

Attachment A

Consulting Services Agreement
City of Big Spring

This Consulting Services Agreement (this "Agreement"), dated as of the _____ day of _____, 2026 (the "Effective Date"), is entered into by and between _____, a Texas limited liability company, with offices located at _____ (the "Service Provider"), and the City of Big Spring, a Texas municipal corporation, with offices located at 310 Nolan Street, Big Spring, Texas 79720 ("Customer" or "City"), each a "Party" and collectively "the Parties."

WHEREAS, Service Provider has the capability and capacity to provide certain cost allocation services; and

WHEREAS, Customer desires to retain Service Provider to provide the said services under the terms and conditions hereinafter set forth, and Service Provider is willing to perform such services;

In consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Service Provider and Customer agree as follows:

Definitions

The following defined terms shall have the following meanings whenever used in this Agreement:

"Business Day" means a day in which national banks are open to the public for carrying on substantially all business.

"City Council" means the City Council of Big Spring, the governing body of the City of Big Spring.
"City Manager" means the City Manager of the City of Big Spring.

1. Services. Service Provider shall provide to Customer the services (the "Services") as set out in Exhibit A. The location such Services shall be delivered or performed from shall be set at location of Customer, or by mutual agreement.

1.1 Service Provider shall provide the Services (a) in accordance with the terms and subject to the conditions set forth in this Agreement; (b) using personnel of required skill, experience, licenses, and qualifications; (c) in a timely, workmanlike, and professional manner; (d) in accordance with generally recognized industry standards in Service Provider's field; and (e) to the reasonable satisfaction of Customer.

1.2 Service Provider shall comply with all Customer rules, regulations, and policies when providing the Services.

1.3 Nothing in this Agreement shall be construed to prevent Customer from itself performing or from receiving services from other providers that are similar or identical to the Services.

2. Service Provider Obligations. Service Provider shall:

2.1 Appoint representatives to the following positions after obtaining Customer's consent:

(a) A primary contact to act as its authorized representative with respect to all matters pertaining to this Agreement (the "Service Provider Contract Manager").

(b) A sufficient number of employees to perform the Services set out in each Statement of Work, each of whose names, positions, and respective levels of experience and relevant licenses shall be set out in the respective Statement of Work (collectively, with Service Provider Contract Manager, "Provider Representatives").

2.2 Make no changes in Provider Representatives except:

(a) With the prior consent of Customer.

(b) At the request of Customer, in which case Service Provider shall promptly appoint a replacement.

(c) Upon the resignation, termination, death, or disability of any existing Provider Representative.

2.3 Assign only qualified, legally authorized Provider Representatives to provide the Services.

2.4 Comply with all applicable laws and regulations in providing the Services.

2.5 Comply with all Customer rules, regulations, and policies of which it has been made aware, in its provision of the Services.

2.6 Maintain complete and accurate records relating to the provision of the Services under this Agreement in such form as Customer shall approve. During the Term (as defined in Section 7) and for a period of four (4) years thereafter, upon Customer's written request, Service Provider shall allow Customer or Customer's representative to inspect and make copies of such records and interview Provider Representatives in connection with the provision of the Services; provided that Customer provides Service Provider with reasonable advance written notice of the planned inspection.

3. Customer Obligations.

3.1 Customer's City Manager shall designate one of Customer's employees to serve as Customer's primary contact with respect to this Agreement and to act as Customer's authorized representative with respect to matters pertaining to this Agreement (the "Customer Contract Manager"), with such designation to remain in force unless and until a successor Customer Contract Manager is appointed, in City Manager's sole discretion. In the event no Customer Contract Manager is appointed, the City Manager shall serve as the Customer Contract Manager. Customer shall require that the Customer Contract Manager respond promptly to any reasonable requests from Service Provider for instructions, information, or approvals required by Service Provider to provide the Services.

4. Fees and Expenses. In consideration of the Services to be performed under this Agreement, Customer shall pay to Service Provider a fee determined in accordance with the fee schedule set forth in the Services in Exhibit C. Unless otherwise provided in the Statement of Work, said fee will be payable within 30 days of receipt by the Customer of an invoice from Service Provider accompanied by documentation reasonably requested by the Customer evidencing all charges. Service Provider shall be solely responsible for its expenses.

4.1 The fees set forth in this Agreement shall cover and include all sales and use taxes, duties, and charges of any kind imposed by any federal, state, or local governmental authority on amounts payable by Customer under this Agreement, and in no event shall Customer be required to pay any additional amount to Service Provider in connection with such taxes, duties, and charges, or any taxes imposed on, or regarding, Service Provider's income, revenues, gross receipts, personnel, or real or personal property or other assets.

5. Intellectual Property.

5.1 Service Provider acknowledges and agrees that any and all work product, including any deliverables, it conceives, creates, develops or reduces to practice, in whole or part, during the term of the Agreement, including without limitation, all "works of original authorship" and all content, inventions, improvements, enhancements, designs, ideas, source code, software applications, formula, processes, techniques, discoveries, or know-how, whether or not patentable or copyrightable, are "works for hire" and is and/or shall become and remain the sole and exclusive property of the Customer and the Customer shall be the sole owner of all patents, copyrights and other rights in connection therewith throughout the world. To the extent any such works are not deemed works for hire, Service Provider hereby assigns to the Customer, Service Provider's entire right, title, and interest in any invention, technique, process, device, discovery, improvement, or know-how, whether patentable or not, hereafter made or conceived solely or jointly by Service Provider while working for or on behalf of the Customer, which relates to, is suggested by, or results from matters set forth in any active Statement of Work and depends on either:

- (a) Service Provider's knowledge of Confidential Information (as defined in Section 6) it obtains from the Customer.
- (b) The use of the Customer's equipment, supplies, facilities, information, or materials.

5.2 Service Provider shall disclose any such invention, technique, process, device, discovery, improvement, or know-how promptly to the Customer Contract Manager. Service Provider shall, upon request of the Customer, promptly execute a specific assignment of title to the Customer and do anything else reasonably necessary to enable the Customer to secure for itself, patent, trade secret, or any other proprietary rights in the United States or other countries. It shall be conclusively presumed that any patent applications relating to a Statement of Work, related to trade secrets of the Customer, or which relate to tasks assigned to Service Provider by the Customer, which Service Provider may file within one year after termination of this Agreement, shall belong to the Customer, and Service Provider hereby assigns same to the Customer, as having been conceived or reduced to practice during the term of this Agreement.

5.3 All writings or works of authorship, including, without limitation, program codes or documentation, produced or authored by Service Provider in the course of performing services for the Customer, together with any associated copyrights, are works made for hire and the exclusive property of the Customer. To the extent that any writings or works of authorship may not, by operation of law, be works made for hire, this Agreement shall constitute an irrevocable assignment by Service Provider to the Customer of the ownership of and all rights of copyright in, such items, and the Customer shall have the right to obtain and hold in its own name, rights of copyright, copyright registrations, and similar protections which may be available in the works. Service Provider shall give the Customer or its designees all assistance reasonably required to perfect such rights.

5.4 If for any reason, including incapacity, the Customer is unable to secure Service Provider's signature on any document needed to apply for, perfect, or otherwise acquire title to the intellectual property rights granted to it under this Section 4.3, or to enforce such rights within seven (7) business days of such request, Service Provider hereby designates the Customer as Service Provider's attorney-in-fact and agent, solely and exclusively to act for and on Service Provider's behalf to execute and file such documents with the same legal force and effect as if executed by Service Provider and for no other purpose.

5.5 Service Provider owns the discoveries, improvements, inventions, or intellectual property identified by title and number or date on Exhibit C, attached. Such discoveries, improvements, inventions, and intellectual property, made or conceived by Service Provider before the effective date of this Agreement, or outside of the scope of this Agreement or any Statement of Work, are expressly reserved and excepted from the provisions of this Agreement. Service Provider represents that there are no such discoveries, improvements, or inventions to be excluded. IF THERE ARE NO SUCH DISCOVERIES, IMPROVEMENTS, OR INVENTIONS TO BE EXCLUDED, SERVICE PROVIDER SHOULD INITIAL HERE _____.

6. Confidentiality. All non-public, confidential, or proprietary information of Customer, or in Customer's possession from a third party ("Confidential Information"), including, but not limited to, any trade secrets, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates disclosed by Customer to Service Provider, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for Service Provider's use in performing this Agreement and may not be disclosed or copied unless authorized by Customer in writing. Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Service Provider's breach of this Agreement; (b) is obtained by Service Provider on a non-confidential basis from a third party that was not legally or contractually restricted from disclosing such information; or (c) Service Provider establishes by documentary evidence, was in Service Provider's possession prior to Customer's disclosure hereunder. Service Provider shall maintain the Confidential Information with the same degree of care Service Provider uses to maintain its own Confidential Information, and, in all events, Service Provider shall maintain the Confidential Information with no less than commercially reasonable care. Upon Customer's request, Service Provider shall promptly return all documents and other materials received from Customer. Customer shall be entitled to injunctive relief for any violation of this Section.

7. Taxation

A municipal corporation and body corporate and politic under the laws of the State of Texas, the City of Big Spring claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request.

8. Term, Termination, and Survival.

8.1 This Agreement shall commence as of the Effective Date and shall continue thereafter until September 30, 2032 ("the Initial Term"), unless sooner terminated in accordance with the provisions of this Agreement. Customer shall have the right to renew the Agreement for a period of one year by providing notice.

This Agreement shall commence as of the Effective Date and shall continue thereafter until the completion of the Services ("the Term"), unless sooner terminated in accordance with the provisions of this Agreement.

8.2 Customer, in its sole discretion, may terminate this Agreement in whole or in part, at any time without cause, and without liability except for required payment for services rendered by providing at least 30 (thirty) days' prior written notice to Service Provider.

8.3 Either Party may terminate this Agreement, effective upon written notice to the other Party (the "Defaulting Party"), if the Defaulting Party:

(a) Breaches this Agreement, and such breach is incapable of cure, or with respect to a breach capable of cure, the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach;

(b) Becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven (7) business days or is not dismissed or vacated within forty-five (45) days after filing;

(c) Is dissolved or liquidated or takes any corporate action for such purpose;

(d) Has 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.

8.4 Upon expiration or termination of this Agreement for any reason, Service Provider shall promptly return to Customer all Customer-owned property, equipment, or materials, including but not limited to keys and copies of keys, in its possession or control; and remove any Service Provider-owned property, equipment, or materials located at Customer's locations.

8.5 The City reserves the right to terminate the Agreement at the end of each fiscal year of the City if the City Council does not budget sufficient funds to extend the Agreement.

8.6 In the event the Agreement is terminated before the Initial Term expires, the obligation of the City to compensate Service Provider is limited to the date that the termination is effect.

8.7 The rights and obligations of the Parties set forth in this Section 8 and Section 4, Section 5, Section 6, Section 7, Section 8, Section 9, Section 10, Section 11, Section 14, Exhibit C, and any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

9. Independent Contractor. It is understood and acknowledged that the Services which Service Provider will provide to Customer hereunder shall be in the capacity of an independent contractor and not as an employee, agent, partner, or joint venturer of the Customer.

9.1 Service Provider shall control the conditions, time, details, and means by which Service Provider performs the Services. The Customer shall have the right to inspect the work of Service Provider as it progresses solely for the purpose of determining whether the work is completed according to the applicable Statement of Work.

9.2 Service Provider has no authority to commit, act for or on behalf of the Customer, or to bind the Customer to any obligation or liability.

9.3 Service Provider shall not be eligible for and shall not receive any employee benefits from Customer and shall be solely responsible for the payment of all taxes, FICA, federal and state unemployment insurance contributions, state disability premiums, and all similar taxes and fees relating to the fees earned by Service Provider hereunder.

10. Indemnification.

(a) Generally. To the fullest extent permitted by law, and subject to the terms and conditions set forth in Section 9(b), Section 9(c), and Section 9(d), Service Provider (as "Indemnifying Party") shall indemnify, hold harmless, and defend Customer and its elected officials, officers, directors, Customer Contract Manager, managers, partners, employees, agents, affiliates, successors, and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, demands, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees and litigation expenses, that are incurred by Indemnified Party (collectively, "Losses"), arising out of or related to any third-party claim alleging:

(i) breach or non-fulfillment of any provision of this Agreement by Indemnifying Party or Indemnifying Party's customers, officers, directors, Service Provider Contract Manager, managers, partners, employees, subcontractors, sub-subcontractors, affiliates, successors, and permitted assigns ("Indemnifying Party's Personnel");

(ii) any negligent or more culpable act or omission of Indemnifying Party or Indemnifying Party's Personnel (including any reckless or willful misconduct) in connection with the performance of its obligations under this Agreement;

(iii) any bodily injury, death, sickness, or disease of any person, or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Indemnifying Party or Indemnifying Party's Personnel (including any reckless or willful misconduct); or

(iv) any failure by Indemnifying Party or Indemnifying Party's Personnel to comply with any applicable federal, state, or local laws, regulations, or codes in the performance of its obligations under this Agreement.

(b) Indemnified Party shall give notice to Indemnifying Party (a "Claim Notice") within ten (10) days after obtaining knowledge of any Losses or discovery of facts on which Indemnified Party intends to base a request for indemnification under Section 9(a). Indemnified Party's failure to provide a Claim Notice to Indemnifying Party under this Section 9(b) does not relieve Indemnifying Party of any liability that Indemnifying Party may have to Indemnified Party, but in no event shall Indemnifying Party be liable for any Losses that result directly from a delay in providing a Claim Notice, which delay prejudices the defense of the related third-party claim. Indemnifying Party's duty to defend applies immediately, regardless of whether Indemnified Party has paid any sums or incurred any detriment arising out of or relating, directly or indirectly, to any third-party claim.

(c) Indemnified Party Control of Defense. Notwithstanding anything to the contrary in this Section 9, Indemnified Party may at its sole option and discretion, assume control of the defense, appeal, or settlement of any third-party claim that is

reasonably likely to give rise to an indemnification claim under Section 9(a), and select its own legal counsel to represent its interests, and Indemnifying Party shall:

(i) reimburse Indemnified Party for its costs and attorneys' fees immediately upon request as they are incurred; and

(ii) remain responsible to Indemnified Party for any Losses indemnified under Section 13(a).

(d) Settlement of Indemnified Claims by Indemnifying Party. Indemnifying Party shall give prompt written notice to Indemnified Party of any proposed settlement of a claim that is indemnifiable under Section 9(a). Indemnifying Party may not, without Indemnified Party's prior written consent, settle or compromise any claim or consent to the entry of any judgment regarding which indemnification is being sought hereunder.

(e) The Parties expressly agree that the Indemnifying Party's obligations to the Indemnified Party in this Section 9 shall not be limited in any way whatsoever, or to any extent, by any worker's compensation, disability, or other employee benefits statute, to which its employees, or those of its subcontractors or sub-subcontractors, or any of Indemnifying Party's Personnel, as the case may be, are subject.

11. Remedies.

11.1 If the Service Provider violates any provision of this Agreement, the Customer shall, in addition to any damages to which it is entitled, be entitled to immediate injunctive relief against the Service Provider prohibiting further actions inconsistent with the Service Provider's obligations under this Agreement.

11.2 In the event Service Provider fails to satisfactorily perform any of the Services on a timely basis, the Customer shall have the right, without prejudice to any other rights or remedies it may have under this Agreement or any applicable Statement of Work, to take one or more of the following steps:

(a) Suspend Service Provider's right and obligation to complete its performance of the Services until such time as the Service Provider is able to demonstrate to the Customer's reasonable satisfaction that it can satisfactorily meet its obligations under this Agreement;

(b) Itself provide and/or engage a replacement service provider to provide any or all of the delayed or unsatisfactory Services;

(c) Assign one or more of its representatives to supervise and work with the Service Provider to correct and mitigate the effects of the Service Provider's breach;

(d) Withhold payment of any amounts otherwise due to the Service Provider in a sufficient amount to set off against any damages caused to the Customer as a consequence of the Service Provider's breach.

11.3 To the extent a Party is required to seek enforcement of this Agreement or otherwise defend against an unsuccessful claim of breach, the unsuccessful Party shall be liable for all attorney's fees and costs incurred by the successful party to enforce the provisions of this Agreement.

11.4 All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties, or otherwise.

12. Insurance. Insurance shall be according to Exhibit B.

13. Compliance.

13.1 Additional Representations, Warranties, Covenants, and Verifications.

(a) Service Provider has submitted a completed, signed, and notarized Texas Ethics Commission Form 1295 ("TEC Form 1295") with a certificate number assigned by the Texas Ethics Commission. The Service Provider shall complete the TEC Form 1295 online through the Texas Ethics Commission's website, print, sign, and notarize the form, and provide it to the City prior to the execution of this Agreement.

(b) In this subsection, "officer" means each City of Big Spring elected official, city manager, department head, purchasing agent, city attorney, and judge, and "family" means related within the first degree of consanguinity or affinity. Service Provider covenants that it will file a "conflicts of interest questionnaire" ("questionnaire") (available from Texas Ethics Commission web site) with Customer if the Service Provider or Service Provider's agent has a business relationship with the Customer and: (1) has an employment or other business relationship with an officer or an officer's family member that results in the receipt by the officer or family member of taxable income of more than \$2,500 in the preceding twelve months; (2) has given an officer or an officer's family member one or more gifts totaling more than \$100 in the preceding twelve months; or (3) has a family relationship with an officer.

(c) Service Provider warrants that it is in compliance with and covenants that it shall comply with all applicable laws, regulations, and ordinances. Service Provider warrants that it has in effect and covenants that it shall maintain, renew and obtain all of the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

(d) Service Provider represents to Customer that it is not on a list prepared and maintained by the Texas Comptroller of companies doing business with Iran, Sudan, or a foreign terrorist organization (these lists are available at <https://comptroller.texas.gov/purchasing/publications/divestment.php>) unless it is a company affirmatively declared by the United States government to be excluded from the applicable federal sanctions regime.

(e) Service Provider represents to City that in the scope of the Agreement, either the City will not lease a computer, phone, or mobile device from Service Provider; or, if the City does lease such from Service Provider, that Service Provider will not have installed thereon or access therefrom the application known as TikTok, or other "covered application" as defined by Section 620.001, Texas Government Code.

(f) Service Provider represents that it does not boycott Israel, and covenants that it will not boycott Israel during the term of the Agreement.

(g) Service Provider represents that it does not boycott energy companies, and covenants that it will not boycott energy companies during the term of the Agreement.

(h) Service Provider represents that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and covenants that it will not discriminate during the term of the Agreement against a firearm entity or firearm trade association.

14. Miscellaneous.

14.1 Non-Waiver of Governmental Immunity.

(a) The City of Big Spring expressly retains all rights and benefits of governmental immunity from liability and suit for damages in accordance with: Title 5, Texas Civil Practice and Remedies Code; Subchapter I, Chapter 271, Texas Local Government Code; and any other law, if applicable.

(b) Nothing in this Agreement shall be deemed as a waiver of governmental immunity or as increasing the City of Big Spring's liability beyond any statutory limitation of liability.

(c) Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the City of Big Spring which would otherwise be barred under the doctrine of governmental immunity or operation of law.

14.2 Exhibits. Exhibits A, B, and C are attached and incorporated into this Agreement.

14.3 Authority. Each Party to this Agreement warrants that it has the power and authority to enter into this Agreement and that all documents executed and delivered pursuant to this Agreement are valid, binding, and enforceable upon such Party. Each Party further warrants that there are no outstanding parties nor any additional signatories required for the execution of this Agreement.

14.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

14.5 Electronic Signatures. Electronic Signatures. Each Party agrees that any electronic signatures, whether digital or encrypted, of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. "Electronic Signature" means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a Party with the intent to sign such record, including e-mail electronic signatures, pursuant to the Texas Uniform Electronic Transactions Act (Tex. Bus. & Com. Code Ann. § 322.001 et seq.) as amended from time to time.

14.6 Entire Agreement. This Agreement together with any and all related exhibits incorporated into this Agreement, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to the subject matter. The parties have not relied on any statement, representation, warranty, or agreement of the other party or of any other person on such party's behalf, including any representations, warranties, or agreements arising from statute or otherwise in law, except for the representations, warranties, or agreements expressly contained in this Agreement.

14.7 Severability. Any term, provision, covenant, or restriction of this Agreement becomes invalid, void, unlawful, illegal, or unenforceable, all other terms, provisions, covenants, and restrictions of this Agreement remain in full force and effect.

14.8 Interpretation. For purposes of this Agreement, (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires,

references herein: (x) to sections, subsections, schedules, and exhibits mean the sections of, subsections of, and schedules and exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The schedules and exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

14.9 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

14.10 Waiver. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

14.11 Amendment and Modification. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. The parties may, by mutual written agreement, amend this agreement. Such amendments shall be incorporated into and made a part of this agreement.

14.12 Assignment. Neither party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other party. Any purported assignment or delegation in violation hereof shall be null and void. No assignment or delegation shall relieve the assigning or delegating party of any of its obligations hereunder.

14.13 No Subcontractors. Service Provider shall not subcontract the Services except in compliance with the Amendment and Modification section of this Agreement. Any subcontractor allowed by amendment must be suitably skilled, experienced and qualified to perform the services. Any permitted subcontractor must carry the insurance required of Service Provider. Any permitted subcontractor must be bound in writing by the indemnification provisions of this Agreement.

14.14 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors, permitted assigns, and permitted subcontractors.

14.15 Non-appropriations. The City has committed only current funds to this Agreement. The City reserves the right to cancel the Agreement at the end of each fiscal year of the City if the City Council does not budget sufficient funds to extend the Agreement.

14.16 The City represents to Service Provider that City's fiscal year begins each October 1 and ends each September 30.

14.17 No Joint Venture, Partnership or Vicarious Liability. Nothing herein shall be construed to create a joint venture or partnership between the parties hereto or an

employer/employee or agency relationship or any other relationship of any nature to which vicarious liability may apply. Neither party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement, or undertaking with any third party.

14.18 No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

14.19 Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake, explosion, or volcanism; or (c) war or invasion. The party suffering a Force Majeure Event shall give notice within seven (7) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.

14.20 Choice of Forum and Submission to Jurisdiction. Any legal suit, action, or proceeding arising out of or based upon/relating to this Agreement or the transactions contemplated hereby or shall be exclusively filed and adjudicated in state courts sitting in Howard County, Texas. Service of process, summons, notice, or other document by certified mail shall be effective service of process for any suit, action, or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to venue of any suit, action, or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum. Each party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

14.21 Choice of Law. This Agreement, and all claims or causes of action (whether in contract, implied contract, tort, equity or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution, or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by, and enforced in accordance with, the internal laws of the State of Texas, including its statutes of limitations, without giving effect to the conflict of law's provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Texas.

14.22 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) on the fourth day after the date mailed, by certified or registered mail (in each case, return receipt requested, postage pre-paid). Notices must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a Notice given in accordance with this subsection. Either party may notice the other party as to a change to its respective address(es) for this subsection.

If to Service Provider:
ATTN:

If to City:
City Manager
310 Nolan Street
Big Spring, Texas 79720

with a copy to:
City Attorney
310 Nolan Street
Big Spring, Texas 79720

14.23 Business Days. If any date on which a party is required to make a payment or a delivery pursuant to the terms hereof is not a Business Day, then such party shall make such payment or delivery on the next succeeding Business Day.

14.24 Expenses. All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

14.25 Further Assurances. Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be required to carry out the provisions hereof and give effect to the transactions contemplated hereby.

14.26 Time of the Essence. Service Provider acknowledges that time is of the essence with respect to Service Provider's obligations hereunder and that prompt and timely performance of all such obligations is strictly required.

14.27 Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

-Signature page to follow-

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date by their respective officers thereunto duly authorized.

SERVICE PROVIDER
[NAME OF ENTITY], a [state] [type of entity]

CITY
CITY OF BIG SPRING, a Texas Municipal Corporation

[Name]
[Title]

Todd Darden
City Manager

APPROVED AS TO FORM ONLY

Andrew W. Hagen
City Attorney

EXHIBIT A

Scope of Services

Description of Services:

Consultant shall perform and provide in a good and professional manner the following services:

- Prepare a Cost Allocation Plan per 2 CFR based on actual costs incurred as well as a full cost allocation plan based on budgeted expenditures. These plans will identify the various costs incurred by the City to support and administer non-general fund programs and to recover indirect costs from federal and state grants. The cost plans will also adhere to the maximum extent of recovery allowed for Hotel Occupancy Taxes under the State of Texas' Tax Code.
- Under direction of the Consultant, the City shall gather input data.
- Computer processing of the plan prepared.
- Provide the City draft reports; Consultant shall revise the reports based on the City's feedback.
- Assist the City in its negotiation of acceptable rates with federal and state authorities, as necessary.

The final document shall comply with the cost principles established by the Federal Office of Management and Budget Rules and Regulations, 2 CFR part 225 (formerly known as OMB A-87) for state and local governments.

Consultant represents that it has, or will secure at its own expense, all personnel required in the performance of Services under this Agreement. All of the Services required hereunder will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be fully qualified to perform the services described herein.

Consultant shall provide the Services stated in this Exhibit A in a professional and workmanlike manner consistent with the typical standards of the industry. Consultant specifically disclaims all other warranties, express or implied, including but not limited to the warranties of merchantability and fitness for a particular purpose.

EXHIBIT B
INSURANCE

ARTICLE I During the Term and for a period of 30 days after expiration or termination of this Agreement for any reason, Service Provider shall, at its own expense, maintain and carry insurance in full force and effect with financially sound and reputable insurers, that includes, but is not limited to:

- a. Commercial general liability with limits no less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate, including bodily injury and property damage and products and completed operations and advertising liability, which policy will include contractual liability coverage insuring the activities of Service Provider under this Agreement;
- b. Automobile liability insurance with limits no less than \$1,000,000, combined single limit;
- c. Professional Liability Insurance, including Errors & Omission Insurance, with limits no less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate; and
- d. Service Provider shall maintain workers' compensation insurance as is required by the laws of the State.

ARTICLE II Upon Customer's request, and as a condition precedent of this Agreement, Service Provider shall provide Customer with a certificate of insurance and policy endorsements for all insurance coverages required by this Exhibit B, which shall include the NAIC number(s) and additional insured status, evidencing the insurance coverage specified in this Agreement. Service Provider shall not do anything to invalidate such insurance. This Exhibit B shall not be construed in any manner as waiving, restricting, or limiting the liability of either party for any obligations imposed under this Agreement (including, but not limited to, any provisions requiring a party hereto to indemnify, defend, and hold harmless, the other party under this Agreement).

ARTICLE III All insurance policies required pursuant to this Exhibit shall:

- (a) be issued by insurers [1] licensed by the Texas Department of Insurance as an admitted carrier in the State of Texas; [2] rated A or greater in A.M. Best Company, Inc. Financial Strength Rating (FSR); and [3] rated VII or higher in A.M Best Financial Size Category (FSC);
- (b) provide that such insurers give Customer at least thirty (30) days' prior written notice in the event of a cancellation, non-renewal, or material change in policy coverage; provided that prior to any such cancellation or non-renewal, Service Provider shall have new insurance policies in place that meet the requirements of this Exhibit B;
- (c) waive any and all rights of subrogation against Customer's insurers and Customer (including the Indemnified Parties);
- (d) provide that such insurance be primary insurance and any similar insurance in the name of and/or for the benefit of Customer shall be excess and non-contributory; and
- (e) name Customer, including, in each case, all successors and permitted assigns, as additional insureds.

ARTICLE IV Companies issuing the insurance policies and the Service Provider shall have no recourse against the City for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of the Service Provider.

ARTICLE V No Release. The carrying of the above-described coverage shall in no way be interpreted as relieving the Service Provider of any other responsibility or liability under this agreement, or any applicable law, statute, regulation, or order.

EXHIBIT C
SERVICES

[INSERT SHEET]