discriminates against any person or persons based upon race, color, creed, national origin, religion, sex, or communicable disease, in accordance with present federal and state laws.

10. Independent Contractor. Contractor shall be fully responsible for its employees, including meeting all state and federal requirements for minimum wage, income tax withholding, workers' compensation, insurance, and all city, state, and federal requirements governing employer/employee relations. Contractor hereby certifies that it shall be and is in compliance with all such regulations, laws and requirements.

11. No Third Party Benefit. Nothing herein expressed or implied is intended, or shall be construed, to confer upon or give to any person or entity, other than the parties, any right or remedy under or by reason of this Agreement.

12. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas as to all matters, including but not limited to matters of validity, construction, effect and performance, without regard to conflict of law principles. All actions regarding this Agreement shall be in a court of competent subject matter jurisdiction \_\_\_\_\_, Texas.

13. Severability. If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Code of the City, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal, or unenforceable clause or provision was never contained herein.

14. Notices. All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

In case of the City, to:

City of \_\_\_\_\_

Attention: \_\_\_\_\_

\_\_\_\_\_, TX 7\_\_\_\_\_

With courtesy email copy to \_\_\_\_\_

In case of Contractor, to:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

With courtesy copy email to: \_\_\_\_\_

15. Entire Agreement. This Agreement and its exhibits contain the entire agreement between the parties with respect to the subject matter hereof and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.

16. Amendment. No amendment to this Agreement shall be effective unless in writing signed by both parties.

17. Compliance with Laws. Contractor shall comply with all applicable federal, state, and local laws applicable to the services to be performed under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in duplicate originals and effective as of the \_\_\_\_day of \_\_\_\_\_, 202\_ (“the Effective Date”).

CONTRACTOR:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

THE CITY OF \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT LIST:  
EXHIBIT “A” – SCOPE OF SERVICES  
EXHIBIT “B” – PRICING

**D-4 GOODS PURCHASE AGREEMENT FORM**

This Agreement for \_\_\_\_\_ (Goods) (this "Agreement") is made and entered into by and between the City of Texas, \_\_\_\_\_ a home-rule Texas Municipal Corporation ("the City") and \_\_\_\_\_ ("Vendor") located at \_\_\_\_\_ (collectively referred to herein as "the Parties").

WITNESSETH:

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Vendor and the City, intending to be legally bound, hereby agree as follows:

18. Purchase Terms. Vendor shall provide the following goods in accordance with the terms of this Agreement and as further set forth in Exhibit "A" hereto:

\_\_\_\_\_  
\_\_\_\_\_  
It is agreed that delivery of the goods will be made on or before the \_\_\_ day of \_\_\_\_\_, 202\_ to the following location:  
\_\_\_\_\_  
\_\_\_\_\_

19. Maintenance or Training Services. In the event that maintenance of the goods or training on the use of the goods is being provided by Vendor, Vendor shall undertake and complete these services in accordance with the terms of this Agreement and additional terms included in Exhibit A.

20. Term. This Agreement shall be for a term ("the Term") beginning on the Effective Date entered below and ending on the date the Goods are delivered and accepted by the City and any Maintenance, Warranty, or Training Services are complete and the Compensation has been fully paid unless otherwise terminated by the Parties.

21. Compensation. In consideration for the Goods delivered and Maintenance and Training Services performed by Vendor, if any, the City agrees to pay Vendor up to a total of \_\_\_\_\_ Dollars \$\_\_\_\_\_. This amount will be paid in accordance with the schedule set forth in Exhibit "A." :

22. Acceptance of Goods – The City shall examine the goods upon receipt and may accept the goods or reject any goods which are damaged or otherwise insufficient. The City shall not pay for damaged or insufficient goods.

23. Warranty – Vendor warrants that the Goods are in good working condition and are suitable for the purposes for which they are intended.

24. Termination.

(a) Termination for Cause. This Agreement may be terminated by the City prior to its expiration if Vendor, for any reason, fails, refuses or is unable to provide the Goods in accordance with the terms of this Agreement following reasonable notice from the City and a ten-day opportunity to cure, including, but not limited to failure to perform any maintenance or training Services in a timely, safe, and effective manner.

(b) Termination for Breach. This Agreement may be terminated by either party (the “Terminating Party”) prior to its expiration if the other party (the “Breaching Party”) breaches any provision of this Agreement. In that case, the Terminating Party may pursue all remedies available at law and in equity and may seek and obtain injunctive relief against the breach or threatened breach of the Breaching Party's obligations under this Agreement.

(c) Other termination by the City – In the event the term of this Agreement extends beyond one year, the City reserves the right to terminate this Agreement if funds are not available in the City’s budget for the appropriation of funds for this Agreement.

(d) Upon termination of this Agreement for any reason, the City shall pay to Vendor pro rata compensation accrued, due and payable for any Goods received during periods prior to the effective date of such termination.

25. Insurance. Vendor shall procure, at its own expense, general liability insurance with a minimum per occurrence limit of one million dollars (\$1,000,000.00) and additional coverage sufficient to cover any liability of vendor which may arise under this Agreement as determined by the City. Vendor shall provide the City with written notice of any coverage limit change on the insurance. Vendor shall provide the City with proof of insurance required hereunder. The City shall be named as an additional insured on the policy.

26. **INDEMNIFICATION. VENDOR SHALL INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS THE CITY AND ITS OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CAUSES OF ACTION, FINES, JUDGMENTS, LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, JOINT OR SEVERAL, WHETHER THEY BE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER TYPE OF CLAIM, WHICH MAY BE ASSERTED AGAINST ANY OF THEM ARISING OUT OF THE PERFORMANCE OF VENDOR'S OBLIGATIONS UNDER THIS AGREEMENT, EXCEPT IN EACH CASE TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL OR WANTON MISCONDUCT OF THE CITY. OBLIGATIONS**

**UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY CONTRACTOR UNDER THIS AGREEMENT AND WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

27. Non-Discrimination. Vendor hereby agrees to refrain from any activity in the performance of this Agreement that discriminates against any person or persons based upon race, color, creed, national origin, religion, sex, or communicable disease, in accordance with present federal and state laws.

28. No Third Pary Benefit. The Parties are independent contractors. Nothing herein expressed or implied is intended, or shall be construed, to confer upon or give to any person or entity, other than the parties, any right or remedy under or by reason of this Agreement.

29. Governing Law. This Agreement shall be governed by the laws of the State of Texas as to all matters, including but not limited to matters of validity, construction, effect and performance, without regard to conflict of law principles.

30. Forum and Venue. All actions regarding this Agreement shall be in a court of competent subject matter jurisdiction in \_\_\_\_\_ County, Texas.

31. Severability. If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Code, or ordinances of the City, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal, or unenforceable clause or provision was never contained herein.

32. Notices. All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

In case of the City, to:  
City of \_\_\_\_\_  
Attention: \_\_\_\_\_

\_\_\_\_\_  
And send a courtesy copy by email to:  
\_\_\_\_\_



In case of Vendor, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

And send a courtesy copy by email to:

\_\_\_\_\_

Notwithstanding the foregoing, ordinary communications may be sent by electronic mail to the designated representatives of the City and Vendor.

33. Entire Agreement. This Agreement and its exhibits contain the entire agreement between the parties with respect to the subject matter hereof and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.

11. Amendment. This Agreement may not be amended, except by agreement in writing signed by both parties.

12. Compliance with Laws. Vendor shall comply with all applicable federal, state, and local laws applicable to the services to be performed under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in duplicate originals and effective as of the \_\_\_\_ day of \_\_\_\_\_, 202\_ (“the Effective Date”).

VENDOR

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CITY OF BOERNE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit A - Scope and Pricing**

**E. EMPLOYMENT SEPARATION AGREEMENT AND RELEASE FORM**

**STATE OF TEXAS** §  
§  
**COUNTY OF \_\_\_\_\_** §

THIS SEPARATION AGREEMENT AND RELEASE (hereinafter referred to as “Agreement”) is made and entered into by and between the City of \_\_\_\_\_, Texas (hereinafter referred to as “the City”), and \_\_\_\_\_ (collectively referred to herein as “Parties”).

**WITNESSETH:**

**WHEREAS,** \_\_\_\_\_ (hereinafter referred to as “Employee”) is an employee of the City; and

**WHEREAS,** after careful consideration the City and Employee have determined that it would be in the interest of all parties for Employee’s employment with the City to terminate on the date and under the terms agreed to herein; and

**WHEREAS,** the terms contained herein are not an admission of wrongdoing on either Party but merely a means of facilitating the end of the employment relationship between Employee and the City; and

**WHEREAS,** both Parties enter into this Agreement voluntarily and without duress;

**NOW, THEREFORE,** in consideration of the representations, warranties and covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Employee’s employment with the City will terminate effective **on the \_\_\_ day of \_\_\_\_\_, 202\_.**
2. As consideration for the release and other promises contained herein by Employee, the City agrees to pay to Employee the total sum of \_\_\_\_\_ (\$\_\_\_\_\_), less any taxes and retirement contributions the City is required to withhold (equivalent to \_\_\_ months of pay at Employee’s regular rate of pay). Employee acknowledges that at the time of execution of this Agreement Employee has been paid all undisputed wages due and owing. The Parties acknowledge Employee will receive payment for unused accrued vacation to the extent entitled.
3. In further exchange for the consideration described in paragraph two above, Employee forever and unconditionally releases and discharges the City, its officers, attorneys, directors, employees, representatives, agents, members and assigns (“Releasees”) from any and all claims, charges, costs, liabilities, obligations, damages, complaints, causes of action, and losses and expenses of any kind, including back pay, benefits and/or attorney’s fees, relating to, arising out of or

arising from Employee's employment with the City or any incidents or facts related to the termination or resignation of Employee's employment. This release encompasses, but is not limited to, claims under local, state or federal law; alleged contract or tort claims, including negligence and gross negligence, disputed wages and/or breach of any alleged employment contract; claims or causes of action arising under any federal, state or local statutes, including, but not limited to, Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991, the Texas Commission on Human Rights Act, all laws, including the common laws, of the State of Texas regarding employment-related claims, claims under ERISA, the claims under the Constitution of the United States, including 42 U.S.C. section 1981 and section 1983, and the Constitution of the State of Texas; disability discrimination claims under the Rehabilitation Act of 1973, the Equal Pay Act, the Americans with Disabilities Act, 42 U.S.C. §12.101 et seq.; the ADAAA; claims under the Age Discrimination in Employment Act, 29 U.S.C. §621 et seq.; claims under the Family Medical Leave Act; and tort claims, including invasion of privacy, defamation, fraud, false imprisonment, infliction of emotional distress, negligent hiring, negligent retention and assault and battery. **THIS RELEASE INCLUDES, BUT IS NOT LIMITED TO, ANY CLAIM OR CAUSE OF ACTION, KNOWN OR UNKNOWN, POTENTIAL OR ACTUAL, RELATED TO OR ARISING OUT OF EMPLOYEE'S EMPLOYMENT WITH CITY, THE TERMINATION AND/OR RESIGNATION OF EMPLOYEE'S EMPLOYMENT, AND ANY BENEFITS ASSOCIATED WITH SUCH EMPLOYMENT UP TO THE DATE AND TIME OF THIS AGREEMENT.**

4. Employee further agrees on behalf of himself, or any member of his family, that he has not and will not file any appeal, complaint, petition, lawsuit or charge associated with his employment against the City, or any of the Releasees, with any local, state or federal agency or court, except to enforce this Agreement. If Employee or anyone acting on his behalf, files any such complaint or charge, or if any such agency or court assumes jurisdiction of any complaint or charge against the City or any of the Releasees regarding or involving Employee, Employee will immediately request such agency or court to withdraw from the matter and dismiss said action.
5. Nothing in this Agreement shall be construed to prohibit Employee from filing a charge with or participating in any investigation or proceeding conducted by the EEOC or a comparable state or local agency. Notwithstanding the foregoing, Employee agrees to waive his right to recover monetary damages in any charge, complaint, or lawsuit filed by Employee or by anyone else on his behalf.
6. Employee agrees that he will not make any disparaging remarks or statements to any third party regarding the City or the Releasees, including but not limited to statements or remarks regarding his employment. Employee further agrees that he will not say or do anything that damages or impairs the business organization, goodwill or reputation of the City or the Releasees. Employee agrees that he will instruct his representatives, agents, employees, servants, spouse and family to abide

by the provisions of this paragraph.

7. The Parties agree that should submit a claim for Unemployment Benefits to the Texas Workforce Commission, the City will take no steps to contest the claim. Nothing herein shall waive the City's right to correct factual inaccuracies in a claim.
8. Employee agrees and understands that by signing this Agreement and accepting the benefits provided in the paragraphs above, he is receiving benefits to which he would not otherwise be entitled, and none of the actions of the City and/or the other Releasees, including the consideration for this Agreement, shall be considered or construed as an admission by City or Releasees of any fault, liability, culpability or wrongdoing.
9. Employee represents and acknowledges that in executing this Agreement, he does not rely, and has not relied, upon any prior representation made by the City or any of the other Releasees with regard to the subject matter of this Agreement.
10. By Employee's signature below, he represents and confirms that he (a) has read this Agreement carefully and completely, (b) has been informed of his right to consult with legal counsel of his choosing, and has had ample opportunity to do so, (c) understands all provisions contained in this Agreement, (d) understands that this is a legally binding Agreement, and (e) enters into this Agreement freely and voluntarily.
11. This Agreement shall be binding on the parties' heirs, successors, assigns, and legal representatives forever.
12. This Agreement contains the entire agreement between the parties with regard to Employee's employment with the City and there are no other understandings or agreements, written, verbal or otherwise, among the Parties to this Agreement except those expressly stated or referred to in this document.
13. It is further agreed that in any lawsuit in which it is alleged a breach of this Agreement, the parties or their successors or assigns shall be limited to the remedy of specific performance and that neither party shall be entitled to an award of attorney's fees arising from any claim for breach of this Agreement.
14. If any provision or provisions of this Agreement are for any reason declared invalid, the Parties agree that all other provisions shall remain fully valid and enforceable.
15. This Agreement is entered into and performable in \_\_\_\_\_ County, Texas and shall be interpreted and enforced in accordance with the laws of the State of Texas. Should any action be brought for the enforcement of this Agreement, venue shall be in \_\_\_\_\_ County, Texas.
16. By Employee's signature below, he represents and confirms that he has been

informed that (a) this Agreement does not waive rights or claims that may arise after the date this Agreement is executed; (b) he has twenty-one (21) days to consider this Agreement and that signing prior to the expiration of twenty-one (21) days will be considered a waiver of this requirement; and (c) he has seven (7) days after signing this Agreement to revoke the Agreement, and the Agreement will not be binding until that revocation period has expired. Failure of Employee to revoke this Agreement during said seven day revocation period shall mean it becomes binding on all parties at 12:01 a.m. of the eighth day after Employee executes same.

- 17. The parties agree that the benefits in paragraph two will be paid or provided, as the case may be, not earlier than eight (8) days after the date Employee executes this Agreement.

SIGNED IN DUPLICATE ORIGINALS AND BINDING this \_\_\_\_ day of \_\_\_\_\_, 202\_.

**EMPLOYEE**

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

**THE STATE OF TEXAS** §

§

**COUNTY OF** \_\_\_\_\_ §

Before me on this day personally appeared \_\_\_\_\_, known to me [or proved to me on the oath of \_\_\_\_\_ or through \_\_\_\_\_ (description of identity card or other document)] to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, A.D. 202\_.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

Notary's Name: \_\_\_\_\_

**THE CITY OF** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_

**F. LITIGATION FORM - ORIGINAL PETITION**

**CAUSE NO.** \_\_\_\_\_

<b>CITY OF</b> _____	§	<b>IN THE DISTRICT COURT</b>
<b>Plaintiff</b>	§	
	§	
<b>vs.</b>	§	
	§	_____ <b>JUDICIAL DISTRICT</b>
_____ <b>(SURETY),</b>	§	
	§	
_____ <b>(CONTRACTOR).</b>	§	
<b>AND</b> _____ <b>(DEVELOPER),</b>	§	
<b>Defendants</b>	§	_____ <b>COUNTY, TEXAS</b>

**PLAINTIFF CITY OF \_\_\_\_\_ 'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, PLAINTIFF, CITY OF \_\_\_\_\_, and files this its Original Petition against \_\_\_\_\_ (“Surety”), \_\_\_\_\_ (“Contractor”), and \_\_\_\_\_ (“Developer”), and for same would show to the Court the following:

**I. PARTIES**

1. Plaintiff, City of \_\_\_\_\_ (“the City”), is a Texas home rule municipal corporation and political subdivision of the State of Texas located in \_\_\_\_\_ County, Texas.
2. Defendant, Surety, is a domestic insurance company licensed to do business in the State of Texas by the Texas Department of Insurance and can be served with process by and through its registered agent, \_\_\_\_\_ at the following address: \_\_\_\_\_.

3. Defendant, Contractor, is a domestic Texas Corporation doing business in \_\_\_\_\_ County, Texas, and can be served with process by and through its registered agent, \_\_\_\_\_, at the following address: \_\_\_\_\_.

4. Defendant, Developer, is a Texas Limited Partnership, doing business in \_\_\_\_\_ County, Texas, and can be served with process by and through its registered agent, \_\_\_\_\_ at the following address: \_\_\_\_\_.

## **II. JURISDICTION AND VENUE**

5. The Court has jurisdiction over this suit, in that, the amount in controversy is within the jurisdictional limits of the Court, and the Warranty Bond and Project which are the subject of this suit, as well as the work and services performed, were to be performed in and are located in the City of \_\_\_\_\_, \_\_\_\_\_ County, Texas. Accordingly, venue is proper in \_\_\_\_\_, Texas, pursuant to Civil Practice and Remedies Code §§15.002(a)(1) and 15.011.

## **III. FACTUAL BACKGROUND**

6. Developer was required by \_\_\_\_\_ of the Street Specifications and Construction Standards, of the City's Subdivision Ordinance and other regulations to construct infrastructure improvements within the subdivision being developed by Developer in the City known as \_\_\_\_\_ Subdivision, Unit \_\_\_\_, in accordance with the City of \_\_\_\_\_'s Planning and Community Design Standards.

7. Developer entered into a contract ("the Construction Contract") with Contractor which required Contractor to construct the improvements, including the streets and other infrastructure which were to be dedicated to the public for acceptance by the City (the "Project") in accordance with required plans and specifications.

8. Contractor was required to furnish work in accordance with the plans and specifications that was not defective, and if found to be defective, correct any defective work in a timely manner pursuant to its warranty obligations.

9. Developer entered into an agreement with the City for acceptance of the infrastructure in the \_\_\_\_\_ Subdivision which was amended as different phases of the Subdivision were completed. Infrastructure for Unit \_\_ of the Subdivision was accepted by the City with conditions in the “Infrastructure Acceptance Agreement Between the City and Developer” executed on the \_\_\_ day of \_\_\_\_\_, 20 (“the Infrastructure Agreement”).

10. In order for the acceptance to take place a warranty bond was required to insure the correction of any defective workmanship and/or materials in the project for a period of two years, including work which did not meet the required plans and specifications.

11. On the \_\_\_ day of \_\_\_\_\_, 20\_\_, Surety, as surety and Contractor, as principal, executed Statutory Warranty Bond # \_\_\_\_\_ (“the Warranty Bond”) payable to the City in the amount of \_\_\_\_\_ and 00/100ths dollars (\$\_\_\_\_\_.00) given as security for the correction and repair of defects in materials or workmanship of the improvements installed for the Subdivision.

12. It became apparent within a short period of time that the infrastructure built by Contractor in the Subdivision failed to meet required specifications in many ways. Several of the streets contained large swaths of pavement riddled with cracks and holes in the surface, uneven pavement, sunken valve boxes, and signs of rapid degradation which indicate a failure in workmanship and/or materials. Due to Contractor’s defective workmanship, and failure to correct the multitude of defects in work and materials for the Project, the streets continue to degrade at a rapid rate.



13. After giving Contractor opportunity to repair the defective work and materials and/or correct its defective work, and Contractor's failure to do so, the City notified Developer and Surety of the situation in writing on different occasions and made other communications with them. Neither Contractor, Developer, or Surety took any action to repair or correct the defective improvements.

14. The City notified Contractor, Developer, and Surety in writing, sent by Certified Mail, on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, within the two-year period of obligation on the Warranty Bond, that it was making a claim on the Warranty Bond due to the defects and the failure to repair or correct the defects.

#### **IV. CAUSES OF ACTION**

15. Contractor, as principal, and Surety, as surety, issued the Warranty Bond on the Project. Contractor failed to perform its work in accordance with plans and specifications and its workmanship and materials were defective. Contractor was notified of the failure, but failed to correct or repair the work. Contractor as principal on the Warranty Bond has failed to meet its requirements under the Warranty Bond and is liable to the City.

16. During the obligation period of the Warranty Bond, Surety was timely notified of the defective workmanship and materials on the Project and the Contractor's failure to meet the requirements of the plans and specifications, as well as the failure to correct or repair the defective work. Surety has failed to honor its Warranty Bond obligations. Surety has failed to respond to the notice and demand for release of funds which constitutes a violation of the bond requirements and a breach of contract. The City seeks damages in excess of the bond funds and/or an order that Surety release the bond funds.

17. The City is a third-party beneficiary to the Construction Contract between Developer and Contractor. Contractor knew the streets and other infrastructure being built by it were for the benefit of the

public, were to be accepted by the City, and were to be built in accordance with City requirements for construction. Contractor failed to meet these requirements and provided defective workmanship and materials on the Project. As a result, Contractor breached its obligations under the Construction Contract, including warranty requirements, and is liable to the City, as a third-party beneficiary, for breach of contract and warranty.

18. The infrastructure dedicated to the public and provided to the City for acceptance in the Subdivision Unit \_\_ does not meet the requirements and specifications set forth in the City's Subdivision Ordinance, \_\_\_\_\_ Street Specifications and Construction Standards, and other regulations, including the City's construction and design standards. Developer has failed to comply with City Ordinances and the City has the right to enforce its ordinances by suit in this Court. The City requests this Court order that Developer comply with City requirements and correct the defects in the streets and infrastructure.

#### **V. DAMAGES**

19. Pursuant to Rule 47 of the Texas Rules of Civil Procedure, Plaintiff, the City states that it seeks monetary relief over \$100,000.00 but not over \$200,000.00. The City seeks judgment against Surety and Contractor for all of the damages it suffered as caused by Contractor and/or Surety, including but not limited to: the reasonable costs incurred or to be incurred by the City to repair and correct the defective workmanship and materials in the infrastructure work done in the Subdivision.

#### **VI. CONDITIONS PRECEDENT**

20. The City has fully performed and satisfied all obligations and conditions precedent, to be performed on its part, and/or the conditions and obligations have been waived or have been

excused by law from performance prior to making this claim against Surety. All conditions precedent have occurred or been satisfied.

**VII. ATTORNEYS FEES**

21. The City is entitled to recover reasonable and necessary attorney fees costs, and expenses from Surety, Contractor, and Developer, under the following Texas Law: \_\_\_\_\_..

**VIII. PREJUDGMENT AND POST-JUDGMENT INTEREST**

22. The City is entitled to pre-judgment and post-judgment interest at the highest rate allowed by law.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff, City of \_\_\_\_\_, respectfully requests judgment against Surety, Contractor, and Developer for damages caused by each and ordering compliance with the City’s ordinances and regulations; and judgment awarding attorney’s fees and expenses, costs of Court, post and pre-judgment interest and such other and further relief to which the City might show itself entitled.

Respectfully submitted,

CITY OF \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
State Bar No. \_\_\_\_\_

\_\_\_\_\_  
**ATTORNEY FOR CITY OF \_\_\_\_\_**

**G. SPEED LIMIT ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE ESTABLISHING SPEED LIMITS ON PORTIONS OF \_\_\_\_\_ ROAD, \_\_\_\_\_ ROAD, \_\_\_\_\_ ROAD, AND \_\_\_\_\_ ROAD; AND PROVIDING FOR A PENALTY NOT TO EXCEED \$200 FOR EACH VIOLATION OF THIS ORDINANCE**

**WHEREAS**, The City has recently annexed said roadways at the request of \_\_\_\_\_ County; and

**WHEREAS**, Section 545.356 of the Texas Transportation Code provides that where the City Council determines upon the basis of an engineering and traffic investigation that any prima facie speed therein set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a street or highway within the City, taking into consideration the width and condition of the pavement and other circumstances on the street or highway, as well as the usual traffic thereon, the City Council may determine and declare a reasonable and safe prima facie speed limit thereon by passage of an Ordinance, which shall be effective when appropriate signs giving notice thereof are erected at such street or highway; and

**WHEREAS**, traffic and speed studies, and informal observations have recently been completed and found as follows \_\_\_\_\_; and

**WHEREAS**, pursuant to these traffic and speed studies, the City Council hereby finds the speed limits set forth below are reasonable and safe for the annexed roadways and where they differ from the prima facie speed set previously for these roads it is because the prima facie speeds were found by the investigation to be greater or less than is reasonable or safe under the conditions found to exist on these roadways; and

**WHEREAS**, the City Council of the City of \_\_\_\_\_ deems it necessary in the interest of the public health, safety and welfare to establish the following speed limits at the following locations.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF \_\_\_\_\_, TEXAS:**

Section 1. The following speed limit regulations are hereby enacted and shall be effective upon the posting of signs reflecting the regulations:

- A. Establishing a speed limit of \_\_\_ miles per hour on \_\_\_\_\_ Road from a point \_\_\_\_\_, in a \_\_\_\_\_ direction approximately \_\_\_\_\_ feet to \_\_\_\_\_.
- B. Establishing a speed limit of \_\_\_ miles per hour on \_\_\_\_\_ Road from a point \_\_\_\_\_, in a \_\_\_\_\_ direction,

- approximately \_\_\_\_ feet to \_\_\_\_\_ .
- C. Establishing a speed limit of \_\_\_\_ miles per hour on \_\_\_\_\_ Road from a point \_\_\_\_\_, in a \_\_\_\_\_ direction, approximately \_\_\_\_ feet to \_\_\_\_\_ .
- D. Establishing a speed limit of \_\_\_\_ miles per hour on \_\_\_\_\_ Road from a point \_\_\_\_\_, in a \_\_\_\_\_ direction, approximately \_\_\_\_ feet to \_\_\_\_\_ .
- E. Establishing a speed limit of \_\_\_\_ miles per hour on \_\_\_\_\_ Road from a point \_\_\_\_\_, in a \_\_\_\_\_ direction, approximately \_\_\_\_ feet to \_\_\_\_\_ .
- F. Establishing a speed limit of \_\_\_\_ miles per hour on \_\_\_\_\_ Road from a point \_\_\_\_\_, in a \_\_\_\_\_ direction, approximately \_\_\_\_ feet to \_\_\_\_\_ .
- G. Establishing a speed limit of \_\_\_\_ miles per hour on \_\_\_\_\_ Road from a point \_\_\_\_\_, in a \_\_\_\_\_ direction, approximately \_\_\_\_ feet to \_\_\_\_\_ .

Section 2. Violation of this ordinance shall be punishable with a maximum fine not to exceed \$200 for each violation.

PASSED and APPROVED on first reading this the \_\_\_\_ day of \_\_\_\_\_, 202\_.

PASSED, APPROVED and ADOPTED on second reading this the \_\_day of \_\_\_\_\_, 202\_\_.

APPROVED:

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**H -1 PIA FORM - REQUEST FOR CLARIFICATION / NARROWING**

\_\_\_\_\_, 202\_

**VIA CMRRR # \_\_\_\_\_ (OR EMAIL IF REQUESTED)**

\_\_\_\_\_  
\_\_\_\_\_

Re: Public Information Request from \_\_\_\_\_,  
received by the City of \_\_\_\_\_, Texas on \_\_\_\_\_, 202\_.  
REQUEST FOR CLARIFICATION / NARROWING

Dear \_\_\_\_\_,

I am an attorney for the City of \_\_\_\_\_, Texas (“the City”), writing to ask for clarification or narrowing of your information request to the City referenced above. In particular, we are unable to respond to your requests and have the following questions which will need clarification before a response can be issued:

\_\_\_\_\_.

In addition to responding to our request for clarification, you may wish to narrow your requests. Because there are no date time frames, we expect that complying with your request would take a great deal of City staff time and would result in significant charges being assessed for these records. The requests could be narrowed by placing date time frames for the records sought, limiting subject matter, and referencing particular individuals to or from whom communications occurred.

Your request for information will be considered withdrawn if you do not respond in writing to this request for clarification within 61 days. You may respond by e-mail, fax, or by U.S. Mail. Please respond to me directly at the contact information below.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me at \_\_\_\_\_.

Sincerely,

\_\_\_\_\_  
Attorney for the City of \_\_\_\_\_  
\_\_\_\_\_

**H -2 PIA FORM - LETTER TO ATTORNEY GENERAL**

June , 2019

*Via CMRRR #* \_\_\_\_\_

The Honorable Ken Paxton  
Office of the Attorney General  
Open Records Division  
P.O. Box 12548  
Austin, Texas 78711-2548

Re: Request for Attorney General Opinion on Public Information Request from \_\_\_\_\_ received by the City of \_\_\_\_\_ on \_\_\_\_\_, 202\_.

Dear Sir or Madam:

On the \_\_\_ of \_\_\_\_\_, 202\_, the Police Department of the City of \_\_\_\_\_, Texas (“the City”) received a Public Information Request (“the Request”) made under the Texas Public Information Act, Chapter 552 of the Texas Government Code (the “Act”), sent from \_\_\_\_\_ (attached hereto as **Exhibit “A”**), requesting records as follows:

“ \_\_\_\_\_.”

By this letter the City is requesting an Attorney General’s Opinion pursuant to Public Information Act, §552.301 as to whether these records may be withheld. This request is timely made within ten business days of the request.

Based on the Request and pursuant to the Act, §§552.101, 552.117, 552 119, 552.1085, 552 108(a)(1) and (b)(1); common law privacy; Chapter 772 of the Health and Safety Code; and Section 1701.660 of the Occupations Code, the City hereby requests a decision of the Attorney General as to whether the City may withhold from public disclosure various responsive documents and things under the respective exemptions to disclosure enumerated herein. The City wishes to withhold all or part of the requested information because the requested records are records of the City’s Police Department and are excepted from disclosure under the provisions of the Act discussed herein and below. Because of the large volume of records, copies of a representative sample of the requested information to which these exceptions apply are attached hereto as **Exhibit “B”**. Exhibit “B” includes paper records and photo, video and audio records on a flash drive.

A letter from the City’s Chief of Police regarding the open status of the investigation to which these records relate (or a letter from the Criminal District Attorney regarding the open status of the criminal prosecution) is attached hereto as **Exhibit “C”**. These are the same records described in that letter and the investigation/prosecution is still open.

## **Applicable Exemptions from Disclosure**

The information requested is in police records which are open files and may be withheld under the following:

**Section 552.108 (a)(1) and (b)(1)** – except from required public disclosure the following categories of information:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if:
  - (1) release of the information would interfere with the detection, investigation, or prosecution of crime; or
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution if:
  - (1) release of the internal record or notation would interfere with law enforcement or prosecution;

In the present situation, all of the requested records are held by a law enforcement agency, the Elmendorf Police Department, and deal with the open investigation of a crime as stated in the letter attached hereto as Exhibit “C.” Based on information stated in the letter, the release of records related to these files, including, but not limited to the dash cam and video footage requested, would interfere with the pending and open investigation and prosecution of a potential crime. See Exhibit “C.” These records should be withheld under Section 552.108(a)(1) of the Act.

Additionally, the requested records are internal records and notations of the City’s Police Department maintained for internal use in matters relating to law enforcement. *For a specific example of the notations of the Police Department see Exhibit “B” hereto at page \_\_\_\_.* Release of the records would interfere with law enforcement. See Exhibit “C.” These records should be withheld under Section 552.108(b)(1) of the Act.

**Section 552.101 and common law privacy** except from disclosure information which is confidential by statute or other law, by judicial decision, or by common law. The requested information is confidential under these provisions along with certain laws enumerated below and for the following reasons: \_\_\_\_\_.

**Section 552.1085** - Section 552.1085 makes confidential sensitive crime scene images, meaning photographs and video recordings taken at a crime scene that depict a deceased person in certain sensitive states. There is an exception for a person who is authorized in writing by the person. In this case some of the responsive photos and videos contain sensitive crime scene images. For example images see Exhibit “B” at video #\_\_\_ and photo images on the flash drive attached numbered \_\_\_\_\_. The requestor indicates they represent the deceased person in the photos and videos. The City wishes to withhold these photos and videos during the pending investigation under Section 552.108, and requests an Attorney General opinion on whether the sensitive material must be released to the representative of the deceased under Section 552.1085 during the pending



investigation, or whether it may be withheld. The City does not have the practical means to redact these videos.

**Sections 772.118, 772.218, and 772.318 of the Health and Safety Code** - Originating telephone numbers and addresses of 9-1-1 callers furnished on a call-by-call basis by a telephone service supplier to a 9-1-1 emergency communication district established under subchapter B, C, or D of chapter 772 of the Health and Safety Code are confidential under sections 772.118, 772.218, and 772.318 of the Health and Safety Code, respectively. The responsive information includes records which reflect the originating telephone numbers and addresses of 9-1-1 callers which should be redacted pursuant to Section 552.101 and Chapter 772 of the Health and Safety Code. For example, see the tape on the flash drive at Exhibit “B.”

**Section 552.119. Photographs of Peace Officers.** Section 552.119(a) excepts from disclosure a photograph that depicts a peace officer, the release of which would endanger the life or physical safety of the officer. In the present case, the footage which contains video images of police officers could endanger the physical safety of the officers and should be withheld pursuant to this section. The photos at Exhibit “B” numbered \_\_\_\_\_, would endanger the safety of officers if released for the following reasons: \_\_\_\_\_.

**Section 552.117 Personal Information of Peace Officers.** Section 552.117(2) provides: Information is excepted from the requirements of Section 552.021 if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members: (2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024. In the present case, personal information regarding the peace officers marked in Exhibit “B” at pages \_\_\_\_\_ should be redacted from produced records.

**Body Worn Cameras - Section 1701.660, et seq Occupations Code** contains provisions related to charges and other rules affecting body worn camera recording requests. Section 1701.662 extends the ten and fifteen business day deadlines associated with requesting a ruling from the attorney general to twenty and twenty-five business days, respectively, for requests for body worn camera recordings. The City reserves the right to file a supplemental request during these time periods if it becomes necessary.

*The City also intends to redact Dates of Birth, Social Security Numbers, Vehicle Registration Numbers, and other third-party information confidential under the Public Information Act from the records as required before producing the records.*

Based on the foregoing exceptions to disclosure, the City requests that the Attorney General issue an opinion allowing the City to withhold from public disclosure the requested information. The City hereby requests the Attorney General’s decision not later than the 45<sup>th</sup> working day after the date of this letter.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me at \_\_\_\_\_.

Barbara Quirk Forms File – June 2022

Sincerely,

\_\_\_\_\_  
\_\_\_\_\_  
Attorney for the City of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Enclosures (with original only): Exhibits “A”, “B”, “C”.

cc: Requestor: \_\_\_\_\_ (Redacted copy no enclosures)  
Via CMRRR # \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (OR BY EMAIL IF REQUESTED)

**H -3 PIA FORM – COST ESTIMATE LETTER**

\_\_\_\_\_, 202\_

VIA CERTIFIED MAIL, RRR # \_\_\_\_\_(or by email if requested)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Your Public Information Request received by the City of \_\_\_\_\_on \_\_\_\_\_, 202\_. Statement of Estimated Charges and notice relating to required programming and manipulation of data.

Dear Public Information Requestor:

We are writing to provide you with a Statement of Estimated Charges and notice of the need for programming and manipulation of data related to your request for information to the City of \_\_\_\_\_referenced above.

**1. Notice Related to Need for Programming and Manipulation of Data**

The City has determined that responding to your request for the following information: \_\_\_\_\_ will require programming and manipulation of data. The information responsive to your request (“the Responsive Information”) is saved in a particular manner for which the City does not have the ability to extract the Responsive Information without computer programming and manipulation of data. Pursuant to the Texas Public Information Act you will need to pay the cost for the third-party computer programming and manipulation of data required. Based on our inquiry to a third-party contractor we have included the estimated cost of this programming and manipulation of data in the cost estimate below.

**2. Cost Estimate**

The City estimates that charges for your request will exceed \$40.00. Therefore, we are providing you with this cost estimate as required by section 552.2615 of the Texas Government Code.

**Estimated Charges:**

\_\_ pages of records (to redact) x .10 \$\_\_\_\_\_  
2 hours labor x \$15 \$\_\_\_\_\_  
Overhead (25% of labor) \$\_\_\_\_\_  
Programming, Manipulation of Data \$\_\_\_\_\_

Flash Drive (actual cost)	\$ _____
Postage (actual)	\$ _____
__ Body cam videos x \$10	\$ _____
__ minutes of body cam x \$1	\$ _____
Manipulation and Programming est.	\$ _____
<b><u>Total Estimated Charges:</u></b>	<b>\$ _____</b>

A less expensive method is available for you to obtain certain parts of this information. If you wish to come to the City offices and review the information without requesting copies or a flash drive, you would save the cost of the flash drive. If that is the case, you will need to contact me and let me know and we can make arrangements. You would still need to pay the other costs in this cost estimate.

Your request will be considered automatically withdrawn if you do not notify us in writing within ten business days from the date of this letter that you:

- a) accept the charges;
- b) wish to modify your request; OR
- c) have sent to the Open Records Division of the Office of the Attorney General a complaint that you are being overcharged for the information you have requested.

Please respond to me directly as I am handling this request for the City. Your response may be in person at the City or sent by mail, electronic mail, and/or facsimile to my contact information below.

Because the total cost above exceeds \$100 [depends on size of city], as allowed by section 552.263(a) of the Government Code, we require a deposit equal to 50% of the estimated amount to be paid to the City at the City Clerk’s office before the City will undertake any expense to redact and provide the response. You have the right to make a complaint with the Texas Attorney General’s Office Open Records division if you feel you are being overcharged.

Thank you for your consideration on this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

\_\_\_\_\_  
 \_\_\_\_\_  
 Attorney for the City of \_\_\_\_\_

**I. CHECKLIST FOR WHAT GOES IN RFP**

Note: If requesting competitive sealed proposals instead of competitive sealed bids, City Council or its designee should make a finding before the notice that the competitive sealed proposal process is the method which will provide the best value to the City. LGC 252.021(c).

Introduction and Purpose.....

\*Instructions for Proposal Submission and Timelines.....

\*\*-Proposer’s Questions (Provide Contact Information).....

Responsibility to Monitor RFP Amendments (provide website information)....

Pre-Proposal Conference.....

Rejection of Proposals.....

Contract Requirements - Standard Terms and Conditions.....

Insurance Certificates from Selected Proposer and Subcontractors and Listing City as Additional Insured

Comprehensive General Liability Personal Injury and Property Damage (\$1 million per occurrence, \$2 million annual aggregate) (Professional Liability if applicable), Workers Comp

Indemnification of City by Selected Proposer

Equal Employment Opportunity

No claims for extra work unless covered by written agreement

City approval of sub-contractors required

Right to Audit Records

Confidential City Information must be kept confidential

Proposer pays all fees and licenses required for work

Observance of Laws Ordinances and Regulations

If contract will exceed \$100,000, must certify no boycott of Israel and no discrim ag Firearms or ammunitions industries

City’s Right to Terminate Contract Early if (list reasons)

\*Scope and Specifications.....

Form and Content of Proposal.....

Information and Certifications Required of Proposer.....

Assignment of Key Staff.....

Proposal Evaluation Process.....

Price and Other Evaluation Criteria.....

Note: If requesting competitive sealed proposals, the City must the following criteria found in Local Government Code Section 252.043(b) and the discussions referenced below in determining the best value for the municipality and must list the criteria in the RFP, stating the relative importance of price and other evaluation factors:

- (1) the purchase price (quotation);
  - (2) the reputation of the bidder and of the bidder's goods or services;
  - (3) the quality of the bidder's goods or services;
  - (4) the extent to which the goods or services meet the municipality's needs;
  - (5) the bidder's past relationship with the municipality;
  - (6) the impact on the ability of the municipality to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
  - (7) the total long-term cost to the municipality to acquire the bidder's goods or services;
- and
- (8) any relevant criteria specifically listed in the request for bids or proposals.

Proposal Selection Process.....

Discussion Clarification and Amendment of Proposals.....

Note: If requesting competitive sealed proposals, Local Government Code Section 252.042(b) provides (and RFP should state): Discussions in accordance with the terms of a request for proposals and with regulations adopted by the governing body of the municipality may be conducted with offerors who submit proposals and who are determined to be reasonably qualified for the award of the contract. Offerors shall be treated fairly and equally with respect to any opportunity for discussion and revision of proposals. To obtain the best final offers, revisions may be permitted after submissions and before the award of the contract.

EXHIBITS: (list here)

Exhibit “A” Proposer’s Certifications

**J-1 SPECIAL WARRANTY DEED**

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**SPECIAL WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_ [enter name], (“Grantor”), located at \_\_\_\_\_ [enter address of location], for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has GRANTED, BARGAINED, SOLD and CONVEYED and by these presents does GRANT, BARGAIN, SELL and CONVEY unto \_\_\_\_\_, (“Grantee”), located at \_\_\_\_\_, Texas 7\_\_\_\_\_, subject to the matters set out below, that certain tract or parcel of land in \_\_\_\_\_ County, Texas, being:

\_\_\_\_\_  
\_\_\_\_\_

and more particularly described in the metes and bounds description along with the survey both of which are attached at Exhibit “A” to this deed and incorporated herein for all purposes, together with all rights, titles, and interests appurtenant thereto (such land and interests are hereinafter collectively referred to as the “Property”).

This Special Warranty Deed and the conveyance set out above is executed by Grantor and accepted by Grantee.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereunto in anyway belonging, unto Grantee, its successors and assigns forever, and Grantor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND all and singular the title to the Property unto said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise.

OTHER THAN THE COVENANT OF TITLE CONTAINED IN THE PRECEDING PARAGRAPH, GRANTEE IS PURCHASING THE PROPERTY ON AN “AS IS” BASIS WITH ALL FAULTS. GRANTOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, THE AVAILABILITY OF

UTILITIES, ACCESS TO PUBLIC ROADS OR ITS PHYSICAL, OR ENVIRONMENTAL CONDITION. GRANTOR EXPRESSLY DISCLAIMS ANY WARRANTY OF HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

If any term or provision herein is declared by a court of competent jurisdiction to be illegal or invalid, such illegal or invalid term or provision shall not affect the balance of the terms and provisions hereof. In the event any action or suit is brought by reason of any breach of this Special Warranty Deed, then the prevailing party shall be entitled to have and recover from the other party all costs and expenses of suit, including reasonable and necessary attorneys' fees. This Special Warranty Deed shall be governed by and construed and enforced in accordance with the laws of the State of Texas. This Special Warranty Deed is to be deemed to have been prepared jointly by the parties hereto, and if any inconsistencies or ambiguities exist herein, they shall not be interpreted or construed against either party as the drafter. This Special Warranty Deed shall be binding upon and inure to the benefit of the Grantor and Grantee and their respective heirs, successors, legal representatives and assigns.

EXECUTED this the \_\_\_\_ day of \_\_\_\_\_, 202\_.

GRANTOR:  
[Enter Grantor's Name]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS            §  
  §  
COUNTY OF \_\_\_\_\_§

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 202\_, \_\_\_\_\_  
\_\_\_\_\_.

[SEAL]

\_\_\_\_\_  
Notary Public in and for the  
STATE OF TEXAS

AFTER RECORDING RETURN TO:

City of \_\_\_\_\_  
\_\_\_\_\_



\_\_\_\_\_, Texas 7\_\_\_\_  
Attn: City Attorney

**J-2 Public Utility Easement Form**

**NOTICE OF CONFIDENTIALITY RIGHTS: If you are a natural person, you may remove or strike any or all of the following information from this instrument before it is filed for record in the public records: your Social Security number or your driver’s license number.**

**PUBLIC UTILITY EASEMENT**

**Date:** \_\_\_\_\_, 202\_

**Grantor:** \_\_\_\_\_

**Grantor’s Address:** \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_ County, Texas 7\_\_\_\_\_

**Grantee (or “the City”):** **CITY OF** \_\_\_\_\_, Texas municipality situated in \_\_\_\_\_ County.

**Grantee, the City’s Address:** \_\_\_\_\_, \_\_\_\_\_, TX 7\_\_\_\_\_

**Easement Tract:** Being that \_\_\_\_\_ acre (\_\_\_\_\_ square feet) tract of land out of \_\_\_\_\_, being more particularly described in the survey plat and metes and bounds description attached hereto respectively as **Exhibits “A” and “B”** and incorporated herein.

**Easement Duration:** Perpetual

**Easement Purpose:** To install, construct, operate, use, maintain, repair, modify, upgrade, monitor, inspect, replace, make connections with, and/or remove the Facilities.

**Facilities:** Underground Public Utility Systems (“the Utilities”), including utility pipelines and other equipment, structures, and materials necessary or desirable for the operation and maintenance of all types of public utilities, distribution, electrical and transmission lines, and other public utilities facilities with all associated appurtenances.

**Non-Permitted Activity:** Installation, construction, operation, use, maintenance, repair, modification, upgrade, and replacement of any structure, foundation, building, retaining wall, detention or other similar improvement in the Easement Tract, including the installation,

construction, operation, use, maintenance, repair, modification, upgrade, and replacement of any improvement, encroachment or Permitted Encumbrance of any kind which would impair City's access to the Facilities as determined by the City in its sole discretion.

**Repairable Improvements:** Improvements that do not interfere in any material way or are not inconsistent with the rights granted the City under this Easement for the Easement Purpose as determined by the City in its sole discretion.

Grantor, for **TEN AND NO/100 DOLLARS (\$10.00)** and other good and valuable consideration paid to Grantor, the receipt and sufficiency of which is acknowledged by Grantor, **GRANTS, SELLS, AND CONVEYS** to the City an easement in, over, under, on, and across the Easement Tract for the Easement Purpose as may be necessary or desirable, together with (i) the right of ingress and egress at all times over, on, and across the Easement Tract for use of the Easement Tract for the Easement Purpose, (ii) the right to eliminate any encroachments in the Easement Tract that interfere in any material way or are inconsistent with the rights granted the City under this instrument for the Easement Purpose as determined by the City in its sole discretion, including without limitation the City's right to remove any obstructions as necessary to keep the obstructions clear of the Facilities, and (iii) any and all rights and appurtenances pertaining to use of the Easement Tract (collectively, the "**Easement**").

TO HAVE AND TO HOLD the Easement to the City and City's successors and assigns for the Easement Duration and Easement Purpose; provided, however, Grantor reserves the right to enter upon and use any portion of the Easement Tract, but in no event shall Grantor enter upon or use any portion of the Easement Tract for any Non-Permitted Activity or in any other manner that interferes in any material way or is inconsistent with the rights granted the City under this Easement for the Easement Purpose as determined by City in its sole discretion.

Grantor binds Grantor and Grantor's heirs, successors, and assigns to **WARRANT AND FOREVER DEFEND** the title to the Easement, subject to the Permitted Encumbrances, to the City against every person whomsoever lawfully claiming or to claim the Easement Tract or any part of the Easement Tract when the claim is by, through, or under Grantor, but not otherwise.

Except where the context otherwise requires, *Grantor* includes *Grantor's heirs, successors, and assigns* and the *City* includes the *City's employees, agents, consultants, contractors, successors, and assigns*; and where the context requires, singular nouns and pronouns include the plural.

*---The remainder of this page is intentionally blank---*

Executed effective the Date first above stated.

Grantor: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

STATE OF TEXAS           §  
COUNTY OF \_\_\_\_\_ §

Before me, the undersigned notary, on this day personally appeared \_\_\_\_\_, of \_\_\_\_\_, known to me through valid identification to be the person whose name is subscribed to the preceding instrument and acknowledged to me that the person executed the instrument in the person's official capacity for the purposes and consideration expressed in the instrument.

Given under my hand and seal of office on \_\_\_\_\_, 202\_.

[Seal]

\_\_\_\_\_  
Notary Public In and For  
The State of Texas  
My Commission Expires: \_\_\_\_\_  
Printed Name of Notary:

**AFTER RECORDING RETURN TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**J-3 LEASE AGREEMENT**

STATE OF TEXAS                    §  
   §                    CITY OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_           §

**LEASE AGREEMENT FOR ECONOMIC DEVELOPMENT PURPOSE**

This LEASE AGREEMENT (this "Lease") is made this \_\_\_ day of \_\_\_\_\_ 202\_, between the **CITY OF** \_\_\_\_\_, whose address is \_\_\_\_\_, \_\_\_\_\_, Texas, 7\_\_\_\_ ("Lessor"), and \_\_\_\_\_, a non-profit corporation incorporated under the laws of the State of Texas, whose address is \_\_\_\_\_ ("Lessee").

**WHEREAS**, Lessor owns land and a building located at \_\_\_\_\_; and

**WHEREAS**, the \_\_\_\_\_ City Council recognizes the benefit to the community of using this office space for economic development purposes and now wishes to lease out the building to an entity which will utilize it for this public purpose; and

**WHEREAS**, the City of \_\_\_\_\_ Incentive Policy provides that the City may consider the lease of land without the necessity of accepting written bids to further economic development purposes; and

**WHEREAS**, Texas Local Government Code Section 253.011 provides that a city may convey an interest in real property to a Section 501(c)(3) nonprofit organization without complying with notice or bidding requirements, provided that consideration is given in the form of an agreement that requires the nonprofit organization to use the property in a manner that primarily promotes a public purpose of the city and provides for automatic reversion upon failure of this consideration; and

**WHEREAS**, Lessee is a 501(c)(3) nonprofit organization created to encourage the growth of small businesses in the City of \_\_\_\_\_; and

**WHEREAS**, Lessee wishes to promote the growth of the Entrepreneurial Ecosystem in the City of \_\_\_\_\_ by providing space for an incubator project where start-up businesses may operate in an environment with innovative, technological, and other support conducive to growth of these businesses ("the Incubator") and has asked to lease the building for this purpose; and

**WHEREAS**, the \_\_\_\_\_ City Council has determined that allowing Lessee to lease the building for the purpose of setting up and operating the Incubator serves the public economic development purpose of increasing future growth in the number and quality of viable small businesses in the City of \_\_\_\_\_, resulting in significant future increases

in ad valorem and sales tax revenues, utility revenues, and quality job opportunities for the City's citizens; and

**WHEREAS**, Lessor and Lessee now wish to enter into this Lease for the purpose of setting out the terms under which the building will be leased; **NOW THEREFORE**:

**WITNESS**, that for the consideration set forth herein, Lessor does by these presents lease and demise unto Lessee a building of approximately \_\_\_\_\_ square feet, located at \_\_\_\_\_, with the underlying land, including landscaped area and parking immediately connected to the building, and further described in the diagram attached hereto as **Exhibit "A"** which is incorporated herein for all purposes (hereafter, the "Premises"), subject to the following terms:

1. **Initial Term and Rent.** This Lease shall be for a term of ten (10) years ("the Initial Term"), beginning on \_\_\_\_\_ ("the Effective Date"), and ending on \_\_\_\_\_ ("the Termination Date"), unless otherwise renewed or terminated as set forth below, and subject to the provisions of this Lease.
2. **Renewal Terms.** At the end of the Initial Term of this Lease or any renewal term this Lease may be renewed for an additional five (5) years by written agreement of the parties, provided that the total of the Initial Term of this Lease plus all renewal terms shall not exceed twenty-five (25) years. Lessee shall notify Lessor in writing two (2) years prior to the end of the Initial Term and any renewal term of Lessee's intention to renew this Lease. If Lessor also wishes to renew this Lease, the parties shall enter into negotiations for the renewal of this Lease which shall conclude no later than one (1) year prior to the end of the then current term of this Lease. Lessor's City Council shall either approve a final proposed renewal agreement or reject the renewal of this Lease within ninety (90) days following the end of negotiations. Lessee shall accept or reject Lessor's proposed renewal agreement within ninety (90) days of the decision by Lessor's governing body.
3. **Rent.** Lessee shall pay the sum of Ten and No/100ths Dollars (\$10.00) each year as rental on the Premises (the "Rent"), with the first payment due and payable on the Effective Date in 202\_, and with like annual payments due and payable on the same day of each successive year during the term of this Lease at Lessor's address listed herein
4. **Use of Premises and Automatic Reversion.** As consideration for this Lease, in addition to the Rent and Additional Rent stated herein, Lessee shall use the Premises solely for the public purpose of providing office space, technological, and other assistance for startup entrepreneurial businesses under the Incubator program which is the purpose of this Lease. Further, Lessee's use of the Premises shall primarily promote

the City's public purpose of increasing the number and quality of small businesses expected to remain in the City, providing future increases in ad valorem and sales tax revenues, utility revenues, and quality job opportunities for the City. As required by Texas Local Government Code Section 253.011, if Lessee fails at any time to use the Premises for these public purposes in the manner stated herein, the leasehold interest conveyed in this Lease shall automatically revert to the City. Nothing herein shall limit the City's right to seek any other remedy available to it at law or in equity.

5. **Performance Measures.** Lessee shall meet the performance measures listed in this Section over the periods of time indicated. Any failure of Lessee to meet any of these performance measures may result in the City's termination of this Lease following notice and a cure period as provided below. For purposes of this Lease "priority start-up business" means a business, other than automotive or fast-food related business, which is expected to remain in the City, providing future increases in ad valorem and sales tax revenues, utility revenues, and quality job opportunities for the City's citizens.
- A. Lessee shall make improvements to the Premises worth at least \_\_\_\_\_ within 24 months of the Effective Date of this Lease and shall provide documentation of payments made for these improvements to the City within 30 months of the Effective Date of this Lease;
  - B. Lessee shall have the Premises open and ready for occupancy by at least 2 "priority start-up entrepreneurial businesses" within 24 months of the Effective Date of this Lease and shall provide documentation to the City of same on or before 30 months after the Effective Date of this Lease ("the Occupancy Date"); and Lessee shall have at least 2 "priority start-up entrepreneurial businesses" located in and operating out of the Premises for the majority of each year of this Lease following the Occupancy Date;
  - C. Lessee shall acknowledge the City's contribution to the Incubator project in marketing materials and signs in the following manner:
    - a. Use of the City's logo in all marketing materials as well as on interior signage. Use of the City's logo shall be pre-approved by the City Manager or his designee prior to printing or publication of any material or sign containing the logo.
  - D. On or before May 31<sup>st</sup> of each year of this Lease Lessee shall present a status report to the City Council reporting:
    - a. The total number and types of priority start-up entrepreneurial businesses located in and utilizing the Premises;
    - b. The support, assistance, and other programs being offered at the Premises;
    - c. A list of any physical improvements made to the Premises during the year;
    - d. The proposed physical improvements and programs for the next year;
    - e. The annual budget for Lessee; and

- f. Additional information regarding status of compliance with this Lease and the operation of the Premises that may be reasonably necessary for Lessor to perform its fiduciary duties for the citizens of the City.

6. **Lessee's Right to Collect Charges.** Lessee shall be entitled to collect use charges for participants in its business incubator program to make use of the Premises, subject to the funds collected being used for the operation and maintenance of the Premises and the business incubator program which are the purpose of this Lease. Lessor, at its sole discretion, reserves the right to audit the expenditure of funds to verify appropriate uses per the purpose of this Agreement, and, upon request of the City Council or City Manager, Lessee shall make records relating to the revenues and expenditures relevant to this Agreement available for inspection and review.

7. **Utilities.** Lessor will pay the cost of normal utility use for the Premises for three (3) years after the Effective Date of this Lease. This obligation shall not include any costs due to installation of new utility infrastructure, equipment, or lines, unusual or unapproved utility use, or the installation or operation of equipment or appliances with unusually high utility needs or the monthly payment of any and all expenses for utilities for the Premises following the initial three (3) year period paid by Lessor ("Utility Expense").

8. **Ownership.** Lessor retains ownership of the Premises, including any permanent improvements to and/or fixtures located thereon. Lessor has not delegated its governmental responsibility or authority to Lessee. Nothing herein shall be construed to give Lessee authority to overrule decisions of the City Council or other appropriate authority of the City.

9. **Return of Premises.** Upon expiration of the Lease term, Lessee shall deliver the Premises with all improvements and fixtures, whether made by Lessee or Lessor, to Lessor in the same condition as they were received or installed, reasonable wear and tear excepted.

10. **Subleasing.** Lessee shall not sublet the Premises, or any part thereof, to any person or persons whatsoever, without prior written authorization from Lessor. Any lease or attempt to sublet shall be considered null and void, *ab initio*. Lease of space within the Premises to start-up businesses for the Incubator purpose contemplated in this Lease shall not be considered a sublet.

11. **Improvements, Maintenance, and Repair.**



- Lessee shall have the right to make such improvements to the Premises as it deems necessary and shall be solely responsible for payment of all amounts related to or arising out of such work (“Improvement Expense”). Plans for such improvements shall initially be approved by the City Manager or his designee. Following such initial approval, Lessee shall have no further obligation to seek Lessor’s approval outside of compliance with applicable law. Nothing herein shall waive any permitting requirements of the City of Boerne and Lessee shall follow all requirements of the City’s Unified Development Code and all other City requirements applicable to the Improvements. In the event Lessee alters the plans for the Improvements after review by the City Manager or his designee, Lessee shall obtain consent from the City Manager or his designee for any such alterations.
- Lessee shall, at its sole cost and expense, repair and maintain the grounds, building, and all of the Premises in good condition and in clean and sanitary condition at all times during the Initial Term and any renewal term of this Lease (“Maintenance Expense”). In the event the Premises shall fall into a state of disrepair such that Lessor becomes reasonably concerned with the condition or maintenance of the Premises, Lessor may terminate this Lease after first giving Lessee notice, and an opportunity to cure, in accordance with the provisions of paragraph 22 below.

## **12. Insurance.**

- A. Lessee shall procure, at its own expense, liability insurance with a minimum per occurrence limit of one million dollars (\$1,000,000.00) and building contents insurance to cover Lessee's contents and equipment at the Premises. Lessee acknowledges that over the period of this Lease, the liability limit may become inadequate. Lessor may, with good cause, require Lessee to maintain a higher coverage limit. In such event, Lessor shall provide Lessee with written notice of any coverage limit change reasonably required to increase insurance coverage on the Premises. Lessee shall obtain such coverage within thirty (30) days of its receipt of such notice from Lessor. Lessor may require additional insurance coverage to protect Lessor's interest. The same notice and execution provisions shall apply. Additionally, Lessee shall be responsible for insuring its own leasehold interest (collectively, “Insurance Expense”).
- B. Lessor may maintain additional property insurance through a commercial carrier or self-insurance arrangement on the Premises to secure Lessor’s interest in the

Premises. Lessor shall have no obligation to expend funds in excess of the insurance proceeds to repair the Premises. In the event of a loss causing a lack of use of the Premises for its intended purposes, in the parties' reasonable judgment, for a period exceeding six (6) months, Lessor shall have no obligation to rebuild or repair the Premises and may elect instead to terminate this Lease upon ninety-days written notice to Lessee. Lessor shall have no obligation to Lessee for any loss of use of the building to Lessee or any limitations on performance of Lessor under this Lease resulting from any such property loss.

C. Liability insurance required of Lessee hereunder shall name Lessor as an additional insured. In addition, Lessee shall provide Lessor with a copy of each insurance policy required hereunder along with proof that all premiums for each such policy or policies shall have been paid by Lessee.

13. **INDEMNIFICATION BY LESSEE. LESSOR SHALL NOT BE LIABLE TO LESSEE'S EMPLOYEES, AGENTS, INVITEES, LICENSEES OR VISITORS, OR TO ANY OTHER PERSON, FOR ANY INJURY TO SUCH PERSON OR DAMAGE TO PROPERTY ON OR ABOUT THE PREMISES CAUSED BY THE NEGLIGENCE OR MISCONDUCT OF LESSEE, ITS AGENTS, SERVANTS OR EMPLOYEES, OR OF ANY OTHER PERSON ENTERING UPON THE PREMISES UNDER THE EXPRESS OR IMPLIED INVITATION OF LESSEE OR CAUSED BY STRUCTURES, BUILDINGS, SIGNS, ADDITIONS, IMPROVEMENTS, DISPLAYS AND OTHER ITEMS BECOMING OUT OF REPAIR, OR THE FAILURE OR CESSATION OF ANY SERVICE PROVIDED BY LESSOR. LESSEE AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS LESSOR OF AND FROM ANY LOSS, EXPENSE OR CLAIM ARISING OUT OF ANY SUCH DAMAGE OR INJURY, INCLUDING LESSOR'S REASONABLE ATTORNEYS' FEES INCURRED THEREBY. THIS OBLIGATION SHALL NOT BE SUBJECT TO THE LIMITS OF LESSEE'S INSURANCE OR TO COMPARATIVE LIABILITY DOCTRINE. THIS SECTION WILL SURVIVE TERMINATION OF THIS LEASE.**

14. **Consent of City Required for Modification of Premises.** Lessee shall not build or add any permanent structure, addition, or item that materially changes the size, accessibility or use of the Premises without the prior written consent of the City Manager or his designee. This provision does not prohibit ordinary and customary maintenance, repair of existing facilities, or addition of internal fixtures otherwise consistent with the parties' intent expressed herein. Rather, it is the parties' intention that Lessee will make many changes and improvements to the Premises to make it more useful and desirable for its intended purposes. Any and all fixtures whether put in by Lessor or Lessee are and become on installation part of the Premises and the property

of Lessor and may not be removed from the Premises without prior written agreement from Lessor. Lessee shall have 30 days from the date of termination of this Lease to notify Lessor in writing of its wish to keep any particular fixture which have been installed by Lessee on the Premises. Landlord and Lessee shall engage in good faith negotiations regarding whether any such fixtures may be removed and the terms of any such removal. Any fixtures for which no agreement has been reached with Lessor by the 60<sup>th</sup> day after termination of this Lease shall remain the property of Lessor and remain with the Premises.

15. **Compliance with UDC and other City Regulations.** Lessee shall comply with the City's Unified Development Code, environmental laws, and all other City regulations and permit requirements applicable to its use of, modifications to, or occupancy of the Premises. Nothing herein shall be construed as advance approval of or any waiver of any permit requirement of the City.
16. **Lessee Responsible for Investigation, "As Is. Where Is."** Lessor makes no warranty as to the suitability of the Premises for the use to which Lessee wishes to put the Premises nor any other warranty. Lessee acknowledges it has had an opportunity to inspect the Premises and do its own investigation of the status of the Premises with regard to any Historic designation, flood plain, or drainageway location or other factor which would affect the use of the Premises or the regulations applicable to the Premises. Lessee accepts the leased Premises "As Is. Where Is."
17. **Compliance with Employment Laws.** Lessee shall be fully responsible for its employees, including meeting all state and federal requirements for minimum wage, income tax withholding, workers' compensation, insurance, and all city, state, and federal requirements governing employer/employee relations. Lessee hereby certifies to Lessor that it is and shall be in compliance with all such regulations, laws and requirements. Failure to comply with this clause, following notice and an opportunity to cure, shall constitute a default on the part of Lessee and shall entitle Lessor to terminate this Lease and take possession of the Premises.
18. **Signs.** Any sign placed on the Premises shall be in conformance with the conditions set out in the ordinances of the City.
19. **Lessor's Right of Access.** Lessor shall have the full right of access to the Premises for purposes of insuring compliance with this Lease and the condition of the Premises. Lessor agrees to make reasonable attempts to exercise the right of access to the Premises at such times as are the least disruptive to Lessee's use and enjoyment of the Premises.

20. **Taxes.** Lessee shall be liable for any and all taxes levied against the leasehold interest, the personal property, the trade fixtures, or other improvements placed on the Premises by Lessee, if any (“Tax Expense”).
21. **Additional Rent.** Each Overage Fee, Utility Expense, Improvement Expense, Maintenance Expense, Insurance Expense, Tax Expense, and other amounts payable by Lessee herein are collectively referred to as “Additional Rent.” In the event that Additional Rent of any kind or nature is not timely paid (i.e., monthly as may be owed to Lessor, according to any taxing entity schedule or as is otherwise required) by Lessee shall constitute a material default.
22. **Termination.** Upon Lessee's breach of any covenant set forth in this Lease or upon any material violation by Lessee of any performance measure requirement or regulation or ordinance of the City Lessor may terminate this Lease in accordance with Section \_\_\_ below. In the event of a material default under this Lease by Lessor, Lessor shall have 30 days to cure such material default and, if such default cannot reasonably be cured in 30 days, Lessor shall have such period as is reasonably necessary under the circumstances so long as it continues to exercise diligence to effect cure of such default. If Lessor elects to pay any amount owed by Lessee herein, Lessee shall within 30 days reimburse Lessor, upon Lessor's written demand, the funds for payments made on Lessee’s behalf for losses sustained because of Lessee's failure to pay such amounts, including Lessor's reasonable attorneys' fees incurred thereby.
23. **Remedies.** Following an uncured material default of the Lease, Lessor or its agents, or assigns shall have the option to pursue any one or more of the remedies, without making notice of demand on Lessee, as follows: (1) to enter upon and take possession of the Premises, by any means whatsoever, without being liable for any claim of damages, (2) to terminate this Lease, in which event Lessee shall immediately surrender the Premises to Lessor, (3) to seek any other remedies at law or in equity, including, but not limited to, the filing of a lawsuit for monetary damages sustained by Lessor occasioned by Lessee's breach of this Lease, (4) to prosecute Lessee for any violation by Lessee or its employees, agents, invitees, licensees, and/or visitors of any applicable ordinance, regulation or statute of any governmental authority. Termination of this Lease, pursuant to the Subsection (2) of this Paragraph, shall be effective upon Lessor's providing written notification of such to Lessee, at Lessee's address listed herein, by certified mail, return receipt requested, and deposited in an official depository in the care and custody of the United States Postal Service. The notice and cure requirements set forth herein shall not apply to an automatic reversion as set forth above.
24. **Governing Law.** The construction and validity of this Lease shall be governed by the laws of the State of Texas without regard to any conflict of laws provisions. Venue for any legal action commenced hereunder shall be in a court of appropriate jurisdiction

\_\_\_\_\_ Texas.

25. **Severability.** In the event any portion of this Lease is deemed illegal, invalid, or unenforceable, then the remainder of this Lease shall not in any way be affected thereby and may be enforced to the greatest extent permitted by applicable law.
26. **Compliance with Law.** Lessee shall be responsible for complying with all provisions of city, state and federal law in its use of the Premises.
27. **Non-discrimination.** Lessee hereby agrees to refrain from any activity in the performance of this Lease or the use of the Premises that discriminates against any person or persons based upon race, color, creed, national origin, religion, sex in accordance with present federal and state laws.
28. **No Amendment without City Approval.** All of the terms of the agreement between the parties regarding this Lease are contained herein and the parties acknowledge that no verbal promises or agreements modify this Lease. No amendment or modification of this Lease shall be in effect unless it shall be in writing, signed by both parties.
29. **No Assignment by Lessee.** Lessee shall not assign or convey any rights or interest in this Lease or the leasehold interest conveyed herein without the express written consent of Lessor's City Manager.

Agreed and executed in duplicate originals this \_\_\_ day of \_\_\_\_\_, 202\_.

**LESSOR:**

**CITY OF** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Secretary

**LESSEE:**

\_\_\_\_\_, a Texas non-profit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF TEXAS           §

COUNTY OF \_\_\_\_\_ §

BEFORE ME, a Notary Public, on this day personally appeared \_\_\_\_\_ of \_\_\_\_\_, a Texas non-profit corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes of consideration therein expressed.

GIVEN under my hand and seal of office this: \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas

**EXHIBIT A**

Property description as defined on a survey plat.