

AGREEMENT TO PROVIDE PROFESSIONAL SERVICES ARCHITECTS, ENGINEERS, AND BUILDING OFFICIALS

THIS AGREEMENT ("Agreement") is entered into this 27th day of February, 2024 by and between Aoka Engineering LLC (DBA: Aoka Code Consulting) ("PROFESSIONAL") and the CITY OF BOERNE, TEXAS, a municipal corporation of the State of Texas ("CITY"). For convenience, the PROFESSIONAL and the CITY may sometimes be referred herein collectively as "parties" and individually as a "party."

WITNESSETH

WHEREAS, CITY desires to engage the PROFESSIONAL to provide professional services as more fully described in the scope of services (Exhibit A); and

WHEREAS, PROFESSIONAL agrees to provide such work and services for the CITY in accordance with the terms of this Agreement;

NOW, THEREFORE, for the mutual promises set forth herein, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto mutually agree as follows:

1. Employment of PROFESSIONAL.

(a) CITY agrees to engage the PROFESSIONAL and the PROFESSIONAL hereby agrees to perform the services which will be approved as separate task orders.

(b) Notwithstanding anything to the contrary contained in this Agreement, CITY and PROFESSIONAL agree and acknowledge that CITY is entering into this Agreement in reliance on PROFESSIONAL's special and unique abilities. PROFESSIONAL accepts the relationship of trust and confidence established between it and the CITY by this Agreement. PROFESSIONAL acknowledges that PROFESSIONAL shall be solely responsible for determining the methods for performing the services described in the agreement scope (Exhibit A attached). PROFESSIONAL covenants with CITY to use its best efforts, skill, judgment, and abilities to perform the work required by this Agreement and to further the interests of CITY in accordance with CITY's requirements, in accordance with the highest standards of PROFESSIONAL's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. The PROFESSIONAL warrants, represents, covenants, and agrees that all of the work to be performed by the PROFESSIONAL under or pursuant to this Agreement shall be done (i) with the professional skill and care ordinarily provided by competent engineers, architects, or building officials, as the case may be, practicing in the same or similar locality and under the same or similar circumstances and applicable professional license; and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer, architect, or building official, as the case may be.

(c) PROFESSIONAL will be responsible for supplying all tools and equipment necessary for PROFESSIONAL to provide the services as authorized in Exhibit A.

2. **Compensation.** The CITY agrees to pay the PROFESSIONAL the fees set forth and per Schedule of Hourly Rates provided as Exhibit B (attached) but not to exceed \$50,000 annually. Within fifteen (15) days of the end of the month within which services were rendered, PROFESSIONAL shall provide City an invoice specifying the services provided during the previous month and the total amount owed by the City. Payment will be made by the CITY within thirty (30) days of receipt of an invoice from PROFESSIONAL.
3. **Changes.** CITY may, from time to time require changes in the scope of services of the PROFESSIONAL to be performed hereunder. Such changes, which are mutually agreed upon by and between CITY and the PROFESSIONAL, shall be incorporated in written amendment to this Agreement.
4. **Services and Materials to be Furnished by CITY.** CITY shall furnish the PROFESSIONAL with all available information and data PROFESSIONAL requests pertinent to the execution of this Agreement. CITY shall cooperate with the PROFESSIONAL in carrying out the work herein and shall provide adequate staff for liaison with the PROFESSIONAL.
5. **Ownership of Documents.** All reports, plans, specifications, computer files and other documents prepared by PROFESSIONAL pursuant to this Agreement shall be the property of the CITY. PROFESSIONAL will deliver to the CITY copies of the prepared documents and materials. PROFESSIONAL shall make all documents and related data and material utilized in developing the documents available to CITY for inspection whenever requested. PROFESSIONAL may make copies of any and all such documents and items and retain same for its files. PROFESSIONAL shall have no liability for changes made to or use of the drawings, specifications, and other documents by anyone other than PROFESSIONAL subsequent to delivery of the prepared documents and materials. However, any such change or other use shall be sealed by the individual making the change or use and shall be appropriately marked to reflect what was changed or modified.
6. **Term and Termination of Agreement.** This agreement will be for a period of three years beginning March 1, 2024, and ending February 28, 2027. Either party may terminate this agreement at any time by providing thirty (30) days written notice to the other party.
7. **Completeness of Contract.** This Agreement and the documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this contract or any part thereof shall have any validity or bind any of the parties hereto. If there is any conflict between the terms of this Agreement and the documents attached hereto, the terms of this Agreement shall control. This Agreement may not be subsequently modified except by a writing signed by both parties.

8. **CITY Not Obligated to Third Parties.** CITY shall not be obligated or liable hereunder to any party other than the PROFESSIONAL.
9. **Final Decisions.** Serving as a PROFESSIONAL to the CITY, PROFESSIONAL shall advise all parties that final decisions shall be made by the City Council and/or City Manager or his/her designee.
10. **Indemnification.** PROFESSIONAL DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, WHICH MAY ARISE BY REASON OF DEATH OR INJURY TO PERSONS OR PROPERTY, CAUSED BY OR RESULTING FROM THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBPROFESSIONAL OR SUPPLIER COMMITTED BY THE PROFESSIONAL, ITS AGENTS, OR CONSULTANTS UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE PROFESSIONAL EXERCISES CONTROL, SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002 (B) AND PROFESSIONAL WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT CITY AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS.

THE INDEMNIFICATION UNDER THIS SECTION SHALL INCLUDE REASONABLE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO THE PROFESSIONAL'S LIABILITY.

THE PROFESSIONAL'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY PROFESSIONAL UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

11. **Insurance.** PROFESSIONAL shall, at its own expense, purchase, maintain and keep in force throughout the duration of this Agreement and for a period of four (4) years thereafter the following minimum insurance:
- a. Commercial general liability insurance, including personal injury liability, blanket contractual liability, and broad form property damage liability in an amount of not less than \$1,000,000 per occurrence/\$2,000,000 annual aggregate.

- b. Automobile bodily injury and property damage liability insurance with a limit of not less than \$1,000,000.
- c. Statutory workers' compensation and employers' liability insurance as required by state law.
- d. Professional liability insurance (Errors and Omissions) with a limit of \$1,000,000 per occurrence/annual aggregate.

PROFESSIONAL shall provide the CITY with proof of insurance required hereunder prior to commencing work for the CITY. Such policies shall name the CITY, its officers, and employees as an additional insured and shall provide for a waiver of subrogation in favor of the City. PROFESSIONAL shall provide the CITY with written notice of any coverage limit change on the insurance throughout the duration of this Agreement.

12. **Prompt Performance by Professional.** All services provided by PROFESSIONAL hereunder shall be performed in accordance with the degree of care and skill ordinarily exercised under similar circumstances by competent members of the engineering, architectural, and building services profession in the State of Texas applicable to such services contemplated by this Agreement.
13. **Client Objection to Personnel.** If at any time after entering into this Agreement, the CITY has any reasonable objection to any of PROFESSIONAL's personnel, or any personnel, professionals and/or consultants retained by PROFESSIONAL, PROFESSIONAL shall promptly propose substitutes to whom the CITY has no reasonable objection, and PROFESSIONAL's compensation shall be equitably adjusted to reflect any difference in PROFESSIONAL's costs occasioned by such substitution.
14. **Timeliness of Performance.** PROFESSIONAL shall perform its professional services with due and reasonable diligence consistent with sound professional practices.
15. **Personnel.** All of the services required hereunder will be performed by the PROFESSIONAL or under PROFESSIONAL's supervision, and all personnel engaged in the work shall be qualified to perform such services.
16. **Independent Contractor.** In performing the services under this Agreement, PROFESSIONAL is acting as an independent contractor. No term or provision hereof be construed as making PROFESSIONAL the agent, servant, or employee of the CITY or as creating a partnership or joint venture relationship between PROFESSIONAL and the CITY.
17. **Non-Solicitation.** The CITY agrees in good faith that for the term of this Agreement and one year after the termination of the Agreement not to directly or indirectly employ or otherwise engage any current employee of the PROFESSIONAL or any former employee of the PROFESSIONAL who left Aoka within the six months prior to and including the date of the execution of this Agreement.

18. **Assignability.** The parties hereby agree that PROFESSIONAL may not assign, convey or transfer its interest, rights and duties in this Agreement without the prior written consent of CITY.
19. **Successors and Assigns.** Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.
20. **Governing Law/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action brought to interpret or enforce the terms of this Agreement shall lie in Kendall County, Texas.
21. **No Third-Party Beneficiary.** For purposes of this Agreement, including its intended operation and effect, the parties specifically agree and contract that: (1) this Agreement only affects matters/disputes between the parties to this Agreement, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with CITY and PROFESSIONAL, or both; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations they owe to either the CITY or the PROFESSIONAL.
22. **Exhibits.** The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.
23. **HB 89 and SB 252 Certifications.** PROFESSIONAL hereby certifies that the Contractor does not and will not boycott Israel during the term of this Agreement in accordance with Chapter 2270, Texas Government Code. Additionally, PROFESSIONAL hereby certifies that the PROFESSIONAL is not included on the website of the Texas Comptroller for entities doing business with foreign terrorist organizations pursuant to Chapter 2252, Texas Government Code.
24. **Conflicts of Interest.** By signature of this Agreement, PROFESSIONAL warrants to CITY that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including business or personal financial interests, direct or indirect, in property abutting the proposed project and business relations with abutting property owners, or with elected officials or employees of the CITY. PROFESSIONAL further warrants that it will make disclosure in writing of any conflicts of interest that develop subsequent to the signing of this Agreement and prior to final payment under the Agreement. PROFESSIONAL warrants that it has submitted to the CITY a completed Conflicts of Interest Questionnaire as required by Chapter 176 of the Texas Local Government Code.
25. **Authority to Sign.** The parties hereby warrant and represent that the undersigned persons have full authority and are duly authorized to sign on behalf of their respective

principals and that such principals have duly authorized the transaction contemplated by this Agreement.

26. **Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, CITY and the PROFESSIONAL have executed this Agreement as of the date first written above.

CITY OF BOERNE, TEXAS

By: Ben Thatcher

Print Name: Ben Thatcher

Title: City Manager

[PROFESSIONAL'S NAME]

By: _____

Print Name: Ganesh Chapagain

Title: CEO

Exhibit A

PROFESSIONAL agrees to perform the scope of services as detailed below:

Building Plan Review

Our building plan review service ensures building safety all the while helping contractors meet their construction goals. When a contractor submits a drawing of their building to us through the city, ICC professionals well versed in building safety codes will review it to ensure what is being planned to build is safe. We provide building plan review services at an industry leading **turnaround time of 3-10 days**. With our expert plan review staff supported by our technology centered process, plans are reviewed accurately and timely.

All plans are eligible for electronic submission. The process is as follows:

- The city intakes the permit application with design documents.
- The project is submitted to us through the city's own system or through an easy upload to Aoka's website.
- Aoka's project manager is notified as soon as the city uploads the design documents.
- The project manager will assign the project to one or multiple relevant plan examiners.
- The plan examiners will review the design documents.
- The plan examiners upload their plan check report according to the direction of the city, either on the city's system or on Aoka's digital platform, which can be accessed by the city in real time.
- The project manager will review the plan check report to ensure quality.
- The city will be notified by email as soon as the plan examination and quality review is completed.
- The city will be able to access the plan check reports prepared by the plans examiner which can be distributed to the permit applicant. Transparency is key.

Availability and Turnaround Times

We propose the following turnaround times for the services listed below:

- | | |
|---------------------------------|--------------------------|
| • Plan Review (<\$5M valuation) | -within 5 business days |
| • Plan Review (>\$5M valuation) | -within 10 business days |
| • Plan Review Rechecks | -within 3 business days |

Exhibit B

PROFESSIONAL agrees to perform the services listed in Exhibit A at the fee shown below:

FEE SCHEDULE

Building Plan Review (Commercial and Residential)

Aoka will bill 55% of the City of Boerne's Building Permit Fee (see below) for building plan review. To be updated annually according to the adopted fee schedule.

PERMITTING AND CODE COMPLIANCE	CURRENT	NOTE
BUILDING:		
NEW CONSTRUCTION PERMIT FEE (ONE-TWO FAMILY DWELLING)	\$0.38 per sq. ft.	(Prior to 3-12-96) (Ord. 96-05) (Revised by Ord. 2003-05) (Revised by Ord. 2007-61) (Revised by Ord. 2018-42) (Revised by Ord. 2019-52) (Revised by Ord. 2022-29)
NEW CONSTRUCTION PERMIT FEE COMMERCIAL/OTHER	\$0.53 per sq. ft. for the first 5,000 sq. ft. plus \$0.15 per sq. ft. over 5000	(Revised 3-12-96) (Ord. 96-05) (Revised by Ord. 2007-61) (Revised by Ord. 2018-42)
REMODELING AND REPAIR PERMIT FEE (ONE-TWO FAMILY DWELLING)	\$0.53 per sq. ft.	(Revised by Ord. 2001-37) (Revised by Ord. 2012-42) (Revised by Ord. 2018-42) (Revised by Ord. 2019-16)
REMODELING AND REPAIR PERMIT FEE (OTHER)	\$26.00 plus \$5.00 per \$1,061.00 in construction value	(Revised by Ord. 2001-37) (Revised by Ord. 2012-42)
ROOF PERMIT FEE	\$111.00	Added by Ord. 2019-16 (Revised by Ord. 2022-29)
FENCE OR WALL PERMIT FEE	Residential \$31.00 Commercial \$53.00	(Revised by Ord. 2001-37) (Revised by Ord. 2011-29) (Revised by Ord. 2018-42)
BUILDING MOVING PERMIT FEE	\$84.00	(Revised by Ord. 2001-37) (Revised by Ord. 2011-29) (Revised by Ord. 2022-29)
NEW LAWN IRRIGATION PERMIT FEE	\$26.00	(Added by Ord. 2011-29) (Revised by Ord. 2018-42)
DEMOLITION PERMIT FEE	\$53.00 residential 1-2 family dwelling; \$106.00 other than 1-2 family dwelling	(Revised 7-13-99) (Ord. 99-07) (Revised by Ord. 2018-42)
FLATWORK	\$111.00	(Added by Ord. 2021-38) (Revised by Ord. 2022-29)
PARKING LOT PERMIT	\$222.00	(Added by Ord. 2021-21) (Revised by Ord. 2022-29)

The building plan review fees above includes 1st, 2nd, and 3rd review. Subsequent reviews (if needed) will be billed at an additional hourly rate of \$90 with prior approval from the city.

Private Infrastructure Inspections/Plan Review

Staff identifies what will be inspected prior to the issuance of a Site Development or Building permit.

The fee for this service is \$90 per hour for both plan review and inspection. Plan review turnaround is 5 to 10 business days. Inspections are performed the day after they are requested.