

PROFESSIONAL SERVICES AGREEMENT

UNIFIED DEVELOPMENT ORDINANCE (UDO)

for

CITY OF MONTGOMERY, TEXAS

STATE OF TEXAS                   §  
                                                  §  
COUNTY OF MONTGOMERY       §

KNOW BY THESE PRESENTS:

This Agreement made this \_\_\_ day of \_\_\_\_\_, 2024, by and between the City of Montgomery, Texas, acting by and through Gary Palmer, City Administrator, hereinafter referred to as the "CLIENT," and Kendig Keast Collaborative, an Illinois Corporation, acting by and through its Chief Executive Officer, Mr. Bret C. Keast, with an office located at 1415 Highway 6 South, Suite D-100, Sugar Land, Texas, 77478, hereinafter referred to as the "CONSULTANT," do hereby make and enter into the following Agreement.

ARTICLE I  
CONSULTANT

- 1.1 The CONSULTANT, as an independent contractor, covenants and agrees to perform the professional planning services related to the Unified Development Ordinance (hereinafter, "UDO") as described in Article II, Scope of Services. Such services shall be performed by the CONSULTANT in strict accordance with the terms of this Agreement and for the consideration stated. Subject to the provisions of Article VI below, CONSULTANT covenants and agrees to perform the specific services identified in Exhibit "A" – Scope of Services. The CONSULTANT shall complete the Scope of Services and shall submit deliverables to the CLIENT as identified in Exhibit "A" – Scope of Services.
- 1.2 The CONSULTANT shall provide its services under this Agreement with the same degree of care, skill, and diligence as is ordinarily provided by a professional planner under similar circumstances for the preparation of a UDO and to which the Agreement applies.

ARTICLE II  
SCOPE OF SERVICES

- 2.1 The CONSULTANT will perform the professional planning services related to the development of the UDO as set forth in Exhibit "A" – Scope of Services, which is attached and made a part of this Agreement.
- 2.2 Pursuant to this Agreement, the CLIENT shall have the option to obtain the services of the CONSULTANT to perform Additional Services. All such Additional Services shall be described in a written Amendment to this Agreement, as provided by Article X, Changes or Termination, including description of the additional work, associated compensation, and time schedule as applicable. By way of illustration, matters which may constitute Additional Services shall include, but are not limited to, the following:

- (a) Requested additional workshops or meetings other than the number identified in the Scope of Services and project schedule that require added preparation or follow-up or displace other planned trip activities;
- (b) Requested additional trips other than the number identified in the Scope of Services and Project schedule;
- (c) Requested additional days or nights added to a scheduled trip that require additional time and direct expenses (e.g., meals, hotel nights, extended car rental and gasoline use, airline change fees, extended airport parking, etc.);
- (d) Other requested work tasks, study activities, or documentation not foreseen or specifically identified in the Scope of Services;
- (e) Requested additional deliverables or additional physical copies of deliverables, including the submission at key milestones of draft and final written reports or maps other than those specified, or in a quantity greater than the number identified, in the Scope of Services;
- (f) Requested additional revisions (individual or cumulative) to draft and final deliverables that are beyond the single comprehensive round of revisions that are to be collected, consolidated, and annotated by the CLIENT as specified in the Scope of Services;
- (g) Requested review and provision of recommendations relating to other planning or development related issues and matters other than those for which such findings and recommendations are specified in the Scope of Services;
- (h) Further requested changes to a deliverable which the CONSULTANT has already revised based on review comments and which the CLIENT has already accepted as revised, and which the CONSULTANT determines to be significant and substantive changes to a deliverable already at a point of substantial completion in accordance with the Scope of Services and available budget; and
- (i) Other related or unrelated professional planning services that may be requested by the CLIENT which are not specified in the Scope of Services.

2.3 Upon written Notice to Proceed issued by CLIENT, CONSULTANT, through its authorized Subconsultant set forth in Article III, Consultant Personnel, will perform the services set forth in Exhibit "B" – Software as a Service Agreement, which is attached and made a part of this Agreement. These services relate to development of the cloud platform used to draft, publish to the web, archive and host the UDO.

### ARTICLE III CONSULTANT PERSONNEL

- 3.1 The CONSULTANT represents that it has or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the CLIENT.
- 3.2 The CONSULTANT may contract with subconsultants for portions of the work or services under this Agreement with the prior written approval of the CLIENT. The subconsultant to be utilized to fulfill these services is enCodePlus, LLC. Any work or services subcontracted hereunder shall be specified by a written agreement and shall be subject to the provisions of this Agreement.

**ARTICLE IV**  
**SUPPORT SERVICES**

- 4.1 The CLIENT agrees to provide the CONSULTANT with support services during conduct of the services listed in Article II, Scope of Services. Support services will include the services described in Exhibit "C" – Support Services, which is attached and made a part of this Agreement.
- 4.2 To the extent authorized by law, the readily available existing data and documentation obtained by the CLIENT that are relevant to the accomplishment of the Scope of Services specified in Article II shall be made available by the CLIENT for use by the CONSULTANT.
- 4.3 The CLIENT shall consider and act on all documents and project work items submitted by the CONSULTANT that require review, comments or approval by the CLIENT within a timeframe specified in Exhibit "A" Scope of Services and/or in the project schedule so as to enable the CONSULTANT to complete the work on schedule as provided in Article V of this Agreement.
- 4.4 The CLIENT agrees to provide the CONSULTANT with support services needed to organize, schedule, notify, provide meeting locations, conduct meetings, and prepare minutes of meetings including committees, workshops, public meetings, and public hearings as described in Exhibit "C" – Support Services. The CONSULTANT will advise and coordinate with the CLIENT to accomplish these support services.
- 4.5 In the event CLIENT fails to provide any of the needed Support Services in a timely or adequate manner, as documented in a progress report, any additional time or expenses incurred or required by CONSULTANT as a result of such failure shall be compensated on a basis of reimbursement of Actual Costs Incurred ("ACI") by CLIENT in the same manner as, and shall be considered to be, Additional Services.

**ARTICLE V**  
**TIME OF PERFORMANCE**

- 5.1 The CONSULTANT shall commence services upon execution of this Agreement and receipt of written Notice-to-Proceed from the CLIENT.
- 5.2 The CONSULTANT shall make a good faith effort to complete the services described in Article II, Scope of Services within eighteen (18) months from receipt of written Authorization to Proceed by the CLIENT, unless one or more of the following occur:
- (a) This Agreement is terminated in accordance with Article X, Changes or Termination;
  - (b) The Scope of Services and/or Time of Performance are changed in accordance with Article II, Scope of Services or Article X, Changes or Termination; or
  - (c) Matters documented by CONSULTANT in progress reports render such completion schedule impossible or impractical.
- 5.3 If executed by CLIENT and CONSULTANT, the agreement set forth in Exhibit "B", Software as a Service, shall survive the expiration or termination of this Agreement, shall become an independent Agreement, and shall remain in effect in accordance with its terms.

- 5.4 The completion schedule set forth in Section 5.2 may be subject to causes that result in delay over which neither the CONSULTANT nor the CLIENT has any control. Notification and justification for any such delays identified by the CONSULTANT must be included in progress reports. The schedule of work will be extended to include any such delays pursuant to Article X, Changes or Termination.
- 5.5 This Agreement shall terminate upon the CLIENT's final acceptance of work completed by the CONSULTANT, unless otherwise terminated or modified as hereinafter provided.

**ARTICLE VI**  
**COMPENSATION TO CONSULTANT**

- 6.1 The CLIENT shall compensate the CONSULTANT for the professional services performed under this Agreement, and for the software set forth in Exhibit "B", Software as a Service if that Agreement is executed by CLIENT and CONSULTANT.
- (a) Basic Services. For the Basic Services described in Exhibit "A" Scope of Services under Article II, Scope of Services, the CLIENT shall pay to the CONSULTANT on a basis of reimbursement of Actual Costs Incurred ("ACI") an amount of three hundred forty-five thousand three hundred fifty-one dollars (\$345,351).
- (b) Software as a Service. For the Software and Services described in Exhibit "B" Software as a Service Agreement," if the Agreement is executed by CLIENT and CONSULTANT, the CLIENT shall pay to the CONSULTANT a lump sum amount of zero and no dollars (\$0.00), plus the annual fees set out therein.

ACI includes salary costs, overhead, direct expenses, and profit. The above ACI amount may be modified pursuant to Article X, Changes or Termination, in the event of increased cost, change in the Scope of Services, an extension of time beyond that specified in Section 5.2, or an increase or decrease in the complexity or character of the work. In addition to ACI, CLIENT agrees to compensate CONSULTANT on a basis of reimbursement of Actual Costs Incurred ("ACI") for any Additional Services as provided by Article II, Scope of Services, provided that such Additional Services are agreed upon in writing prior to their being undertaken. The cost of such Additional Services shall be invoiced separately by CONSULTANT and paid by CLIENT upon receipt of billing for such services. Such payments shall be in addition to and have no bearing on the above ACI amount. Payments by CLIENT under this Agreement, including the timeliness of payment and the payment of interest on overdue amounts, are subject to Chapter 2251, Texas Government Code.

- 6.2 Each invoice from the CONSULTANT shall be due and payable by the CLIENT upon receipt by the CLIENT, subject to the terms of Section 6.1. The billing statement, certified true and correct by CONSULTANT, shall show the total amount paid and the amount due and payable as of the date of the current statement. Amounts paid and due for Additional Services shall be identified on a separate invoice.

- 6.3 The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the CLIENT for the performance of this Agreement. If at any time during the period of performance under this Agreement, sufficient appropriations and authorization are not made by the CLIENT, this Agreement shall terminate upon written notice being given by the CLIENT to the CONSULTANT. In such event, CLIENT shall comply with the provisions of Section 10.4 below. The CLIENT's decision as to whether sufficient appropriations are available shall be accepted by the CONSULTANT and shall be final.

**ARTICLE VII**  
**PRODUCT OF SERVICES, COPYRIGHT**

- 7.1 Exclusive of the licensed software set forth in Exhibit "B", Software as a Service, the CONSULTANT and the CLIENT mutually agree that reports, maps and materials prepared or developed under the terms of this Agreement shall be delivered to and become the property of the CLIENT. The CONSULTANT shall have the right to retain copies and to utilize the product of services for marketing purposes, except for any confidential information, as defined in Article XI, hereof.
- 7.2 The CONSULTANT shall furnish the CLIENT with the number of copies of reports as shown in Exhibit "A" – Scope of Services.
- 7.3 Exclusive of the licensed software set forth in Exhibit "B", Software as a Service, nothing produced in whole or in part by the CONSULTANT under this Agreement shall be the subject of an application for copyright by or for the CONSULTANT.

**ARTICLE VIII**  
**PRIVATE INTERESTS OF PUBLIC OFFICIALS AND CONSULTANT**

- 8.1 No official, employee, agent, or member of the local public body of the CLIENT shall have any financial interest, direct or indirect in this Agreement or the proceeds thereof.

**ARTICLE IX**  
**CERTIFICATIONS OF CONSULTANT**

- 9.1 The CONSULTANT has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement, and it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, any commission, percentage, brokerage fee, or any other consideration, contingent upon or resulting from the award or making of this Agreement.
- 9.2 The CONSULTANT presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services under this Agreement.

**ARTICLE X**  
**CHANGES OR TERMINATION**

- 10.1 This Agreement may not be altered, changed or amended except by instrument in writing executed by the parties hereto.
- 10.2 The CLIENT may, from time to time, request changes in the Scope of Services and/or time of performance for the services of the CONSULTANT to be performed hereunder. Such changes, including any increase or decrease in the amount of the CONSULTANT'S compensation, which are mutually agreed upon by and between the CLIENT and the CONSULTANT, shall be incorporated in written amendments to this Agreement.
- 10.3 This Agreement may be terminated before the termination date stated in Article V, Time of Performance, by any of the following conditions:
- (a) Right of Either Party to Terminate for Cause - This Agreement may be terminated by either of the parties hereto for failure by the other party to perform in a timely and proper manner its obligations under this Agreement. A signed, written notice of such termination shall be delivered to the other party by express mail with point-by-point tracking and such termination shall take effect twenty (20) days after the notice is deposited in the express mail, provided that the failure to perform has not been remedied by that time. By such termination, neither party may nullify obligations already incurred for performance or failure to perform before the date of termination.
  - (b) Right of the CLIENT to Terminate for Convenience - This Agreement may also be terminated by the CLIENT for any reason. A signed, written notice of such termination shall be delivered to CONSULTANT by registered or certified mail and such termination shall take effect not less than seven (7) calendar days following the date the notice is received by the CONSULTANT.
- 10.4 Upon receipt of a notice of termination under any of the conditions under Sections 6.3 or 10.3 above, the CONSULTANT shall, unless the notice otherwise directs, immediately discontinue all services in connection with the performance of this Agreement. Within thirty (30) days after receipt of the notice of termination, the CONSULTANT shall submit a Final Statement, showing the services performed under this Agreement prior to the effective date of termination. Such Final Statement shall also include any unpaid amounts or unreimbursed expenses, as well as any financial obligations incurred by CONSULTANT on behalf of CLIENT and which cannot reasonably be refunded to CONSULTANT, all of which CLIENT agrees to pay upon receipt of said Final Statement. Data and study products prepared by the CONSULTANT and paid for by CLIENT under this Agreement shall be delivered to the CLIENT within seven (7) calendar days from the date the data and study produces are requested by CLIENT
- 10.5 Notwithstanding the provisions of this Article X, the CONSULTANT shall not be relieved of liability to the CLIENT for damages sustained by the CLIENT by virtue of any negligent act or omission or any breach of this Agreement by the CONSULTANT.

**ARTICLE XI**  
**CONFIDENTIALITY**

- 11.1 Any information determined to be confidential that is provided to the CONSULTANT by the CLIENT or obtained or developed by the CONSULTANT for the benefit of the CLIENT in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the CONSULTANT without prior written approval of the CLIENT. Confidential information shall only be used for the purposes of this Agreement and shall not copy, disclose, convey or transfer any of the Confidential Information to any third party, excluding the party's authorized employees. Provisions regarding the confidentiality of the licensed software are inclusive of the terms and conditions of the software.

**ARTICLE XII**  
**INSPECTION OF RECORDS**

- 12.1 The CONSULTANT shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by the CLIENT to assure proper accounting for all project funds. These records will be retained for three years after the expiration of this Agreement.
- 12.2 Any time during normal business hours and as requested by the CLIENT, the CONSULTANT shall make available to the CLIENT for examination all of its project records with respect to all matters covered by this Agreement and will allow the CLIENT to review, examine, and make excerpts from such records, and to make copies of all contracts, invoices, materials, payrolls, records of personnel conditions of employment, and other data relating to all matters covered by this Agreement. The financial records of the CONSULTANT are maintained in its corporate office located in Sugar Land, Texas, and copies will be available upon request in a timely manner in this office for audit purposes to the CLIENT or its authorized representative.

**ARTICLE XIII**  
**INSURANCE**

- 13.1 Insurance
- A. The CONSULTANT agrees to maintain Worker's Compensation Insurance to cover all of its own personnel engaged in performing services for the CLIENT under this contract in the following amounts:
- Worker's Compensation: Statutory
- B. The CONSULTANT also agrees to maintain Commercial General Liability, Business Automobile Liability, Umbrella Liability, and Errors and Omissions Insurance, covering claims against the CONSULTANT for any incidents arising in the course of work performed under this Agreement, in the following amounts:

Commercial General Liability Insurance: Personal injury and property damage -- \$1,000,000.00 combined single each occurrence and \$2,000,000.00 general aggregate

Business Automobile Liability for all vehicles: Bodily injury and property damage -- \$1,000,000.00 combined single limit each occurrence

Umbrella Liability: \$2,000,000.00

Errors and Omissions: \$1,000,000.00

#### **ARTICLE XIV MISCELLANEOUS PROVISIONS**

- 14.1 Force Majeure. Neither the CLIENT nor the CONSULTANT shall be required to perform any term, condition, or covenant of this Agreement while such performance is delayed or prevented by acts of God, material or labor restriction by any governmental authority, terrorism, civil riot, floods, hurricanes, or other natural disasters, any other cause not within the control of the CLIENT or the CONSULTANT that by the exercise of due diligence the CLIENT or the CONSULTANT is unable, wholly or in part, to prevent or overcome and supersedes all prior agreements and understanding between CLIENT and CONSULTANT concerning the subject matter of this Agreement.
- 14.2 Entire Agreement. This Agreement constitutes the entire agreement between the CLIENT and the CONSULTANT. No other agreements, amendments, modifications, implied or otherwise, shall be binding on any of the parties unless set forth in writing and signed by both parties.
- 14.3 Choice of Law. The CLIENT and the CONSULTANT agree that this Agreement shall be construed in accordance with the laws of the State of Texas.
- 14.4 Dispute Resolution. Any dispute, controversy or claim between the parties shall be resolved in the following manner:

The parties will attempt in good faith to resolve any dispute, controversy or claim arising out of or relating to this Agreement promptly by negotiation between designated executives or other representatives of the parties who have the authority to settle the controversy. No terms of resolving the dispute, controversy or claim discussed or offered shall be binding on either party or otherwise detrimental to the interest of either party in the event it is not resolved by negotiation.

The disputing party shall give the other party written notice of the dispute by registered or certified mail. Within ten (10) days after receipt of said notice, the receiving party shall submit to the disputing party a written response. Unless shown otherwise, receipt will be presumed to have occurred three (3) days following the mailing. The notice and response shall include: (a) a statement of each party's position and a summary of the evidence and arguments supporting its position; and (b) the name and title of the designated executive or other representative who will represent the party in negotiations. The negotiators so designated shall meet at a mutually acceptable time and place within twenty (20) days of the date of receipt by the receiving party of



the disputing party's notice and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute.

If the controversy or claim has not been resolved within thirty (30) days of the meeting of the designated executives or representatives, the parties shall endeavor to settle the dispute by non-binding mediation.

If the matter has not been resolved pursuant to the aforesaid non-binding mediation procedures within ninety (90) days of the commencement of such procedure, parties are free to bring their claim in a court of law. Venue for all actions brought pursuant to this Agreement is in Montgomery County, Texas; and all parties consent to Montgomery County, Texas, being the exclusive jurisdiction to resolve said claims or controversies arising pursuant to this Agreement.

14.5 Severability. If one or more of the provisions of this Agreement, or the application of any provision to any party or circumstance, is held invalid, unenforceable, or illegal in any respect, the remainder of this Agreement and the application of the provision to other parties or circumstances shall remain valid and in full force and effect.

14.6 Notice. Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be mailed by certified or registered mail addressed as set forth below or at such other address as may be specified by written notice:

CLIENT: Gary Palmer, City Administrator  
City of Montgomery  
101 Old Plantersville Road  
Montgomery, Texas 77316

CONSULTANT: Bret C. Keast, Chief Executive Officer  
Kendig Keast Collaborative  
77 Sugar Creek Center Boulevard, Suite 600  
Sugar Land, Texas 77478

14.7 Assignment. The CONSULTANT shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the CLIENT thereto. Provided however, that claims for money by the CONSULTANT from the CLIENT under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the CLIENT.

14.8 Successors and Assigns. The CLIENT and the CONSULTANT each binds itself and its successors, executors, administrators and assigns to the other parties of the Contract and to the successors, executors, administrators and assigns of such other parties, in respect to all covenants of this Agreement. Nothing herein shall be construed as creating any personal liability on the part of any officer, board member, commissioner, employee or agent of any public body, which is a party hereto.

- 14.9 Reports and Information. The CONSULTANT, at such times and in such forms as the CLIENT may require, shall furnish the CLIENT such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the cost and obligations incurred or to be in connection therewith, and any other matter covered by this Agreement.
- 14.10 Incorporation of Provisions Required by Law. Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein and this Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.
- 14.11 Waiver. The failure on the part of any party herein at any time to require the performance by any other party of any portion of this Agreement shall not be deemed a waiver of, or in any way affect that party's rights to enforce such provision or any other provision. Any waiver by any party herein of any provision hereof shall not be taken or held to be a waiver of any other provision hereof or any other breach hereof.
- 14.12 Survival. Any and all representations and conditions made by the CONSULTANT under this Agreement are of the essence of this Agreement and shall survive the execution, delivery and termination of it, and all statements contained in any documents required by the CLIENT, whether delivered at the time of the execution or at a later date, shall constitute representations hereunder.
- 14.13 Cumulative Remedies. In the event of default by any party herein, all other parties shall have all rights and remedies afforded to it at law or in equity to recover damages and to interpret or enforce the terms of this Agreement. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.
- 14.14 State or Federal Laws. This Agreement is performed in Montgomery, Texas, and is subject to all applicable federal and state laws, statutes, codes, any and applicable permits, ordinances, rules, orders, and regulations of any local, state, or federal government authority having or asserting jurisdiction.
- 14.15 Equal Employment Opportunity. In the performance of this Agreement, the CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, or national origin. The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of it, state that it is an Equal Opportunity Employer.
- 14.16 Multiple Originals. Two (2) copies of this Agreement are executed; each shall be deemed an original.

\* \* \* \* \*

The parties have executed this Agreement in duplicate originals.

This \_\_\_\_\_ day of \_\_\_\_\_, 24.

FOR CITY OF MONTGOMERY TX:

FOR KENDIG KEAST COLLABORATIVE:

By: \_\_\_\_\_  
Gary Palmer  
City Administrator

By: \_\_\_\_\_  
Bret C. Keast, AICP  
Chief Executive Officer

ATTEST:

\_\_\_\_\_

## EXHIBIT A - SCOPE OF WORK

In accordance with the terms of the Professional Services Agreement (the “Agreement”) with the City of Montgomery, Kendig Keast Collaborative (KKC) will provide professional land use planning and ordinance writing services to assist the City in creating a new Unified Development Ordinance. This work effort will be centered on producing future land use, thoroughfare and open space plans and updating and rewriting the following chapters of the Code of Ordinances:

- Chapter 42, Floods
- Chapter 54, Manufactured Homes and Trailers (Division 3, Park Regulations and Standards)
- Chapter 66, Signs
- Chapter 78, Subdivisions
- Chapter 98, Zoning

### Project Administration

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KKC will coordinate with City staff to develop a project schedule for completion of the services, which will include the dates of deliverables, periods of review, and meetings for the duration of the project. The Project Schedule will be coordinated so that the City’s Project Director can provide status reports to the Planning and Zoning Commission, City Council and other boards and commissions at regular milestones in the ordinance development process.

KKC will complete project management activities to ensure schedule adherence, cost control, and quality assurance. These activities will include:

- Preparation and maintenance of the Project Schedule.
- Frequent communication and coordination with the City’s Project Director.
- Submittal of written progress reports in conjunction with each monthly invoice.

### Core Project Services

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The core services are divided into three distinct stages:

1. Near-Term Plans and Ordinance Amendments
2. UDO Drafting and Mapping
3. UDO Implementation

Within each stage is a series of tasks and subtasks set out below.

#### Stage 1. Near-Term Plans and Ordinance Amendments

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**1.1 Project Orientation.** This task will initiate work with City staff and include research and background studies, field reconnaissance and ground truthing, policy analysis and validation, collection of data and mapping, and mobilization of resources.

Meet with City staff to:

- Establish the project logistics, methods and timing of communications and schedule adherence.
- Discuss the structure, membership, and roles of an Advisory Committee.

- Prepare a project schedule detailing the dates of meetings and deliverables, staff review time, staff calls and meetings, and other project activities.
- Identify needed data and information, such as:
  - Five-year history of variance requests and decisions;
  - Five-year history of zoning cases; and
  - List of staff comments and changes noted to date.

Meeting(s): Staff teleconference

Deliverable(s): Project schedule

### 1.2 Field Reconnaissance. Observe built conditions in the context of the existing zoning districts.

- Acquire and review all existing conditions data, case information, and GIS mapping.
- Attend a tour lead by City staff to learn about planned infrastructure improvements, proposed and pending developments, and areas noted for future projects.
- Visit development sites that represent good zoning outcomes and pending project sites for discussion of how the new regulations may achieve outcomes that are in line with community and Council expectations.
- Develop a photographic inventory to capture development types, forms, and patterns.

Meeting(s): Staff-led tour  
Self-guided reconnaissance

Deliverable(s): None for this task

### 1.3 Introductory Meetings.

- Attend a city staff meeting to hear about their experiences in administering and enforcing the current zoning, subdivision, flood and sign ordinances, solicit recommendations for needed improvements, and review the processes for application intake, review, commenting, problems encountered, and the timeline for each step for each application type.
- Arrange a kick-off meeting with the Advisory Committee to confirm their review and meeting commitments and to initiate conversations about the future of Montgomery.
- Facilitate a joint work session with the Planning and Zoning Commission and City Council (and applicable committees) to discuss their use of the current regulations and to identify void or vague provisions, conflicts and inconsistencies, and limitations.
- Meet with members of the four Home Owners Associations (HOAs) to familiarize them with the project purpose and to solicit their ongoing input as the UDO is drafted.
- Attend three, one-hour focus group meetings with the following key stakeholders:
  - Landowners, developers and builders;
  - Engineers, architects and planners;
  - Business owners and operators;

Meeting(s): Advisory Committee Meeting No. 1 (in-person)  
Planning and Zoning Commission and City Council Work Session (in-person)  
HOA meetings (4) (in-person)  
Focus Groups (3) (in-person)

**1.4 Future Land Use, Thoroughfare and Open Space Plans.** The plan maps will guide city decisions relative to zone changes and land development proposals, future street alignments and rights-of-way dedications, and preservation of parks, open space and natural greenways.

- Graphically summarize the character of existing development as a basis for creating the Future Land Use Plan.
- Assess the long-range development outlook and context for the community, including:
  - Identification of areas available, most suitable, and preferred for new growth, accounting for flood hazard areas and other physical and environmental factors, the transportation network, and infrastructure and public service capacities and availability;
  - Means to coordinate growth management and future land use and ensuring linkages to infrastructure and service capacities, land use balance, economic development needs, and rural/agricultural preservation and other resource conservation priorities;
  - Orderly improvement of the transportation system to enhance safety and relieve congestion, considering facilities for automobiles and pedestrian/bicycle circulation.
  - Maintaining the integrity of existing neighborhoods while setting appropriate standards for quality new residential areas.
  - Strengthen the City’s tax base and its “quality of place” appeal, including consideration of future growth and development patterns and associated upgrades to or extension of public infrastructure and services.
  - A capacity outlook for the City’s infrastructure and its timing based on projected growth activity.
  - Place-making, urban design, and image/appearance opportunities in terms of development quality along SH 105, FM 149 and Lone Star Parkway and at “gateway” locations.
- Develop a map that visually depicts the desired future development pattern, including provision for protecting natural resource and valued open space areas, conservation of existing neighborhoods, preservation of the historic downtown and original town neighborhoods, corridor commercial design, and mixed-use neighborhood and town centers.
- Create a parks and open space plan to protect the environs along existing resource features, meet standards for the provision of future parks and recreation facilities, and reserve linear connections to link neighborhoods, parks, schools and other community facilities.
- Build on the Montgomery County Thoroughfare Plan to identify the future locations and alignment of collector streets, along with their rights-of-way and street design requirements.

Meeting(s):            Advisory Committee Meeting No. 2 (in-person)  
                                 Joint Planning and Zoning Commission and City Council Workshop and Open House (1) (in-person)  
                                 Interest group meetings (2), scheduled to occur on the same day as the Workshop and Open House. (in-person)

Deliverable(s):      Future Land Use Plan (and shapefiles)  
                                 Modified Thoroughfare Plan (and shapefiles)  
                                 Parks and Open Space Plan (and shapefiles)

**1.5 Illustrated Master Plan.** This task will result in two schematic master land plans covering the undeveloped and noncommitted areas of the Buffalo Springs Planned Development (PD) as well as the Stewart Lake Area. The purpose of the land plans is to establish conditional approval procedures and design principles for use during the interim period prior to UDO adoption. Proposed applications for developments will be required to demonstrate as to the adherence of their plan with the land use, street and open space patterns and design principles expressed by the master plans.

- Facilitate a combined three-day design workshop to involve stakeholders in sketching planning exercises and ideas creation consisting of before, during and after meetings with surrounding neighbors, landowners and businesses.
- Develop an early concept schematic for presentation and feedback. This work-product will be conceptual in nature and focus on developing a general organizing framework for the plan including a proposed road system, proposed land use “bubbles”, open space systems and other organizing features. The concept plan will be presented in PowerPoint and will be supplemented with a wide selection of development character images to communicate suggested development types and densities.
- Assimilate the feedback and recommended changes from the early concept schematic into a draft design alternative. This will still be at an intermediate (40-50%) level of detail for obtaining further feedback and for confirming consensus to proceed into detailed design.
- Synthesize proposed adjustments into a 90% plan version for official presentation. Based on any final feedback received, prepare a single (100%) version of a Final Plan for official adoption.
- Prepare interim ordinance language for a conditional approval process for use during the period from Final Plan to UDO adoption.
- Produce design principles and decision criteria for use by staff in reviewing, by the Planning and Zoning Commission in recommending, and by the City Council in deciding approval of proposed development applications. The guidelines may cover, but are not limited to:
  - Cross sections of different street profiles, building frontage types, pedestrian improvements and streetscape amenities.
  - Block and lot proportions relative to walkability, traffic and pedestrian circulation and safety, property access, on- and off-street parking and loading, and building footprints and lot coverage.
  - Building and use types relative to their scale and operational requirements, location and proximity to existing and planned or proposed land use typologies, parking and loading demands, access to public spaces and transit, stormwater management impacts/needs and compatibility with natural resources.
  - Amenities that may be used in different contexts to fulfill objectives: aesthetics, screening, landscaping, use transitions, green infrastructure, stormwater management, parking, public art, recreation, etc.
- Develop a 3D computer model of one master plan to illustrate and simulate the City’s new design and development standards. The model will be integrated within the UDO and posted on the City’s website to aid applicants in their preparations for plan submittal.
- *On an Additional Services basis, work alongside City staff to manage the implementation of the plan. In this capacity, KKC’ role would be to serve as lead (adjunct) project manager as part of a*



*larger project management team consisting of other city departments. Services could include among others:*

- performing development/design/zoning reviews;*
- communicating directly with developers;*
- creating project marketing materials and requests-for-proposals (RFPs);*
- performing developer due diligence;*
- reviewing developer financial statements, project pro-formas and budgets;*
- helping determine the reasonableness of developer incentives requests;*
- performing project feasibility gap analysis;*
- creating developer incentives packages;*
- generating project terms sheets and draft development agreements;*
- presenting information to the City Council and/or various other boards and committees and generally shepherding the city’s internal development review process.*

Meeting(s): Staff calls (2) (virtual)  
Joint Planning and Zoning Commission / City Council meeting (1) (in person)  
City Council adoption (1) (Add Alternate)

Deliverable(s): Concept schematic plan  
Design alternative  
Final Plan  
Design guidelines and decision criteria

#### **1.6 Interim Ordinance Amendments.**

- Provide track-change edits to the current version of Chapter 98, Zoning, to establish new standards where the ordinance is vague or void. In particular, these amendments will address:
  - New zoning district, land uses and area regulations for Downtown (Sec. 98-84)
  - Updated historic preservation standards and procedures (Article VI)
  - Development standards for planned development (Div. 7)
  - District R-2, Multifamily residential district site and building design standards
  - District B, Commercial district site and building design standards
- Attend a public hearing of the Planning and Zoning Commission to present the proposed text amendments and to gain their recommendation of adoption.
- Present the proposed text amendments for City Council adoption.

Meeting(s): Staff calls (2) (virtual)  
Advisory Committee Meeting No. 3 (virtual)  
Planning and Zoning Commission public hearing (1)  
City Council meeting (1)

Deliverable(s): Interim ordinance amendments



## Stage 2. UDO Drafting and Adoption

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**2.1 Web-Based Platform.** Build the online platform for use in drafting and editing, documenting internal comments, and publishing interim drafts and the final adopted UDO.

- Build the public-facing site using a template design (or upgraded custom design).
- Consult with staff on City branding and style guide.
- Create a stylesheet to standardize the font, format and numbering system.
- Migrate the Code of Ordinances into the software platform to repeal Chapters 42, 54, 66, 78, and 98 and replace them with a new chapter for the Unified Development Ordinance.
- Build the interactive functionality including tags of all definitions and cross-references for the purpose of internal/external hyperlinking.
- Train staff on the use of the password-protected maintenance module to provide comments and to edit text.
- Build the following premium features:
  - eReader: Optimized mobile and desktop document reading with navigation, printing, linking.
  - Zoning Navigator to organize the UDO in understandable sections and categories.
  - GeoZone: Esri-based GIS map application designed for planning and zoning queries, analyses, and display including:
    - *District Summary*: GIS display of applicable land uses and height, area and bulk standards for a zoning district or user-defined area.
    - *Land-Use Lookup*: GIS map of districts where specific land uses are permitted by-right or by condition or special exception.
    - *Parcel Summary*: Instant access to parcel details like ownership, land and building value and district standards.
    - *Smart Web URLs*: Automatically links zoning districts and parcels dynamically to reflect real-time updates on the interactive map.

Meeting(s): None for this task

Deliverable(s): Premium features listed above

**2.2 UDO Drafting.** Draft and deliver two modules for review and discussion.

- Review the current text to determine provisions that may be carried through as-is along with those warranting modified or new text, tables or graphics to clearly articulate the regulations and standards.
- Perform research of related provisions in the Code of Ordinances to identify needed cross-referencing or provisions that warrant amendment or repeal and replacement.
- Review the newly drafted regulations for consistency with applicable statutes.
- Build tables and matrices to organize and improve the readability of standards and embed graphics to illustrate the application of the regulations.
- Generate custom graphics, where needed, to illustrate the application of standards.
- Prepare applicable definitions and acronyms.

Meeting(s): Monthly staff teleconferences (6) (virtual)

Advisory Committee Meeting Nos. 4, 5 and 6 (two in person; one virtual)  
City Council midpoint briefing (in-person)

Deliverable(s): Two UDO Modules

**2.3 Zoning Map Amendment.** Make changes to the zoning map to reflect the new districts and match the guidance of the Future Land Use Plan.

- Review the GIS map files acquired from the city to verify their currentness, accuracy and consistency with the Montgomery County Central Appraisal District.
- Provide updates to the district boundaries of any zone change ordinances adopted but not yet implemented on the map.
- Make notation of the district boundaries that will remain the same albeit a change in the nomenclature.
- Track changes of existing district boundaries, where adjusted, to accommodate new zoning districts.
- Prepare and deliver a draft revised zoning map for staff review.
- Seek approval of the zoning map subsequent to adoption of the ordinance.

Meeting(s): Staff meeting to review draft zoning map

Deliverable(s): Draft and final zoning map

**2.4 UDO Text and Map Adoption.** A public hearing will be held with the Planning and Zoning Commission and City Council, during which the public may be heard and may enter their comments into the record.

- Present the Public Hearing Draft to the Planning and Zoning Commission prior to a public hearing, at which time the Commission may recommend changes. Upon completion, present the proposed UDO to the City Council together with the Commission's recommended changes.
- Present the Public Hearing Draft, including the amendments recommended by the Planning and Zoning Commission, before a public hearing of the City Council.
- Make changes and corrections to the Public Hearing Draft as directed by the City Council and publish the final adopted version of the UDO.

Meeting(s): Planning and Zoning Commission Public Hearing (1) (in-person)  
City Council Public Hearing (1) (in-person)

Deliverable(s): Public Hearing Draft  
Final adopted Ordinance

**2.5 Codification.** The UDO will be integrated within and codified as part of the Code of Ordinances.

- Codify any adopted but uncoded ordinances.
- Repeal Chapters 42, 54, 66, 78, and 98 and replace them with a new chapter for the Unified Development Ordinance.
- Produce a Code Comparative Table to compare the Code of Ordinances prior to and after adoption of the UDO.
- Incorporate hyperlinked cross-references.

- *On an Additional Services basis, perform a legal review of the Code of Ordinances, issue a memorandum of recommended changes and updates to bring the code current with state and federal laws, and update the State Law Reference Table*

### Stage 3. UDO Implementation

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#### 3.1 Development Manual. Produce a Development Manual to include:

- A summary description of each application type;
- Flow diagrams to illustrate the individual steps and timelines for each process;
- Updated or new checklists outlining the applicant submission requirements;
- New application forms; and
- A schedule of submittal dates, response and public notice types and timelines, and corresponding dates of meetings or hearings.

Meetings: None for this task

Deliverable: Web-Based Development Manual

#### 3.2 Start-Up Period Assistance. On an Additional Services basis, provide assistance to City staff during the first six months (or more as requested) following adoption of the UDO. The time associated with this task and any encumbered direct expenses would be on an hourly basis, billed against the escrow fee established for this service. Assistance may include:

- Review of all or select development applications;
- Participation via video-conferences with City staff to express our comments on reviewed applications and to respond to staff questions;
- Provision of verbal or written interpretations for application of the regulations to specific developments;
- Interactions with City staff and upon request, virtual meetings with development applicants;
- Attendance by request at Planning and Zoning Commission and/or City Council meetings; and
- Observe and advise on the City's administrative procedures.

Meetings: Zoom conferences  
Interdepartmental project review meetings  
Application meetings  
Commission and Council meetings

Deliverables: To be determined

#### 3.3 UDO Training. Provide training for back-office functions including application intake, distribution, departmental review and comment, and reporting and applicant coordination, together with one facilitated training session with the Planning and Zoning Commission and City Council. Time associated with this task will be on an hourly rate basis as the needs and level of effort vary widely.

- Interview those responsible for application intake and front counter interactions to identify standard practices and discuss means to improve effectiveness and efficiencies.
- Observe inter- and intra-departmental review functions and meetings and issue a technical memorandum with recommended improvements.
- Review inter-departmental documentation, written correspondence with applicants, and



reports for Commission or Council consideration, and issue a technical memorandum noting best practices and recommended changes.

- Arrange mock meetings with the Planning and Zoning Commission and City Council to review the materials provided, methods of case review and comment/question documentation, staff presentation, Commission /Council discussion, hearing procedures, and criteria and issuance of decisions.
- Provide layperson guides to the zoning ordinance, which could be assembled into a booklet upon adoption.

## Tentative Budget

MONTGOMERY, TEXAS UNIFIED DEVELOPMENT ORDINANCE				
Key Personnel	Principal	Project Manager	Senior Associate	TOTAL
Title				
<b>Scope Tasks</b>				
<b>Phase 1. Kick-Off</b>				
1.1 Project Orientation	\$200	\$560	\$270	\$1,030
1.2 Field Reconnaissance	\$400	\$280	\$270	\$950
1.3 Introductory Meetings	\$1,800	\$5,040	\$4,860	\$11,700
1.4 Future Land Use, Thoroughfare and Open Space Plans	\$5,400	\$11,200	\$16,200	\$32,800
1.5 Illustrated Master Plans (Buffalo Springs + Stward Lake)	\$5,100	\$29,400	\$40,500	\$75,000
1.6 Interim Ordinance Amendments	\$1,800	\$11,200	\$10,800	\$23,800
<b>Subtotal</b>				\$145,280
<i>Direct Expenses</i>				\$8,843
<b>TOTAL FOR STAGE 1</b>	<b>\$14,700</b>	<b>\$57,680</b>	<b>\$72,900</b>	<b>\$154,123</b>
<b>Stage 2. UDO Drafting and Adoption</b>				
2.1 Web-Based Platform (Code of Ordinances + GIS Bundle)		Premium Features		\$29,250
2.2 UDO Drafting				\$73,000
2.3 Zoning Map Amendment				\$14,500
2.4 UDO Text and Map Adoption				\$11,700
2.5 Codification				\$5,260
<b>Subtotal</b>				\$133,710
<i>Direct Expenses</i>				\$2,811
<b>TOTAL FOR STAGE 2</b>	<b>\$10,200</b>	<b>\$38,640</b>	<b>\$55,620</b>	<b>\$136,521</b>
<b>TOTAL FOR STAGES 1 &amp; 2</b>				<b>\$290,643</b>
<b>Stage 3. UDO Implementation</b>				
3.1 Development Manual				\$16,400
3.2 Start-Up Period Assistance (Applicant Escrow)				\$0
3.3 UDO Training				\$8,000
3.5 Three-Day Design Charrette (+ direct expenses)				\$16,040
3.6 3D Computer Model (one master plan area)				\$11,000
<b>Subtotal</b>	<b>\$9,600</b>	<b>\$16,800</b>	<b>\$14,040</b>	<b>\$51,440</b>
<i>Direct Expenses</i>				\$3,268
<b>TOTAL FOR STAGE 3</b>	<b>\$9,600</b>	<b>\$16,800</b>	<b>\$14,040</b>	<b>\$54,708</b>
<b>TOTAL FOR STAGES 1, 2 &amp; 3</b>				<b>\$345,351</b>

EXHIBIT "B"  
SOFTWARE AS A SERVICE AGREEMENT

Licensor: enCodePlus, LLC  
1415 Highway 6 South, Suite D-100  
Sugar Land, Texas 77478

Licensee: City of Montgomery Texas  
City Hall  
101 Old Plantersville Road  
Montgomery, TX 77316

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Licensor and Licensee agree as follows:

1) Definitions.

- a. *Agreement* means this Software as a Service Agreement, including all incorporated exhibits and documents.
- b. *Authorized Users* means all Users authorized by the Licensor to access and use the Software through the Licensee's account under this Agreement, and includes individual users that are employees of Licensees but excludes outside contractors or agents of the Licensee.
- c. *Calendar Day* or "Day" means All days in a month, including weekends and holidays.
- d. *Effective Date* is the date the Agreement is executed by Licensee and Licensor.
- e. *Force Majeure Event* means an event, such as a hurricane, earthquake, or other casualty caused by nature; labor strike; war; a law, order, proclamation, regulation, or ordinance of any governmental agency that prevents Licensor or Licensee from performing its obligations under this Agreement.
- f. *Law* means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government, political subdivision, or any arbitrator, court, or tribunal of competent jurisdiction.
- g. *Licensed Technology* means Licensor's proprietary software or any third-party software or other intellectual property provided to allow the Licensee to access and utilize the Software in conformance with this Agreement or to make the Software available to the Licensee over the Internet.
- h. *Licensee* means the City of Montgomery and its employees.
- i. *Licensee Data* means any and all information, data, materials, works, expressions, or other content, including any that are:
  - (1) uploaded, submitted, posted, transferred, transmitted, or otherwise provided or made available by or on behalf of the Licensee for processing by or through the Software, or
  - (2) collected, downloaded, or otherwise received by Licensor or the Software for the Licensee or pursuant to this Agreement or at the written request or instruction of the Licensee. All output, copies, reproductions, improvements, modifications, adaptations, translations, designs and methods and other derivative works of, based on, derived from, obtained from the Licensee in

connection with the Software, or otherwise using any Licensee Data are themselves also Licensee Data. Licensee Data does not include any Licensor Materials.

- j. *Licensor* means enCodePlus, LLC.
  - k. *Renewal Term* has the meaning set forth in Section 14.2.
  - l. *Services* means all services required of Licensor to ensure the Software is available to the Licensee over the Internet consistent with the terms of this Agreement. These services include: hosting; making the system available to the Licensee over the Internet as a service; ensuring the system operates with other software, hardware, systems, networks, and services; using embedded third party software, including for processing Licensee Data; programming, modifying, or configuring the Software to meet the Licensee's ongoing needs; integrating, customizing, enhancing, or modifying the Software; consulting activities; and training or project management.
  - m. *Service Error* means an event that results in an impairment of performance or essential operations of the Software.
  - n. *Software as a Service (SaaS)* or "Software" means the turnkey system provided by Licensor pursuant to this Agreement as part of its Services, including the Licensed Technology that Licensor will make accessible to the Licensed as part of its Services under this Agreement.
  - o. *Term* means the Initial Term and any subsequent Renewal Terms.
- 2) **Agreement.** This Software as a Service ("Agreement" or "License") is made as of the date of the last signature below, between enCodePlus, LLC, a Texas Limited Liability Company ("Licensor"), and the City of Montgomery, a public body corporate and political subdivision of the State of Texas ("Licensee").
- 3) **Licensed Technology.** This is an Agreement between Licensor and Licensee, with a term as set out in Section 5, below. Licensor grants licensee a non-transferable, non-exclusive, limited, non-assignable, and non-sublicensable right to use the Software covered by this Agreement pursuant to the terms of this Agreement including payment of all applicable Fees. This right to use and access the Software is for unlimited concurrent use for Licensee governmental purposes, including on- and off-site access. This License gives only certain rights to Licensee. All other rights are reserved to Licensor.
- 4) **Software Package.** The terms of this Agreement apply to Licensee's use of the Licensed Technology, including an unlimited number of registered license seats and two hours of annual technical support<sup>1</sup>.
- 5) **Software Support.** The terms of this Agreement apply to the following services provided and included support.
- a. *Services Provided.* During the term of license, enCodePlus will provide:
    - (1) Expert level guidance and troubleshooting in connection with questions and issues arising from use of our Software;
    - (2) Bug fixes and issue resolution; and
    - (3) Access to new releases of the software.

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<sup>1</sup> Support excludes adding or building new content, document management services, and Software customization.

- b. *Included Support.* The following are included in the enCodePlus software support obligations:
  - (1) Access to new releases will be accessible for each available code update of the same features included in the current license.
  - (2) New release support may include training and guidance to answer specific questions.
  - (3) Basic product functionality questions to answer "how to" questions related to standard and, as applicable, premium feature usage.
  - (4) Enhancements and feature request submissions.
- c. *Excluded Support.* The following are excluded from enCodePlus software support obligations:
  - (1) Versions of software other than the current and one previous version, e.g. Windows 11 and Windows 10 (excludes Windows 8.1 and all prior versions).
  - (2) System/server administration activities.
  - (3) Routine product maintenance (cleaning disk space and configuring log rotation).
  - (4) 3rd Party applications not provided by enCodePlus.
  - (5) Altered or modified software, unless altered or modified by enCodePlus documentation or knowledge base.
  - (6) Defects in the software due to hardware malfunction, abuse or improper use.
  - (7) Any version of the software for which support services have been discontinued.
  - (8) Customization, integration and any issues arising from non-standard usage of the software.
  - (9) Professional services that have not been purchased.

6) **Term and Termination.**

- a. *Initial Term.* The initial term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant to this Agreement, will continue in effect for five years (the "Initial Term").
- b. *Renewal.* Following expiration of the Initial Term, this Agreement will automatically and perpetually renew each year on the anniversary of the Effective Date unless:
  - (1) terminated pursuant to this Agreement, or
  - (2) the Licensee gives Licensor written notice of nonrenewal at least 30 days prior to the expiration of the current term (collectively, the Renewal Term and the Initial Term constitute the "Term").
- c. *Termination for Cause.* In addition to any right of termination set forth elsewhere in this Agreement, the Licensor or Licensee may terminate this Agreement for cause in accordance with this Section.
  - (1) The Licensor or Licensee may give written notice of termination to the other party effective as of the date specified in the notice if:
    - (a) the other party materially breaches this Agreement; and
    - (b) the breach cannot be cured, or can be cured, but remains uncured 30 days after the breaching party receives written notice of the breach.
  - (2) The Licensee may terminate any and all of this Agreement, effective immediately, by written notice to Licensor if Licensor:
    - (a) is dissolved or liquidated or takes any corporate action for such purpose;

- (b) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due;
  - (c) files or has filed against it a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law;
  - (d) makes or seeks to make a general assignment for the benefit of its creditors; or
  - (e) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
- d. *Termination for Convenience.* At any time without cause and without causing any breach or incurring any additional obligation, liability, or penalty, the Licensee may terminate this Agreement, in whole or in part, at any time by giving 30 days written notice to Licensor. In the event this Agreement is terminated for convenience, Licensor shall be paid for any services properly performed through the termination date specified in the written notice of termination. Licensor acknowledges that payment for goods and services rendered is good, valuable and sufficient consideration for the Licensee's right to terminate this Agreement for convenience.
- e. *Effect of Termination; Data Retention.* Upon termination or expiration of this Agreement, the Licensor and Licensee shall comply with the requirements and obligations of this Subsection.
- (1) Subject to the continuing rights, licenses, and obligations of either Licensor or Licensee under this Agreement, all authorizations and licenses granted under this Agreement will immediately terminate. The Licensee shall cease all use of the expired or terminated Licensed Technology, and Licensor shall cease all use of Licensee Data.
  - (2) The Licensee shall pay to Licensor all undisputed charges and amounts due and payable to Licensor, if any, for use of the Licensed Technology and Services performed under the terminated or expired Agreement.
  - (3) Licensor shall repay, on a pro rata basis, all fees, expenses, and other amounts paid in advance for any Services that Licensor has not performed as of the effective date of such expiration or termination.

7) **Fees.**

- a. *Fees.* Licensee will pay Licensor in accordance with Exhibit B.2, Payment Schedule.
- b. *Delays.* In the event of substantial delays occurring during the performance of the one-time build services through no fault of the Licensor, the one-time build sum shall be equitably adjusted by change order in accordance with the procedures in Section 23, Change Orders. A delay shall be considered substantial when it causes a cumulative delay of 30 days or more. The change in fee due to such substantial delay shall be one percent of the total one-time and annual cost, accrued on a monthly basis until the services are complete. The timelines are as follows:
  - (1) Provision of requested documents, files and information 10 business days
  - (2) Approval of layout and design deliverables 5 business days
  - (3) Response to questions regarding certain features 5 business days



- (4) Review, testing and approval of individual deliverables
  - (a) Published document(s) 15 business days
  - (b) Premium features 10 business days
- (5) Draft site delivery 10 business days

c. *Fees During Renewal Terms.* Licensor fees are fixed during the Initial Term. Licensor may increase Fees for the Renewal Term and subsequent Renewal Terms by providing written notice to the Licensee at least 60 calendar days before the Renewal Term that would be subject to the new fees begins. No increase in Fees for a Renewal Term shall exceed the lesser of:

- (1) Three percent of the Fees effective during the immediately preceding Renewal Term; or
- (2) The amount equal to the percentage of the most-recently published Consumer Price Index (CPI) for all Urban Consumers. Licensor and Licensee agree that if this CPI is no longer published, Licensor and the Licensee will negotiate in good faith to select a new index that best reflects and accounts for cost changes relevant to the Licensee's geographic location and Licensor's business.

d. *Invoices.* Licensor shall submit invoices to the Licensee for access to the Licensed Technology and for all services completed at least 60 days prior to the due date of the payment. The invoice shall be submitted to Licensee in electronic format.

e. *Payment.*

- (1) *Initial Term.* Invoices will be issued upon substantial completion of the draft and final deliverables. Licensee shall have 30 calendar days from the date the invoice is issued to review and provide final written comments on each deliverable. The invoice is payable on the 31st day.
- (2) *Renewal Term.* Licensor shall submit invoices to Licensee for access to the Licensed Technology and all services completed at least 60 days prior to the due date of payment.
- (3) *Late Payment.* If any payment due under this Agreement ("Payment Due") is more than 15 days past due, a fee of 10 percent of the Payment Due shall be paid by Licensee in addition to the Payment Due. If Payment Due is more than 30 days late, the Fee shall be 20 percent in addition to the Payment Due. If Payment Due is more than 45 days late, the Licensed Technology will be taken off line, and will not be restored until the Payments Due and any Fees associated with each Payment Due has been paid in full.

#### 8) **Software Build.**

- a. *Content.* Refer to Exhibit B.2, Payment Schedule.
- b. *Standard Features.* Refer to <https://www.encodeplus.com/resources/features/#standard>.
- c. *Support and Maintenance.* With respect to addressing errors which may arise in the Licensed Technology, Licensor shall provide Support Services for the Licensed Technology in accordance with the provisions of this Subsection.
- d. *Support Responsibilities.*
  - (1) Support shall be provided by Licensor as set forth in Exhibit B.2, Payment Schedule.
  - (2) Licensor shall:

- (a) Correct all Service Errors, including by providing defect repair, programming corrections, and remedial programming.
  - (b) Provide telephone or web-based support within one business day of contact by Licensee during Licensor's business hours, or at a mutually agreeable time. Licensor will promptly assess the issue and its severity and on the same day will notify Licensee of the expected time of resolution. Licensor will use commercially reasonable efforts to resolve issues within one business day, or less, and may use any reasonable resolution method available (e.g., fixes, workarounds, etc.) to resolve an issue. The most severe issues whereby the Licensed Technology is unusable will be the first and highest priority, which will be worked on until resolved. Licensor does not guarantee resolution of issues within the response period, only response to initial calls. Failure to contact a Licensee within the response time period because the Licensee is unavailable (e.g., phone busy, no answer, in a meeting, or out of the office) does not constitute Licensor's noncompliance with the response commitment. Failure of Licensor to achieve the technical support response times shall not constitute a material breach of this Agreement.
  - (c) Provide online access to user support information, to the full extent Licensor makes such resources available to its other customers.
- e. *Service Maintenance.* As part of the annual license fee, Licensor shall continuously maintain the Licensed Technology to optimize availability. Such maintenance services shall be performed outside of Licensee's normal operating hours, and include:
  - (1) Scheduled once annually, all updates, bug fixes, enhancements, new releases, new versions, and other improvements to the Licensed Technology, excluding additional features, at no additional charge;
  - (2) Ensuring that all changes to the Licensed Technology will not adversely affect the system; and
  - (3) All such services and repairs necessary to maintain access to or use of the Licensed Technology.
- f. *Escrow.* If included as a feature in Exhibit B.2, Payment Schedule, or added thereafter by amendment to this Agreement, Licensor shall place all source code constituting and relating to the Licensed Technology into an escrow account pursuant to the terms of an escrow agreement (the "Escrow Agreement") to be entered into between Licensor and the escrow agent (the "Escrow Agent") which shall name Licensee as a beneficiary; provided, however, that the Escrow Agreement shall contain substantially the following conditions with respect to release of escrow to Licensee: (i) Licensor is adjudged bankrupt, and/or (ii) in the event of a catastrophic loss which terminates Licensor's operations, then Licensee shall have a non-exclusive, royalty-free, perpetual, worldwide license to use the source code released from the escrow in its sole discretion, solely for its own internal use and not for any resell, license, or sub-license. In consideration of Licensor placing the source code in escrow, Licensee will pay an annual escrow fee of \$1,000, plus a \$500 escrow initiation fee, for the first license year and an annual source code escrow fee of \$1,000 thereafter. All charges for additional services which may be requested from the escrow company by Licensee as a beneficiary to the escrow agreement shall be payable by Licensee.

- 9) **Add-Alternate Services.** As elected by Licensee, Licensor may undertake the following services:
- a. *Code Management.* The "Content" identified in Section 8, Software Build, above, may be systematically managed and maintained by Licensor. Such services include the integration of new or amended text and the documented history (i.e., ordinance, resolution, bill, by-law, plus the adopted and/or effective date, and legal citation(s), as applicable). All amendments will be denoted by Title, Chapter, Article, or Section, as applicable, together with a cumulative history table of all amendments. The ordinance, resolution, bill, or by-law is uploaded to the cloud library and linked within the document text and history table. Keywords may be added to maintain a searchable history of amendments.
  - b. *Process.* Licensor and Licensee will undertake the following process in relation to Document Management services:
    - (1) Licensee shall provide Word document, and any related JPEG, table, or similar document(s) to Licensor;
    - (2) Licensor shall provide the document management process services described in this Section and inform Licensee by email upon substantial completion of same;
    - (3) Licensee shall have a 15 business-day review period for accuracy after receipt of notice from Licensor, by the end of which review period Licensee shall inform Licensor of required corrections by email;
    - (4) Licensor shall make final corrections and inform Licensee by email upon substantial completion of same.
    - (5) Licensee shall have a five business-day review period for accuracy after receipt of notice from Licensor, by the end of which review period Licensee shall inform Licensor to release the document(s) for public use or inform Licensor of required corrections by email; Subsections 4 and 5 shall be repeated until all needed corrections have been made by Licensor; and
    - (6) Licensor shall release the document(s) for public use within five business days of notice from Licensee to do same.
  - c. *Retroactive Legal Review.* In-state attorneys will perform a thorough audit of the historical state of the ordinances. The city may not have reviewed its ordinances in several years (sometimes decades) and, therefore, the ordinances may be out of date. At the outset of the project, we will perform an audit of the existing code for potentially out of date ordinances. This review process may take between 30-45 days depending upon the number and nature of ordinances and the level of required review. The retroactive review will include several different types of issue spotting. First, the reviewer will determine whether any changes in legislation since the last recodification have rendered the code inaccurate or illegal. Second, the reviewer will consider whether certain ordinances are otherwise unconstitutional. Finally, the reviewer will determine if there are enforcement issues related to ambiguities in the code or other procedural due process issues.
  - d. *Tracking New Legislation and Code Updates.* The attorneys will be responsible for monitoring new legislation and case law that impacts the city's ordinances. The attorneys will prepare memorandum or other correspondence when new legislation is imminent or becomes effective.

The attorneys will track bills that are being sent to the Governor for consideration. The attorneys will track decisions of local courts and the state and national courts at the federal level for changes that impact the city's ordinances. This task will be performed on a continuing basis. Communications on this subject will be disseminated as the circumstances dictate.

- e. *Collaboration with City Attorney.* One of the ongoing responsibilities will be collaborating with local officials and most notably, the city attorney. This collaboration will involve explaining potential issues both from the retroactive legal review and the ongoing legislation tracking. Attorneys will provide legal memorandum and/or other communications succinctly identifying the potential issues from the retroactive review or ongoing monitoring of new legislation. The attorneys will deliver these communications on an as needed basis.
  - f. *Drafting Ordinances.* The ordinance review and ongoing legislation tracking may involve suggestions for drafting new ordinances or redrafting existing ordinances. This may include simple changes to existing ordinances or crafting wholly new ordinance chapters to replace obsolete ordinances or writing new ordinances to meet new legal standards. The attorneys will provide advice and drafting on the various ordinances on an as needed basis.
  - g. *Annual Review.* The attorneys will engage in an annual review of the city's ordinances. The attorneys will review the code at or near the beginning of each fiscal year to ensure compliance with updated legislation and case law. The review will include issue spotting for other constitutional or enforcement issues similar to the initial retroactive review. This review could occur on a different schedule approved by the city.
- 10) **Scope of Use.** Licensee acknowledges and agrees that the License Programs and Documentation are furnished to Licensee for the sole use of Licensee during the term of this Agreement. Licensee shall use the License Programs and Documentation only for Licensee's own internal purposes and shall not, without the prior written approval of Licensor, either allow any third party (i.e., other than employees who have a "need to know" the same in furtherance of Licensee's own internal purposes and are legally obligated to preserve and protect the secrecy thereof) to obtain the License Programs and Documentation or allow any use of the License Programs and Documentation for the benefit of any third party other than strictly for Licensee's own internal purposes.
- 11) **Use by Other Localities.**
- a. *Extension of Agreement.* This License Agreement may be extended, with the authorization of the Licensee, to other public bodies or public agencies or institutions of the United States to permit their use of the contract at the same prices and terms and conditions of the License Agreement. If any other public body decides to use the final contract, the Licensor shall deal directly with that public body concerning the placement of orders, issuance of the purchase orders, contractual disputes, invoicing and payment. The Licensee acts only as the "Contracting Agent" for these public bodies.
  - b. *Responsibility for Notice.* It is the Licensor's responsibility to notify the public body(s) of the availability of the contract.

- c. *Own Legal Determination.* Other public bodies desiring to use this License Agreement must make their own legal determination as to whether the use of this License Agreement is consistent with their laws, regulations, and other policies.
- d. *Separate Agreement.* Each public body has the option of executing a separate License Agreement with the Licensor. Public bodies may add terms and conditions required by statute, ordinances, and regulations, to the extent that they do not conflict with the License Agreement's terms and conditions. If, when preparing such a License Agreement, the general terms and conditions of the public body are unacceptable to the Licensor, the Licensor may withdraw its extension of the award to that public body.
- e. *Not Held Liable.* The Licensee shall not be held liable for any costs or damages incurred by another public body as a result of any award extended to that public body by the Licensor.

12) **Acknowledgement of Proprietary Rights.**

- a. Licensee acknowledges that Licensor holds all right, title, and interest in and to the License Programs and Documentation, including all materials, media and copies thereof, and including all intellectual property rights (trade secrets and copyrights) pertaining thereto, and that this Agreement ("Agreement") conveys to Licensee only a limited right to use the License Programs and Documentation. Such right is fully revocable in accordance with the provisions of this Agreement. Licensee agrees that, except for such right of use, it shall not assert any right, title, or interest in or to the License Programs or Documentation.
- b. Licensee acknowledges that the License Programs and Documentation constitute commercially valuable, proprietary, confidential products of Licensor, the design and development of which reflect a considerable effort on the part of skilled development professionals and the investment of considerable time and money. Licensee further acknowledges that the License Programs and Documentation contain substantial Trade Secrets of Licensor, which have been entrusted to Licensee for use only as expressly authorized under this Agreement. As used herein, Trade Secrets mean and include any scientific or technical information, design, process, procedure, formula, or improvement that is commercially valuable and secret (in the sense that its confidentiality affords Licensor a competitive advantage over its competitors). Trade Secrets include (without limitation) the source code, system design and specifications, command structure, algorithms, and input and output formats pertaining to the License Programs. Trade Secrets do not include, however, any data or information that (i) is generally known to the public, (ii) has been or is disclosed to Licensee as a matter of right and without restriction by a third party who has lawfully obtained such data or information without obligation to Licensor, (iii) is independently developed by Licensee without reliance in any way on the License Programs or Documentation, or (iv) is approved for unrestricted publication by Licensor at any time. If required by order of any government authority, Licensee may disclose to such authority data, information, or materials pertaining to or involving the License Programs and Documentation only to the extent required by such order, provided that Licensee shall first have used its best efforts, in cooperation with Licensor, to obtain a protective

order reasonably satisfactory to Licensor and sufficient to maintain the confidentiality of such data, information, or materials.

- c. Licensor claims and reserves to itself all rights and benefits afforded under U.S. copyright law and all international copyright conventions in all License Programs and Documentation as restricted, unpublished works.
- d. With the exception of "confidential records", all records of a governmental body are presumed to be public records, open to inspection by members of the public. Confidential records are to be kept confidential, "unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information". Among the public records which are considered confidential are the following:
  - (1) Trade secrets which are recognized and protected as such by law.
  - (2) Reports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose.
- e. If a request is made by a member of the public to examine the Licensed Technology and related records, including the portion or portions thereof for which a confidentiality request has been made by this Agreement, the Licensee will so notify the Licensor and will keep confidential the Licensed Technology and related records, pending action by the Licensor requesting confidentiality to defend its request. In that notification, the Licensor requesting confidentiality will be given not more than 10 calendar days within which to file suit seeking the entry of a declaratory order and/or injunction to protect and keep confidential such portion of the Licensed Technology and related records. Absent such action by Licensor requesting confidentiality, and absent the entry of a court order declaring such portion or portions of the Licensed Technology and related records confidential, said information will be released for public examination. Licensor shall be responsible for all costs relating to a declaratory judgment or injunctive action, including the payment of any damages assessed and attorney fees and litigation expenses awarded.

**13) Restrictions on Use and Copying.**

- a. Licensee shall devote its best efforts, consistent with the practices and procedures under which it protects its own most valuable proprietary information and materials, to protect the License Programs and Documentation against any unauthorized or unlawful use, disclosure, dissemination, or copying.
- b. Licensee shall not, at any time, disclose or disseminate the License Programs or Documentation (including any extract, copy, adaptation, or transcription thereof), or the Trade Secrets embodied therein, whether in whole or in part, to any employee, consultant, contractor, or other person who does not have a need to know and obtain access thereto in order to give effect to the rights granted to Licensee under this Agreement, in order to maintain the proprietary and confidential nature of such materials and to limit use and copying thereof and access thereto as required by the terms of this Agreement. Licensee shall require any persons authorized to have access to the License Programs and Documentation to accept the terms and conditions of such access.
- c. Licensee shall make no hard copies of the License Programs or Documentation.

- d. Under no circumstances may Licensee decompile, reverse engineer, or "unlock" (as the term is generally used in the industry) the License Programs.
- 14) **Survival of Obligations.** Licensee's obligations identified in this Agreement shall survive the termination of the Agreement and remain in effect for so long as Licensor is entitled to protection of its rights in the Licensed Programs and Documentation under applicable law.
- 15) **Notices.**
- a. *Generally.* Except as provided in Subsection 16.b., notices delivered pursuant to this Agreement shall be sent to the people and addresses shown in Exhibit B.3, Notices. Generally, notices shall be delivered by First Class Mail or courier service. Such notice shall be deemed to have been given when deposited in the United States Mail or courier service properly addressed to the intended recipient.
- b. *Upgrades, Maintenance, Service Interruptions, and Planned Outages.* Notices regarding upgrades, maintenance, service interruptions, and planned outages shall be delivered by electronic mail to the Licensee. Licensee may change the individuals who receive notice pursuant to this Subsection by electronic mail notice to Licensor.
- 16) **Assignment.** Licensor may not assign its rights and obligations under this Agreement without prior written notice to Licensee no less than 30 days prior to assignment. Licensee may thereafter continue with the terms of this Agreement, attempt to renegotiate with the assignee, or terminate this license pursuant to the provisions of Section 6, Term and Termination.
- 17) **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Licensor and Licensee and their respective successors and permitted assigns. There are no third-party beneficiaries to this Agreement.
- 18) **No Waiver.** The failure of either party to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. A waiver of any breach under this Agreement shall not be deemed a waiver of any subsequent breach.
- 19) **Effective Date.** The Effective Date shall be the date on which the Licensee executes this Agreement, or such other date as may be agreed to by the Licensor and Licensee and indicated as "Effective Date" below.
- a. *Venue.* Licensor and Licensee agree that this Agreement shall be construed in accordance with the laws of Texas. Venue for all actions brought pursuant to this agreement is in Montgomery County; and all parties consent to Montgomery County, being the exclusive jurisdiction to resolve said claims or controversies arising pursuant to this agreement. The parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiation between senior executives of the parties who have the authority to settle the controversy.
- b. *Notice of Dispute.* The disputing party shall give the other party written notice of the dispute. The other party shall respond in writing within 10 days after receipt of said notice. The notice and response shall include: (1) a statement of the party's position and a summary of the facts and arguments supporting its position; and (2) the name and title of the executive who will represent

the party. The executives shall meet at a mutually acceptable time and place within 20 days of the date of the disputing party's notice and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute.

- c. *Mediation.* If the controversy or claim has not been resolved within 30 days of the first meeting of the senior executives, the parties shall endeavor to settle the dispute by non-binding mediation.
- d. *Court.* If the matter has not been resolved pursuant to the aforesaid non-binding mediation procedures within 90 days of the commencement of such procedure, parties may bring their claim in a court of law. Venue for all actions brought pursuant to this Agreement is in Montgomery County and all parties consent to Montgomery County, being the exclusive jurisdiction to resolve said claims or controversies arising pursuant to this agreement.
- e. *Relief.* Nothing in this Section shall prevent a Party from bringing an action for injunctive relief if such relief is necessary for the protection of a right or property or proprietary information which might be lost absent such relief.

20) **Integration.** This Agreement constitutes the entire agreement between the parties with regard to the subject matter hereof and thereof. This Agreement supersedes all previous agreements between or among the parties. There are no agreements, representations, or warranties between or among the parties other than those set forth in this Agreement or the documents and agreements referred to in this Agreement.

21) **Force Majeure.**

- a. *Excused.* The party affected by the Force Majeure Event shall be excused from performance due to a Force Majeure Event as long as the affected party:
  - (1) gave prompt notice within 20 days of the Force Majeure Event to the other party,
  - (2) took all reasonable steps to avoid the cause of nonperformance, and
  - (3) continued to take reasonable steps to avoid and remove the cause of nonperformance.
- b. *Notice.* The affected party shall promptly notify the other party in writing and resume performance as soon as possible after the Force Majeure Event and to the full extent the cause of nonperformance is removed.

22) **Change Orders.** The fees and timeline may be changed only by Change Order. A Change Order signed by the Licensor and Licensee indicates agreement, including the adjustment in the fee and timeline. A Proposed Change Order (PCO) is a written request submitted to the Licensee by the Licensor requesting a change to the fee and/or schedule.

23) **Amendments and Modifications.** No amendment, modification, or supplement to this Agreement shall be binding on any of the parties unless it is in writing and signed by the parties.

24) **General Interpretation.** The terms of this Agreement have been negotiated by the parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under the agreement. No rule of strict construction will be applied against any person.



- 25) **Further Assurances.** Each of the parties agree to take such further action to execute and deliver such additional documents as may be reasonably required to them to effectuate the purpose and intent of this Agreement.
- 26) **Severability.** If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this section, then this stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

	_____
	Effective Date
	enCodePlus, LLC
_____	_____
Licensee	Licensor
	
_____	_____
Authorized Agent Signature	Authorized Agent Signature
	Bret C. Keast, CEO
_____	_____
Authorized Agent (Typed)	Authorized Agent (Typed)
_____	_____
Date	Date

**EXHIBIT B.1**  
**REQUEST FOR USER NAME AND PASSWORD**

The City of Montgomery ("Licensee") requests that a new password be issued by enCodePlus, LLC ("Licensor") for the benefit of Licensee to enable the undersigned user ("User") to access and use the maintenance module and User Guide for the Licensed Technology. Licensee and the undersigned agree to comply with the below provisions of the End User License Agreement between Licensor and Licensee.

Licensee agrees that each of Licensee's employees having administrative or maintenance access to the Licensed Technology, and at the full discretion of Licensor, contract workers and any third parties acting on behalf of Licensee or any other person or entity acting as an agent for Licensee in any capacity, shall be identified to Licensor and issued a unique password. Each person receiving a password must first complete and sign the user acknowledgment form below. Submission of such acknowledgment form will constitute a request by Licensee for issuance of a new password for a particular individual, and upon receipt of a completed acknowledgment form, Licensor will issue a password for that individual user. Passwords are **not transferable**. When Licensee becomes aware that a user will no longer need a password, for any reason, Licensee agrees to immediately notify Licensor that the password is no longer active. Any replacement users will be issued a new password. Licensee acknowledges full responsibility for any improper use of a password issued at the request of Licensee, and for any loss by or damage to Licensor caused by an improper use of any such password.

The undersigned supervisor and each licensed user agree to the terms of this Agreement and are responsible for the User's compliance.

**Refer to Licensed User Amendment Form on next page.**



P: 1800.3819286 I E: info@enCodePlus.com  
A: 1415 Highway 6 South, Ste A300, Sugar Land, TX 77478  
ENCODEPLUS.COM

enCodePlus Software License

LICENSEE: \_\_\_\_\_

Licensed User Amendment Form

Licensee, as stated above, requests that new users and new or revised passwords be issued by onCodePlus, LLC ("Licensor") for the benefit of licensee to enable the undersigned users ("User") to access and use the maintenance module and User Guide for the software program. Licensee and the undersigned agree to comply with the provisions of the license agreement between Licensor and Licensee.

**Permissions and Authorities.** Below are the levels of permission and authority granted to staff, editors, publishers, and managers, respectively.

Role/Task	Levels of Permissions/Authorities			
	Staff	Editors	Publishers	Managers
Management Module Access	X	X	X	X
View Draft Regulations, Reports, Publishing Status, Comments	X	X	X	X
Edit Regulations, respond to comments		X	X	X
Approve Regulation changes			X	X
Publish Regulations			X	X
Manage Users (reset passwords, change names)				X

\_\_\_\_\_

Supervisor Signature

\_\_\_\_\_

Printed Name

\_\_\_\_\_

Date



P: 1800.3819286 I E: info@enCodePlus.com  
A: 1415 Highway 6 South, Ste A300, Sugar Land, TX 77478  
ENCODEPLUS.COM

USER 1	
<b>User Status</b> <input type="radio"/> Current User <input type="radio"/> New User <input type="radio"/> Transfer User <input type="radio"/> Remove User	<b>Level of Permission/Authority (check one)</b> <input type="radio"/> Staff <input type="radio"/> Editor <input type="radio"/> Publisher <input type="radio"/> Manager
Printed Name	Date
Email (Username)	Previous Username, if applicable

USER 2	
<b>User Status</b> <input type="radio"/> Current User <input type="radio"/> New User <input type="radio"/> Transfer User <input type="radio"/> Remove User	<b>Level of Permission/Authority (check one)</b> <input type="radio"/> Staff <input type="radio"/> Editor <input type="radio"/> Publisher <input type="radio"/> Manager
Printed Name	Date
Email (Username)	Previous Username, if applicable

USER 3	
<b>User Status</b> <input type="radio"/> Current User <input type="radio"/> New User <input type="radio"/> Transfer User <input type="radio"/> Remove User	<b>Level of Permission/Authority (check one)</b> <input type="radio"/> Staff <input type="radio"/> Editor <input type="radio"/> Publisher <input type="radio"/> Manager
Printed Name	Date
Email (Username)	Previous Username, if applicable

USER 4	
<b>User Status</b> <input type="radio"/> Current User <input type="radio"/> New User <input type="radio"/> Transfer User <input type="radio"/> Remove User	<b>Level of Permission/Authority (check one)</b> <input type="radio"/> Staff <input type="radio"/> Editor <input type="radio"/> Publisher <input type="radio"/> Manager
Printed Name	Date
Email (Username)	Previous Username, if applicable

USER 5	
<b>User Status</b> <input type="radio"/> Current User <input type="radio"/> New User <input type="radio"/> Transfer User <input type="radio"/> Remove User	<b>Level of Permission/Authority (check one)</b> <input type="radio"/> Staff <input type="radio"/> Editor <input type="radio"/> Publisher <input type="radio"/> Manager
Printed Name	Date
Email (Username)	Previous Username, if applicable



EXHIBIT B.2  
 PAYMENT SCHEDULE

Content Build	Term	Not-To-Exceed Amount
Code of Ordinances	One-Time	Included with UDO
<i>Subtotal</i>		\$0
<b>Feature Build</b>		
Archive Manager	One-Time	Included with UDO
Template Design		
Cloud Library		
eReader		
Zoning Navigator		
GIS Bundle		
<i>Subtotal</i>		\$0
<b>TOTAL ONE-TIME BUILD</b>		
<b>License, Maintenance</b>		
Software License	Annual	\$1,500
Cloud Library		\$1,000
GeoZone Bundle		\$11,250
<b>TOTAL ANNUAL LICENSE AND MAINTENANCE</b>		<b>\$13,750</b>
<b>TOTAL ONE-TIME + ANNUAL (YEAR ONE)</b>		<b>\$3,500</b>

EXHIBIT B.3  
NOTICES

To Licensor	To Licensee
<p>Bret C. Keast, AICP, President enCodePlus, LLC 77 Sugar Creek Center Blvd, Suite 600 Sugar Land, TX 77478 Tel: 281.302.5847 Email: bret@enCodePlus.com</p> <p><i>With copy to:</i> William G. Harger, Attorney at Law William G. Harger &amp; Associates, PLLC 704 Main Street Richmond, Texas 77469 Tel: (281) 202-6000 Email: harger@hargerlaw.com</p>	<p>Gary Palmer, City Administrator City of Montgomery 101 Old Plantersville Road Montgomery, Texas 77316 Tel: 936.597.3962 Email: gpalmer@ci.montgomery.tx.us</p> <p><i>With a copy to:</i></p>
Account Management	Financial Services Department (minimum two)
<p>Kim Keast, Business Manager enCodePlus, LLC 77 Sugar Creek Center Blvd, Suite 600 Sugar Land, TX 77478 Tel: (281) 302-5847 Email: kim@encodeplus.com</p>	<p>Maryann Carl, Finance Director City of Montgomery 101 Old Plantersville Road Montgomery, Texas 77315 Tel: 936.597.4491 Email: mcarl@ci.montgomery.tx.us</p>
GIS Build	GIS Department / Contact
<p>Suhag Kansara, AICP enCodePlus, LLC 77 Sugar Creek Center Blvd, Suite 600 Sugar Land, TX 77478 Tel: (281) 888-0697 Email: suhag@encodeplus.com</p>	

**EXHIBIT "C"**  
**SUPPORT SERVICES**

- C.1 The City will provide administrative and technical support services to assist the Consultant Team in performing the Scope of Services described above for development of the UDO ("Project"). The support services to be provided by City will include the following types of general services and specific tasks for the planning program:
- A. Identify a single individual as the City's Project Director, who will serve as a primary point of contact and source of day-to-day work program direction for this collaborative regulatory drafting effort involving both City and Consultant personnel, resources, and capabilities.
  - B. Provide all available data, maps, air photos, spatial data, previous reports/plans/studies/ordinances, data sets and GIS coverages and layers already developed/maintained by the City for its entire planning area, and other information that is available to the City in digital or printed format, which is pertinent and necessary for development of the UDO. Prompt compilation and delivery of such resource materials to the Consultant Team is an essential prerequisite for initiation of the regulatory drafting process and timely progress on various initial public participation and strategic assessment tasks. City materials will not be required to be returned upon project completion.
  - C. Make affected or related entities or organizations aware of the UDO project and the process for developing the regulations.
  - D. Ensure that key City personnel and appointed and elected officials will participate as needed in the process and be available upon request, through arrangements made by the City's Project Director, to provide information and referrals and offer opinions, insights, and suggestions that are necessary for development of the various aspects of the UDO. This will include potential formal or informal meetings and a briefing with the City Council as specified in scope of services, above.
  - E. Review in a timely manner the draft regulatory provisions submitted by the Consultant Team.
  - F. Reproduce and forward each draft project submittal provided via e-mail by the Consultant Team to appointed and elected officials, City staff, and other project participants as appropriate. The Project Director of the City may provide briefings to the City Council or other bodies at regular intervals throughout the process.
  - G. Conduct public information activities in conjunction with public meetings and other fitting project milestones. As necessary, the City will be responsible for news media contacts, preparation and distribution of news releases and any other public information materials, and posting of meeting notices and project information and updates on the City's web site. The Consultant Team will contribute materials for posting by the City on the City's web site as provided in the scope of services, above.
  - H. Organize, notice, provide space for, and provide administrative support for meetings of appointed and elected officials, open door meetings, staff meetings, and any other events and workshops. This support includes:
    - (a) Adequate setup for presentations (PowerPoint projector, sound system, screen or white wall, reduced lighting, extension cords, easels, flip pads and markers, etc.).
    - (b) Arranging meeting locations and reproducing agendas and other handouts.
    - (c) Noticing the meetings according to City requirements for public notice.
    - (d) Provide three-ring binders (2" size) with section dividers for each appointed and elected official, and applicable staff member for purposes of organizing and maintaining project materials throughout the process.

- (e) Reproduce paper copies of project materials as the City deems necessary for execution of the project.
  - I. Consider and act on all deliverables and other interim work items submitted by the Consultant Team that require City review, comments or approval within a reasonable period of time so as to enable the Consultant Team to complete the work on schedule. Specific timeframes for such City response will be incorporated into a detailed project schedule.
  - J. Provide the Consultant Team written summaries and copies of any handouts/materials from all project-related meetings not attended by the Consultant Team.
- C.2 In support of the Software as a Service, the City will provide the following to the Consultant Team:
- A. The City's logo as an original file (.eps or .ai preferred; high resolution .jpg, .tif, or .png also accepted).
  - B. The City's Digital Style Guide, if available, including:
    - (a) RGB or hex color mixes for any official colors;
    - (b) Fonts used, including web font preferences; and
    - (c) Additional relevant iconography or branding images.
  - C. Up to a 100-word welcome message for the home page (via email or MS Word).
  - D. Up to six high-resolution images that portray the City for use on the home page.
    - (a) Images must be 1280x1024 pixels or greater
    - (b) In .jpg format
    - (c) The City must own or have permissions to use such photographs
    - (d) For ADA accessibility, alternate or "Alt" image tags can be provided for each image
  - E. URLs or PDFs and titles of all the files and materials you would like to include in the Document Library, including reports and studies, static maps, applications, and forms, etc.