

## STANDARD TERMS OF ENGAGEMENT

This document establishes the standard terms of our engagement as your attorneys. Unless modified in writing by mutual consent, these terms will be an integral part of our agreement. Therefore, we ask that you carefully review this statement and contact us promptly if you have any questions. We suggest that you retain this document in your file.

### I. Our Relationship

#### 1. Identity of Client

The *Bojorquez Law Firm, PC* ("Firm") will be representing the interests of the *City of Dripping Springs* ("City") as an organization.

#### 2. Nature of Representation

While in the future we may be directed to represent the City on other matters, our present relationship can be described as follows:

As directed by the Mayor, City Council, City Administrator, or City Attorney, and in coordination with the City Attorney, the Firm will serve as Special Counsel providing legal services on matters regarding Municipal Law, Local Government Law, Utility Law, and related areas.

#### 3. Scope of Work

As the client, it is imperative that you have a clear understanding of the services the Firm will provide. Any questions that you have should be dealt with promptly. We will provide services related only to matters as to which we have been specifically engaged. Such services may include, by agreement, law-related services such as city planning. Law-related services would be provided in whole or in part by individuals who are not attorneys. Accordingly, these services are not legal services. As such, communications between the City and the Firm regarding such work may not be subject to the *Texas Rules of Disciplinary Conduct* governing the attorney-client relationship. The Firm will at all times act on your behalf to the best of our ability. Any expressions on our part concerning the outcome of the City's municipal matters are expressions of our best professional judgment but are not guarantees. Such opinions are necessarily limited by our knowledge of the facts and are based on the state of the law at the time they are expressed. We cannot guarantee the success of any given matter, but we will strive to represent your interests professionally and efficiently.

#### **4. Client Responsibilities**

You agree to cooperate fully with the Firm and to provide us promptly with all information known or available to you relevant to our representation. The City agrees to pay our invoices in accordance with these STANDARD TERMS OF ENGAGEMENT and the corresponding letter of Engagement.

#### **5. Responsibilities of the Bojorquez Law Firm**

The Firm is committed to meeting the City's legal needs. In doing so, the Firm will: act competently and in a timely manner; protect the City's privileged information and ensure appropriate confidentiality; promote the City's interests; discuss the City's objectives and how they should best be achieved; and provide information about the work to be done, who will do it, when the work is expected to be completed and the way the services will be provided. The Firm will comply with Section 2252.908 of the Texas Government Code and file the Disclosure of Interested Parties. The Firm verifies that the Firm does not boycott Israel and will not boycott Israel during the term of this agreement.

#### **6. Ethical Conflict of Interest Disclosure**

The representation of more than one (1) municipal entity may present special ethical considerations under the *Texas Rules of Disciplinary Conduct*. The Firm may undertake representation of multiple municipal entities if the City agrees in writing after consultation about the risks of joint representation. The City may also consult with legal counsel other than the Firm regarding this representation.

A potential conflict could arise with respect to the subject matter of this representation. Based on the information now available at this time, the Firm is not aware of any actual conflicts among City and any other municipal entity. If the City becomes aware of anything that may suggest an actual conflict of interest, please bring it to the Firm's attention immediately.

If circumstances arise during the course of this matter that require or make it desirable that any of the clients obtain separate representation in this matter, the Firm would be free to continue to represent the remaining members of the client group in this matter. By signing these STANDARD TERMS OF ENGAGEMENT and accepting our joint representation, the City agrees that, if it becomes necessary or desirable for the City to retain other counsel, the City will not seek to disqualify the Firm from continuing to represent the remaining members of the client group.

## **II. Fees, Billing and Administrative**

### **1. Fees for Legal Services**

The charges for professional services provided by the Firm will typically be based upon the following: (1) the time devoted to the matter; (2) the novelty and difficulty of the questions presented; (3) the requisite experience, reputation and skill requested to deal with those questions; (4) time limitations imposed by the circumstances; (5) and the quality of the results obtained. Fees and costs for particular matters are unpredictable and we have made no commitment concerning maximum fees or costs. Unless otherwise indicated in writing, our fees for legal services are determined on the basis of the hourly rates of the respective attorney that will perform the services. These rates may vary depending on the expertise and experience of the individual. We adjust these rates from time to time, increasing them

as the individuals gain experience and expertise and to reflect current economic conditions. We will notify you in writing if this fee structure is modified.

**Hourly Rates:** All billings shall be as follows, and are invoiced in increments of one-tenth (.10) hours (i.e., in six-minute increments):

- Managing Attorney: \$250.00 per hour
- Of Counsel Attorney: \$200.00 per hour
- Senior Associate Attorney: \$184.00 per hour
- Associate Attorney: \$173.00 per hour
- Junior Associate Attorney: \$163.00 per hour
- Municipal Court Prosecution: \$155.00 per hour
- Land Planner: \$135.00 per hour
- Municipal Court Consulting: \$125.00 per hour
- Legal Secretary/Office Assistant: \$100.00 per hour
- Specialized Sub-Contractor: Negotiated
- Litigation: \$275.00 - \$300.00 per hour

## 2. Rate Adjustment

Billing rates are subject to increase a maximum of ten percent (10%) annually. No rate increase will exceed ten percent (10%) without first obtaining consent from the designated primary client representative. The City will be notified in writing when a rate adjustment will occur.

## 3. Other Charges and Handling Fees

All out-of-pocket expenses (such as long-distance telephone charges, copying charges, travel expenses, courier expenses, etc.) incurred by the Firm in connection with representing you will be billed to you as a separate item on your monthly statement.

A five percent (5%) handling fee will be assessed on all out-of-pocket expenses incurred on behalf of the City for consulting and engineering fees, appraisal costs, and other professional requirements of a matter.

## 4. Billing Procedures & Terms of Payment

Our billing period begins on the 27<sup>th</sup> of the month and ends on the 26<sup>th</sup> day of the following month. We will render monthly statements to you for legal services and expenses. We usually mail these statements toward the beginning of the month, following the latest date covered in the statement. Each statement is payable within thirty (30) days of its stated date and must be paid in U.S. Dollars. If any statement is not paid within thirty (30) days after its stated date, interest at the rate of six percent (6%) per month and eighteen percent (18%) per annum will accrue on the balance due. However, if at any time eighteen percent (18%) per annum exceeds the highest interest rate permitted by applicable law, then the interest rate that will be applied to any overdue amounts will be reduced to the maximum rate permitted under applicable law. If you have any questions or concerns about any statement that we submit to you for payment, please contact us at your earliest convenience so that we can resolve any problems without delay. If unresolved, overdue invoices may result in discontinuation of representation of the City. Typically, such issues can be resolved to the satisfaction of both sides with little inconvenience or formality.

**5. Fee Estimates**

We are often requested to estimate the amount of fees and costs likely to be incurred in connection with a particular matter. Your primary attorney will do their best to estimate fees and expenses for particular matters when asked to do so. However, an estimate is just that, and the fees and expenses required are ultimately a function of many conditions over which we have little or no control. Unless otherwise agreed in writing with respect to a specific matter, all estimates made by us shall be subject to your agreement and understanding that such estimates do not constitute maximum or fixed fee quotations and that the ultimate cost is frequently more or less than the amount estimated.

**6. Retainers**

Generally, there is no retainer for municipal clients. However, with substantial new matters for existing or new clients, the Firm may require a retainer. The retainer amount is not meant to be an estimate or limit of the fees and expenses required to complete the work on this matter but is intended as your good faith deposit against a portion of such fees and expenses. The retainer will be placed in our Trust Account and we will bill our fees and disbursements against the retainer. We will advise you if additional amounts are necessary to be placed in trust against which to bill future work. If our work is completed and your account is paid-in-full, yet a balance remains in on your retainer, we will refund the retainer to you upon request.

**7. Retention of Documents**

Although we will attempt to retain for a reasonable time copies of most documents generated by this Firm, we cannot be held responsible in any way for failure to do so, and we hereby expressly disclaim any such responsibility or liability. You must ultimately retain all originals and copies you desire among your own files for future reference.

**8. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, United States of America. Venue of any case or controversy arising under or pursuant to this Agreement shall be in *Williamson County*, Texas, United States of America.

**III. Termination of Services**

You have the right to terminate our services at any time upon providing written notice to us. Upon receipt of written notice from you, we will immediately cease to render additional services to the extent we can do so without jeopardizing your legal interests or our ethical obligations.

We reserve the right to discontinue work on pending matters or terminate our attorney-client relationship with you at any time that payment of your account becomes delinquent. We also reserve the right to withdraw when obligated by the *Texas Rules of Disciplinary Conduct*.

Additionally, if you fail to follow our advice and counsel, or otherwise fail to cooperate reasonably with us, we reserve the right to withdraw from representing you upon short notice, regardless of the then status of your matter. No termination shall relieve you of the obligation to pay fees and expenses incurred prior to such termination. Unless otherwise agreed in writing, representation will cease upon your payment in full of all fees due, and my Firm's conveyance

of your files to the destination you designate. The Firm's files (work product), will be retained at the Firm.

#### **IV. Internal Revenue Service (IRS) and Texas Workforce Commission (TWC) Status**

##### **1. Independent Contractor (IC)**

For purposes of federal income tax or social security withholdings, the Firm is an IC responsible for payment of its own taxes and not an employee of the City. The Firm, and not the City, is obligated to arrange for the required federal withholdings of the Firm's employees. Below is a summary of the IC versus employee requirements and a good general overview of how our services will be provided.

##### **2. The Internal Revenue Service**

The IRS assesses three (3) factors of the employer/individual relationship: behavioral control, financial control, and relationship of the worker and firm to determine who is an employee and who is an Independent Contractor. (*See* IRS Form SS-8). Again, depending on the type of business and the services performed, not all sections of the form may apply, and the weight assigned to a specific factor may vary depending on the facts.

##### **3. The Texas Workforce Commission**

The TWC has adapted the old IRS twenty-factor test, known as the "direction or control" test to determine who is an employee and who is an IC (*see* TWC Form C-8). Depending on the type of business and the services performed, not all of the twenty common law factors may apply, and the weight assigned to a specific factor may vary depending upon the facts.

Below are considerations for the TWC's twenty-factor test, which also generally address issues of behavioral control, financial control, and relationship of the worker and firm.

##### **(a) Financial Control**

In general, an employee is usually paid for their time, whereas an independent contractor is usually paid by the job. An employee usually does not negotiate their pay, whereas an independent contractor usually negotiates their pay to ensure a profit. An employee is not expected to invest in the business they work for so the employer takes care of tax matters and expenses, whereas an independent contract is investing in their independent business so the IC takes care of all expenses and taxes.

##### **(b) Relationship of Worker & Business Entity**

In general, an employee does not usually advertise their services, whereas an IC does. An employee carries business cards that reflect the employer's name, whereas an IC carries business cards that reflect the IC's business name. An employee is primarily reached at the employer's phone number, whereas an IC is primarily reached at their business phone number.

##### **(c) Behavioral Control**

In general, an employer contracting for IC services is normally interested in the end result, not in the details of how the work is done. The employer should have no



interest in how the IC allocates his or her time, or who the IC hires to assist (other than requiring proper licensure).

**V. Questions**

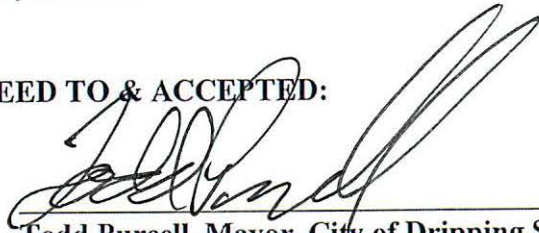
If during the course of our representation you have any questions about any aspect of our arrangements, please feel entirely free to raise those questions. The Firm wants all of our clients to have a clear and satisfactory understanding about every aspect of our billing and payment policies. Accordingly, we encourage an open and frank discussion of any or all of the matters mentioned in this document.

**VI. Acceptance of and Consent to the Standard Terms and Engagement**

If this arrangement is acceptable to you and the City, please sign these Terms and return to the Firm at your earliest convenience. We are truly honored that you are willing to make our Firm part of your team.

**AGREED TO & ACCEPTED:**

by:



Todd Purcell, Mayor, City of Dripping Springs

date: 2/18/2020

by:



Alan Bojorquez, Managing Attorney, Bojorquez Law Firm, PC

date: January 20, 2020

*Please return a signed original of the **STANDARD TERMS OF ENGAGEMENT** to the Bojorquez Law Firm via mail, fax, or email.*