

**PROFESSIONAL SERVICES AGREEMENT**

**STATE OF TEXAS**                     §  
  §           **KNOW ALL MEN BY THESE PRESENTS:**  
**COUNTY OF BEXAR**               §

This Professional Services Agreement (the “Agreement”) between the City of Leon Valley, Texas, a Texas municipal corporation (hereinafter referred to as “City”), and Stephen J. Barscewski (hereinafter called “Contractor”), sometimes collectively referred to herein as the “Parties,” is for the purpose of procuring inspection services for the City.

**RECITALS**

**WHEREAS,** it is necessary that the City procure health inspection services to perform the functions and duties specified in the applicable sections of City ordinances; and

**WHEREAS,** City desires to engage the Contractor as the City’s Health and Sanitation Inspector; and

**WHEREAS,** Contractor is an independent contractor and shall perform the services described herein on a contract basis and not as an employee; and

**WHEREAS,** Contractor shall conduct inspection on an “as needed” basis for the City;

**NOW, THEREFORE,** in consideration of the foregoing and on the terms and conditions hereinafter set forth and for other good and valuable mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Contractor agree as follows:

**ARTICLE I  
RESPONSIBILITIES  
AND OBLIGATIONS**

**1.1 Contractor’s Responsibilities**

- (a) Contractor shall perform for the City those health and sanitation inspections and other related services as required to enforce the City’s Chapter 12 “Health and Sanitation” and other related health and sanitation ordinances. In connection, the Contractor is hereby designated and authorized to perform and shall perform, the necessary services as Health and sanitation Officer of the City.
  
- (b) Contractor shall perform plan review and approval on all new construction and remodeling of food establishments and other public health-related construction within the City.
  
- (c) Contractor shall routinely inspect all food service establishments, public swimming pools, day-care facilities and other public places, and shall prepare and file with the City a report of each inspection.

(d) Risk Categories shall be assigned by the Health and Sanitation Officer for each establishment. The frequency of inspection for establishments categorized as Risk Factors 3 and 4 shall be two (2) times per year. The frequency of inspection for establishments categorized as Risk Factors 1 and 2 shall be one (1) time per year.

(e) Contractor shall investigate and take appropriate action as set forth in the above-referenced health ordinance and in accordance with applicable law regarding all health violations and nuisances within the City, including but not limited to:

- A. Potential and or reported food poisoning;
- B. Insects, rodents and other potential non-human sources of contamination;  
and
- C. Garbage, trash and filth as deemed necessary.

(f) The frequency of inspections for complaints shall be based upon formal complaints received by the Leon Valley Planning and Zoning Department.

(g) Additional reinspection of establishments shall be made from time to time as conditions and requirements dictate.

(h) The Contractor shall obtain approval from the Director of the Planning and Zoning Department to conduct Food safety Training.

(i) Contractor shall notify Director of Planning and Zoning of all citations and scheduled court appearances prior to actual court date.

(j) Contractor shall collect, transport and maintain product samples for laboratory testing and or court actions, when necessary.

(k) The Contractor shall maintain written records and provide monthly and annual written reports stating inspections data such as the name of establishments, location, date of inspection, demerits received, risk factor, and type of inspection to the Director of Planning and Zoning concerning all activities, said shall be in a format mutually agreeable to City and Contractor.

(l) Contractor shall provide Director Planning and Zoning with an annual evaluation of the Leon Valley Food Establishments program by September 30<sup>th</sup> of every agreement. In addition, the Contractor shall make recommendations for revisions to the Leon Valley Health Sanitation Code, as required. Said report shall be in a format mutually agreeable to City and Contractor.

(m) The Contractor shall not sublet or assign any work under this Agreement except in case of unexpected or scheduled absence(s). The contractor shall provide the City with the name of a registered sanitarian who may temporarily perform the primary Contractor's duties.

(n) The contractor agrees to use the City's software program to upload reports.

(o) The Contractor agrees to provide a Registered Professional Sanitarian backup inspector if said contractor is not available.

## 1.2 Contractor's Obligations

(a) Contractor shall devote such time as reasonably necessary for the satisfactory performance of work under this Agreement and as described in Section 1.1 ("Services"). The Contractor shall:

- A. Perform the Services set forth in Subsection 1.1 above.
- B. Devote as much productive time, energy, and ability to the performance of his duties under this Agreement as may be necessary to provide the required Services in a timely and productive manner.
- C. Perform the Services in a safe, good and workmanlike manner using at all times adequate equipment in good working order.
- D. Communicate with the City about progress the Contractor has made in performing the Services.
- E. Supply all tools, equipment and supplies required to perform the Services, except if the Contractor's work must be performed on or with the City's equipment.

## 1.3 Confidential Information

(a) Contractor will perform services for City which may require City to disclose confidential and proprietary information to Contractor or which may require City to grant authorization to Contractor to make or enter financial and legal transactions on behalf of the City. Confidential information includes, but is not limited to, any information of any kind, nature or description concerning matters affecting or relating to Contractor's services for the City, business operations of the City and/or, employee data, products, projects, drawings, plans, processes or other data of City. For financial and legal transactions, contractor shall obtain authorization from City prior to entering into such transactions. Contractor further agrees:

- A. to use reasonable network and data security to protect City.
- B. Not to reproduce confidential information or use the information for any purpose other than the performance of the work specified under Section 1.1 and 1.2.
- C. That upon request or upon termination of this Agreement, to deliver to City any notes, documents, equipment or material received from City created by or originating from his activities for City.
- D. City shall have the sole right to determine the treatment of any information that is part or project described under Section 1.1 and 1.2, including the right to keep information confidential and proprietary.

## 1.3 City's Responsibilities

(a) The City agrees to pay the Contractor for services rendered pursuant hereto the following:

Food Establishment Commercial	\$55.00
Food Service Establishment Commercial	\$85.00
Retail Food Store Commercial	\$55.00
Temporary Food Booths Commercial	\$30.00

Certificate of Occupancy Commercial	\$85.00
Day-Care Facility Commercial	\$85.00
Foster/Custodial Care Facility residential	\$55.00
Plan Review Commercial/residential	\$55.00
Semi-Public and Public Pool/ Spa Commercial	\$50.00
Additional Pools/Spa Same Location	\$45.00
Complaint Investigation Commercial/residential	\$50.00
Reinspection commercial/residential	\$50.00
Training	\$50.00
Court Appearances (hour)	\$50.00

(b) As compensation for services under this agreement, the Contractor shall be paid the above fees as services are rendered on a monthly basis. Contractor will not be compensated for holidays, vacation time, or benefits. Contractor is responsible for complying with reporting requirements for all local, state and federal taxes related to payments made to Contractor under this Agreement.

(c) All fees paid to Contractor by City shall be based on invoices submitted to City in writing by Contractor for work performed. While invoices shall be submitted monthly, Payment shall be due in accordance with the City’s regular payment practices.

**ARTICLE II  
TERM**

The term of this Agreement shall be three (3) years commencing on the date this Agreement is signed by all parties and terminating in year three on the date signed by all parties.

**ARTICLE III  
TERMINATION**

**3.1 Termination Without or Without Cause**

(a) Notwithstanding anything in this Agreement to the contrary, City may terminate this Agreement for any reason subject to Section 3.2 and Section 6.17.

(b) Notwithstanding anything in this Agreement to the contrary, Contractor may terminate this Agreement for any reason subject to Section 3.2.

**3.2** This agreement may be terminated by either party by giving thirty (30) days written notice of termination to the other party.

**ARTICLE IV  
INDEMNIFICATION**

**CONTRACTOR COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, CITY (AND THEIR ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES), INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO CONTRACTOR' NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF CONTRACTOR, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF CONTRACTOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY, UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. CONTRACTOR SHALL PROMPTLY NOTIFY CITY, IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY, RELATED TO OR ARISING OUT OF CONTRACTOR' ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT CONTRACTOR' COST TO THE EXTENT REQUIRED BY THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH. CITY SHALL HAVE THE RIGHT, AT THEIR OPTION AND AT THEIR OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING CONTRACTOR OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.**

**IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT, THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH, IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY, PROTECT AND HOLD HARMLESS CITY, FROM THE CONSEQUENCES OF CITY'S OWN NEGLIGENCE; PROVIDED HOWEVER, THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL APPLY ONLY WHEN THE NEGLIGENT ACT OF CITY IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE, AND IT SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF CITY IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE. CONTRACTOR FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF AND IN THE NAME OF CITY ANY CLAIM OR LITIGATION BROUGHT AGAINST CITY (AND THEIR ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES), IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR**

**PROPERTY DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE.**

**THE CONTRACTOR SHALL ALSO INDEMNIFY CITY AND THEIR RESPECTIVE OFFICIALS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTIONS, SUITS AND LIABILITIES ARISING OUT OF THE CONTRACTOR' AND THE CONTRACTOR' GENERAL CONTRACTOR'S ACTIONS RELATED TO THE CONSTRUCTION OF THE IMPROVEMENTS.**

**IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY PROVIDED TO THE CITY SHALL SURVIVE THE TERMINATION AND/OR EXPIRATION OF THIS AGREEMENT AND SHALL BE BROADLY INTERPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFICATION OF THE CITY PERMITTED BY LAW.**

**ARTICLE V  
INSURANCE**

**5.1** The Contractor shall maintain, at its own cost and expense, such usual, customary, and appropriate insurance including workers compensation insurance protecting Contractor and City from all claims for damages to persons and to property which may arise from any operations under this Agreement, or any of its amendments. All policies other than workers compensation shall name the City as an additional insured include a blanket waiver of subrogation as to the City.

**5.2** The failure of the Contractor at any time to provide the insurance required by Section 5.1 shall be considered a material breach of this Agreement for which the City shall be entitled to damages, including termination of the Agreement for uncured violations.

Commercial General Liability	Each Occurrence	\$1,000,000
	Damage to rented Premise	\$1,000,000
	Personal & Adv Injury	\$1,000,000
	General Aggregate	\$1,000,000
	Errors and Omission	\$1,000,000

**ARTICLE VI  
MISCELLANEOUS**

**6.1 Binding Agreement.**

The terms and conditions of this Agreement shall be binding on and inure to the benefit of the City and Contractor. The City Manager/or designated agent shall be responsible for the administration of this Agreement and shall have the authority to execute any instruments, duly approved by the City of Leon Valley, Texas.

**6.2 Mutual Assistance.**

City and Contractor will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

**6.3 Representations and Warranties.**

The Parties mutually represent and warrant to each other that they have the requisite authority to enter into this Agreement. The Parties agree to be bound hereby in the manner exclusively provided herein.

**6.4 Assignment.**

Contractor shall not assign its rights, duties, or obligations under this Agreement without the prior approval of the City whose consent may be withheld for any reason.

**6.5 Notice.**

Any notice required or permitted to be delivered hereunder shall be deemed delivered by email provided by the contractor below, or actual delivery, facsimile with receipt confirmation, or by depositing the same in the United States Mail, postage prepaid and certified with return receipt requested, addressed to the Party at the address set forth below:

**IF INTENDED FOR CITY:**

City of Leon Valley  
6400 El Verde Road  
Leon Valley, Texas 78238  
Attn: City Manager

**WITH A REQUIRED COPY TO:**

City Attorney's Office  
City of Leon Valley  
4201 Parmer Lane  
Building C, Suite 150  
Austin, Texas 78727  
Attn: City Attorney

**IF INTENDED FOR CONTRACTOR:**

Stephen Barscewski  
\_\_\_\_\_  
\_\_\_\_\_

Either Party may designate a different address at any time upon written notice to the other

#### **6.6 Governing Law.**

The Agreement shall be governed by the laws of the State of Texas, and the venue for any action concerning this Agreement shall be in Bexar County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

#### **6.7 Amendment.**

This Agreement may be amended by mutual written agreement of the Parties.

#### **6.8 Legal Construction.**

In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement, and it is the intention of the Parties to this Agreement that, in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

#### **6.9 Interpretation.**

Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, whatever its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

#### **6.10 Entire Agreement.**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement, except as provided for in any Exhibits attached hereto or duly approved amendments to this Agreement.

#### **6.11 Recitals.**

The recitals to this Agreement are incorporated herein as findings of fact.

#### **6.12 Paragraph Headings.**

The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

#### **6.13 Counterparts.**

This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.



**6.14 Exhibits.**

Any Exhibits attached hereto are incorporated by reference for all purposes.

**6.15 Appropriation.**

The Leon Valley City Council (“Council”) has appropriated, set aside and encumbered, and does hereby appropriate, set aside, and encumber, available and otherwise unobligated funds of the City in an amount sufficient to fund and pay all financial obligations of the City pursuant to this Agreement.

**6.16 Survival of Covenants.**

Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

**6.17 Opportunity for Cure.**

Should Contractor default in the performance of this Agreement, same shall be considered an “Event of Default”. City shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have ten (10) calendar days after receipt of the written notice, in accordance with Section 6.5, to cure such default. If Contractor fails to cure the default within such ten (10) day cure period, City shall have the right, without further notice or adoption of an ordinance or resolution, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another Contractor to complete the work required in this Agreement.

**EXECUTED** the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

CITY OF LEON VALLEY, a Texas municipal corporation

By: \_\_\_\_\_  
Crystal Caldera  
City Manager

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Nicole Warren  
City Attorney

BB INSPECTION SERVICES, LLC, a Texas  
limited liability corporation

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

