

## PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (“Agreement”) is made and entered into by and between the **CITY OF BURLESON** (the “City”), a home rule municipal corporation situated in portions of Tarrant and Johnson Counties, Texas and ARMSTRONG FORENSIC LABORATORY, INC. (“Consultant”).

### **1. SCOPE OF SERVICES.**

Consultant hereby agrees to provide the City with professional services for the purpose of **the services outlined in Exhibit A** Attached hereto and incorporated for all purposes incident to this Agreement. More specifically describing the services to be provided hereunder.

### **2. TERM.**

This Agreement shall commence upon execution by the parties, (“Effective Date”) for a one (1) year term unless terminated earlier in accordance with the provisions of this Agreement. Those obligations concerning warranties and representations which by their nature should survive termination of this Agreement, shall survive termination of this Agreement, including Articles 5, 6, 8, 12, 14-17, and 25-26.

### **3. COMPENSATION.**

This is a fixed-price contract. The City shall pay Consultant an amount not to exceed SIXTY-FIVE THOUSAND and NO/100 dollars in accordance with the fee schedule and Scope of Services outlined in Exhibit A, which is incorporated herein. Payment is subject to the other terms and conditions of this Agreement in exchange for the completion of tasks and delivery of services specified in Exhibit A. In the event of partial performance the City shall pay Consultant for only the itemized tasks completed and delivered. Consultant shall not perform any additional services for the City not specified by this Agreement unless the City requests and approves in writing the additional services and costs for such services. The City shall not be liable for any additional expenses of Consultant not specified by this Agreement unless the City first duly approves such expenses in a contract amendment executed by the City Manager or the City Manager’s designee.

The Contractor shall submit monthly payment invoices to the City. Invoices shall contain a detailed breakdown to include: task or deliverables to the City and date provided for the billing period, the amount billed for each task or deliverable, and the total amount due.

Payment for services rendered shall be due within thirty (30) days of the uncontested performance of the particular services so ordered and receipt by City of Contractor’s invoice for payment of same. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. No interest will accrue on any contested portion of the billing until mutually resolved. City will exercise reasonableness in contesting any billing or portion thereof.

#### **4. TERMINATION.**

##### **4.1. Written Notice.**

The City or Consultant may terminate this Agreement at any time and for any reason by providing the other party with 30 days written notice of termination.

##### **4.2 Non-appropriation of Funds.**

In the event no funds or insufficient funds are appropriated by the City in any fiscal period for any payments due hereunder, City will notify Consultant of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the City of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds shall have been appropriated.

##### **4.3 Duties and Obligations of the Parties.**

In the event that this Agreement is terminated prior to the Expiration Date, the City shall pay Consultant for services actually rendered or consultant shall reimburse the City for services paid for but not actually rendered, up to the date of notice of termination.

#### **5. DISCLOSURE OF CONFLICTS AND CONFIDENTIAL INFORMATION.**

Consultant hereby warrants to the City that Consultant has made full disclosure in writing of any existing or potential conflicts of interest related to Consultant's services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Consultant hereby agrees immediately to make full disclosure to the City in writing. Consultant, for itself and its officers, agents and employees, further agrees that it shall treat all information provided to it by the City as confidential and shall not disclose any such information to a third party without the prior written approval of the City. Consultant shall store and maintain City information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt City Information in any way. Consultant shall notify the City immediately if the security or integrity of any City information has been compromised or is believed to have been compromised.

#### **6. RIGHT TO AUDIT.**

Consultant agrees that the City shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records of the consultant involving transactions relating to this Contract at no additional cost to the City. Consultant agrees that the City shall have access during normal working hours to all necessary Consultant facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The City shall give Consultant reasonable advance notice of intended audits.

Consultant further agrees to include in all its subcontractor agreements hereunder a provision to the effect that the subcontractor agrees that the City shall, until expiration of three (3) years after final payment of the subcontract, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records of such subcontractor involving transactions related to the subcontract, and further that City shall have access during normal working hours to all subcontractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this paragraph. City shall give subcontractor reasonable notice of intended audits.

**7. INDEPENDENT CONTRACTOR.**

It is expressly understood and agreed that Consultant shall operate as an independent contractor as to all rights and privileges granted herein, and not as agent, representative or employee of the City. Subject to and in accordance with the conditions and provisions of this Agreement, Consultant shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors and subcontractors. Consultant acknowledges that the doctrine of *respondeat superior* shall not apply as between the City, its officers, agents, servants and employees, and Consultant, its officers, agents, employees, servants, contractors and subcontractors. Consultant further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between City and Consultant.

**8. LIABILITY AND INDEMNIFICATION.**

***CONSULTANT SHALL BE LIABLE AND RESPONSIBLE FOR ANY AND ALL PROPERTY LOSS, PROPERTY DAMAGE AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, TO THE EXTENT CAUSED BY THE NEGLIGENT ACT(S) OR OMISSION(S), MALFEASANCE OR INTENTIONAL MISCONDUCT OF CONSULTANT, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES.***

***CONSULTANT COVENANTS AND AGREES TO, AND DOES HEREBY, INDEMNIFY, HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR LAWSUITS FOR EITHER PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO CONSULTANT'S BUSINESS AND ANY RESULTING LOST PROFITS) AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OR MALFEASANCE OF CONSULTANT, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES.***

**9. ASSIGNMENT AND SUBCONTRACTING.**

Consultant shall not assign or subcontract any of its duties, obligations or rights under this Agreement without the prior written consent of the City. If the City grants consent to an assignment, the assignee shall execute a written agreement with the City and the Consultant under which the

assignee agrees to be bound by the duties and obligations of Consultant under this Agreement. The Consultant and Assignee shall be jointly liable for all obligations under this Agreement prior to the assignment. If the City grants consent to a subcontract, the subcontractor shall execute a written agreement with the Consultant referencing this Agreement under which the subcontractor shall agree to be bound by the duties and obligations of the Consultant under this Agreement as such duties and obligations may apply. The Consultant shall provide the City with a fully executed copy of any such subcontract.

**10. INSURANCE.**

Consultant shall provide the City with certificate(s) of insurance documenting policies of the following minimum coverage limits that are to be in effect prior to commencement of any work pursuant to this Agreement:

10.1 Coverage and Limits

- (a) Commercial General Liability  
\$1,000,000 Each Occurrence  
\$1,000,000 Aggregate
  
- (b) Automobile Liability  
\$1,000,000 Each accident on a combined single limit basis or  
\$250,000 Bodily injury per person  
\$500,000 Bodily injury per person per occurrence  
\$100,000 Property damage

Coverage shall be on any vehicle used by the Consultant, its employees, agents, representatives in the course of the providing services under this Agreement. "Any vehicle" shall be any vehicle owned, hired and non-owned.

- (c) Worker's Compensation  
Statutory limits  
Employer's liability  
\$100,000 Each accident/occurrence  
\$100,000 Disease - per each employee  
\$500,000 Disease - policy limit

This coverage may be written as follows:

Workers' Compensation and Employers' Liability coverage with limits consistent with statutory benefits outlined in the Texas workers' Compensation Act (Art. 8308 – 1.01 et seq. Tex. Rev. Civ. Stat.) and minimum policy limits for Employers' Liability of \$100,000 each accident/occurrence, \$500,000 bodily injury disease policy limit and \$100,000 per disease per employee

- (d) Errors & Omissions (Professional Liability):



\$1,000,000 Per Claim and Aggregate

If coverage is written on a claims-made basis, the retroactive date shall be coincident with or prior to the date to the contractual agreement. The certificate of insurance shall state that the coverage is claims-made and include the retroactive date. The insurance shall be maintained for the duration of the contractual agreement and for five (5) years following completion of the services provides under the contractual agreement or for the warranty period, which ever is longer. An annual certificate of insurance submitted to the City shall evidence coverage.

10.2 Certificates.

Certificates of Insurance evidencing that the Consultant has obtained all required insurance shall be delivered to the City prior to Consultant proceeding with any work pursuant to this Agreement. All applicable policies shall be endorsed to name the City as an additional insured thereon, as its interests may appear. The term City shall include its employees, officers, officials, agent, and volunteers in respect to the contracted services. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirement. The City reserves the right to make reasonable requests or revisions pertaining to the types and limits of that coverage. A minimum of thirty (30) days notice of cancellation or reduction in limits of coverage shall be provided to the City. Ten (10) days notice shall be acceptable in the event of non-payment of premium. Such terms shall be endorsed onto Consultant's insurance policies. Notice shall be sent to the Purchasing Manager, City of Burleson, 141 W. Renfro, Burleson, Texas 76028, with copies to the City Attorney at the same address.

10.3 Additional Insurance Requirements.

The insurance required herein must be provided by an insurer licensed to do business in the State of Texas. The insurance required herein must be provided by an insurer rated by the A.M. Best as "A-" or better or are rated "A" by Standard and Poor's. The insurance required herein shall be in full force and effect at all times during this Agreement.

**11. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.**

Consultant agrees to comply with all applicable federal, state and local laws, ordinances, rules and regulations. If the City notifies Consultant of any violation of such laws, ordinances, rules or regulations, Consultant shall immediately desist from and correct the violation.

**12. NON-DISCRIMINATION COVENANT.**

Consultant, for itself, its personal representatives, assigns, subcontractors and successors in interest, as part of the consideration herein, agrees that in the performance of Consultant's duties and obligations hereunder, it shall not discriminate in the treatment or employment of any individual or group of individuals on any basis prohibited by law. If any claim arises from an alleged violation of this non-discrimination covenant by Consultant, its personal representatives, assigns, subcontractors or successors in interest, Consultant agrees to assume such liability and to indemnify and defend the City and hold the City harmless from such claim.

**13. NOTICES.**

Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission, or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

To CITY:

City of Burleson  
City Manager  
Attn: Tommy Ludwig  
141 W. Renfro St.  
Burleson, TX 76028

To CONSULTANT:

ARMSTRONG FORENSIC  
LABORATORY, INC.  
DR. BEN ARMSTRONG  
330 LOCH'N GREEN TRAIL  
ARLINGTON, TX 76012

**14. GOVERNMENTAL POWERS.**

It is understood and agreed that by execution of this Agreement, the City does not waive or surrender any of its governmental powers.

**15. NO WAIVER.**

The failure of the City or Consultant to insist upon the performance of any term or provision of this Agreement or to exercise any right granted herein shall not constitute a waiver of the City's or Consultant's respective right to insist upon appropriate performance or to assert any such right on any future occasion.

**16. GOVERNING LAW / VENUE.**

This Agreement shall be construed in accordance with the internal laws of the State of Texas. If any action, whether real or asserted, at law or in equity, is brought on the basis of this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas.

**17. SEVERABILITY.**

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or

impaired.

**18. FORCE MAJEURE.**

The City and Consultant shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control (force majeure), including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, riots, material or labor restrictions by any governmental authority, transportation problems and/or any other similar causes.

**19. HEADINGS NOT CONTROLLING.**

Headings and titles used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

**20. REVIEW OF COUNSEL.**

The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or exhibits hereto.

**21. AMENDMENTS / MODIFICATIONS / EXTENSIONS.**

No extension, modification or amendment of this Agreement shall be binding upon a party hereto unless such extension, modification, or amendment is set forth in a written instrument, which is executed by an authorized representative and delivered on behalf of such party.

**22. ENTIRETY OF AGREEMENT.**

This Agreement, including the schedule of exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Consultant, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

**23. SIGNATURE AUTHORITY.**

The person signing this agreement hereby warrants that he/she has the legal authority to execute this agreement on behalf of the respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

**24. NO WAIVER OF GOVERNMENTAL IMMUNITY.**

Nothing contained in this Agreement shall be construed as a waiver of City's governmental

immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to City by law, except to the extent expressly provided or necessarily implied herein.

**25. MANDATORY OWNERSHIP DISCLOSURE PROVISION.**

Consultant shall submit completed Texas Ethics Commission Form 1295 Ownership Disclosure form to City at time of execution of Agreement pursuant to Texas Government Code Section 2252.908.

**26. MANDATORY ANTI-BOYCOTTING PROVISION.**

Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate:

- i. Pursuant to Section 2271.002 of the Texas Government Code, Consultant certifies that either (i) it meets an exemption criterion under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- ii. Pursuant to SB 13, 87th Texas Legislature, Consultant certifies that either (i) it meets an exemption criterion under SB 13, 87th Texas Legislature; or (ii) it does not boycott energy companies, as defined in Section 1 of SB 13, 87th Texas Legislature, and will not boycott energy companies during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- iii. Pursuant to SB 19, 87th Texas Legislature, Consultant certifies that either (i) it meets an exemption criterion under SB 19, 87th Texas Legislature; or (ii) it does not discriminate against a firearm entity or firearm trade association, as defined in Section 1 of SB 19, 87th Texas Legislature, and will not discriminate against a firearm entity or firearm trade association during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- iv. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Consultant certifies that either (i) it meets an exemption criterion under Subchapter F, Chapter 2252, Texas Government Code; or (ii) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Vendor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**27. NON-EXCLUSIVITY.**

Agreement is non-exclusive and City may enter into a separate Agreement with any other person or entity for some or all of the work to be performed under Agreement.

**28. NO THIRD-PARTY BENEFICIARIES.**

Except as expressly provided herein, nothing herein is intended to confer upon any person other than the parties hereto any rights, benefits or remedies under or because of this Agreement,

provided, however, that the described beneficiaries of the indemnity provisions of this Agreement are expressly intended third-party beneficiaries of this Agreement.

**29. BASIC SAFEGUARDING OF CONTRACTOR INFORMATION SYSTEMS.**

The Consultant shall apply basic safeguarding requirements and procedures to protect the Consultant's information systems whenever the information systems store, process, or transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by the City to the public or simple transactional information, such as that is necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent business person would employ" which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016).

Consultant shall include the substance of this clause in subcontracts under this contract (including subcontracts for the acquisition of commercial items other than commercially available off-the-shelf items) in which the subcontractor may have City contract information residing in or transiting through its information system.

**30. COUNTERPARTS; PDF SIGNATURES.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any pdf-format or other electronic transmission of any signature of a signatory shall be deemed an original and shall bind such signatory.

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# Armstrong

*Forensic Laboratory, Inc.*

## 2025 FEE SCHEDULE

THC Quantitation

Controlled Substance Identification

Blood Alcohol Content

Court Testimony



# Analytical Cost

Armstrong Forensic Laboratory, Inc. is accredited by ANAB and the TFSC to perform criminal casework in the State of Texas. Armstrong's analyses conform to ASTM and SWGDrug Identification Criteria and Code of Professional Practice.

All analyses are performed in Texas by Texas Forensic Science Commission Licensed Analysts.

<b>THC IDENTIFICATION AND QUANTITATION IN PLANT MATERIAL</b>	<b>\$ 110/Unit</b>
<b>THC IDENTIFICATION AND QUANTITATION IN NON-PLANT MATERIAL</b> E-cigs, vapes, edibles, waxes, oils, and non-green leafy material	<b>\$ 200/Unit</b>
<b>CONTROLLED SUBSTANCE AND PHARMACEUTICAL IDENTIFICATION</b> Additional components Reported, Same Sample Quantitation of component	<b>\$ 100/Unit</b> <b>\$ 55/each</b> <b>\$ 100/Unit</b>
<b>WEIGHT ONLY</b>	<b>\$ 100/Unit</b>
<b>BLOOD ALCOHOL CONTENT</b>	<b>\$ 100/Unit</b>

# Consultation and Court Fees

## *Kelly Wouters, Ph.D.*

Consultation, Travel, Phone and Standby \$ 345 /Hour

## *Wren Busby, Ph.D.*

Consultation, Travel, Phone and Standby \$ 295 /Hour

## *Blood Alcohol Analyst*

Consultation, Travel, Phone and Standby \$ 200 /Hour

Court Presentation and Deposition	Additional	\$ 100/Hour
Video Deposition	Additional	\$ 200/Hour
Affidavit of Laboratory Analysis		\$ 100.00/Case
Court Ready Data Package of Laboratory Analysis		\$ 250.00/Case
Duces Tecum		\$ 750.00/Case
Evidence Storage (6 mos.)		\$ 75.00/Case
Evidence Return Shipping		\$ 65.00/Box

# Price Acknowledgement

Pricing detailed in this Fee Schedule is valid from the date of the signed Acknowledgement through 2025. All services proposed will be provided as the proposed costs at any time those services are performed for all case work submitted within the agreement period. Any request for Affidavits, Court Ready Litigation Packets, or Duces Tecum not paid for by the requestor shall be owed by the submitting agency. Any defense requests will be directed to the prosecuting agency for a response. Any evidence left with Armstrong Forensic Laboratory, Inc. will be returned to the submitting agency at the submitting agencies expense. Should testimony on a case that was originally analyzed in the 2025 pricing period, Armstrong will perform that service at the agreed rate. Armstrong reserves the right to initiate negotiations related to any proposed service or fee for work to be submitted after the end of the 2025 agreement period.

Armstrong's General Terms and Conditions effective at the time services are performed are incorporated into this proposal and any services provided by Armstrong. A copy of Armstrong's General Terms and Conditions is available on request.

This Fee Schedule is accepted and forms an agreement between signer and Armstrong Forensic Laboratory,

_____ Signature of Authorized Personnel	_____ Date	_____ Ben Armstrong	_____ Date
_____ Print Name and Title		_____ President	
_____ Agency		_____ Armstrong Forensic Laboratory, Inc.	



# Notes

Controlled Substance Full Scan represents a full analysis, including weight and report of the primary controlled substance in the item or sub-sample.

Quantitative results (purity) are a separate analysis from the identification. Depending on the number of different units submitted as a single item, multiple sub-samples may be required for a representative analysis.

For evidence that must be sub-sampled to meet analytical methodologies, each sub-sample will be treated as an individual unit.

**The are no hidden fees for client cancellation, set up, untested samples, difficult samples, or sample cancellation due to insufficient sample.**

Armstrong maintains a library of reference standards including numerous synthetic drugs.

If a submitted sample contains a controlled substance not already included in Armstrong's libraries, the purchase of a reference standard may be necessary to confirm the identification.

In the event any additional standards are necessary, Armstrong will contact the Client for approval.

**Armstrong responds to requests from prosecutors handling the case, provides requested materials, and invoices the submitting agency, unless specifically directed otherwise by the submitting agency.**

Additional Component is considered to mean any other potentially significant analyte identified within the results; controlled or non-controlled by the State of Texas.

Event Charges may be incurred when Armstrong is requested to provide services that require efforts beyond the scope of its standard work-shift. (Mon.- Fri., 7a.m. - 6 p.m.)

Travel Expenses are charged as a Pass Through Cost. Mileage is charged at \$0.70 per mile.

Armstrong requests completed evidence be picked up or scheduled for return shipping within two weeks after the completion of the report. Evidence left at Armstrong for more than 30 days may be returned to the submitting agency at the agency's expense.

Armstrong is not a licensed destruction facility and cannot destroy or discard controlled substances and related evidence.

**Expedited Turn-around Options:**  
ASAP TAT – 100% Analytical Surcharge  
5 Day TAT – 50% Analytical Surcharge

**SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement:

**CITY OF BURLESON:**

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

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

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

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

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

Name: Benjamin Armstrong

Title: President

Date: Oct 24, 2024

ARMSTRONG FORENSIC  
LABORATORY, INC.

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
City Attorney, Assistant City Attorney,  
or Deputy City Attorney