

RESOLUTION NO. R-2017-83

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, APPROVING TERMS OF ENGAGEMENT WITH BOJORQUEZ LAW FIRM, PC; AUTHORIZING THE MAYOR TO EXECUTE ALL NECESSARY DOCUMENTS; REPEALING ANY RESOLUTIONS IN CONFLICT; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Bastrop, Texas conducted a detailed Request for Qualifications for City Attorney Services; and

WHEREAS, there were ten (10) firms who submitted statements of qualifications for consideration by the City Council; and

WHEREAS, the City Council reviewed the statements of qualifications on September 19, 2017 and selected four (4) firms for interviews on September 26, 2017; and

WHEREAS, all four (4) firms interviewed on September 26, 2018 exhibited a passion for municipal law and represented the municipal attorney profession very well; and

WHEREAS, the City Council selected Alan Bojorquez, Bojorquez Law Firm, PC as the sole finalist for City Attorney pending reference checks and contract negotiation; and

WHEREAS, the City Manager completed reference checks and found that those contacted provided very favorable recommendations regarding the City Attorney services provided by Bojorquez Law Firm, PC; and

WHEREAS, the Terms of Engagement with Bojorquez Law Firm have been reviewed and found acceptable.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

SECTION 1: That the City Council hereby approves the Terms of Engagement with Bojorquez Law Firm, PC, attached hereto as Exhibit A and made a part hereof by this reference.

SECTION 2. That the City Council hereby authorizes the Mayor to execute the Terms of Engagement on behalf of the City of Bastrop.

SECTION 3: Any prior resolution of the City Council in conflict with the provisions contained in this resolution are hereby repealed and revoked.

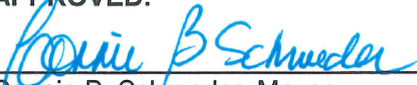
SECTION 4: Should any part of this resolution be held to be invalid for any reason, the remainder shall not be affected thereby, and such remaining portions are hereby declared to be severable.

SECTION 5: This resolution shall take effect immediately from and after its passage, and it is duly resolved.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop, Texas on the 10th day of October, 2017.

CITY OF BASTROP, TEXAS

APPROVED:




Connie B. Schroeder, Mayor

ATTEST:



Ann Franklin, City Secretary

APPROVED AS TO FORM:



Joseph J. Gorfida, Jr.
Interim City Attorney

12325 Hymeadow Drive
Suite 2-100
Austin, Texas 78750



Phone: (512) 250-0411
Fax: (512) 250-0749
TexasMunicipalLawyers.com

STANDARD TERMS OF ENGAGEMENT

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

I. Our Relationship

1. Identity of Client

The *Bojorquez Law Firm, P.C.* ("Firm") will be representing the interests of the *City of Bastrop*.

2. Nature of Representation

Our relationship can be described as follows:

The Firm will represent the City of Bastrop as an entity, and as such shall advise city officials and advocate on the city's behalf. Alan Bojorquez will be designated as the lawyer who is appointed *City Attorney*, but may designate other lawyers within the Firm to serve to assist with certain matters as they arise.

3. Scope of Work

As the client, it is imperative that you have a clear understanding of the legal counsel the Firm will provide. Any questions that you have should be dealt with promptly. We will provide services related only to matters as to which we have been specifically engaged. The Firm will at all times act on your behalf to the best of our ability. Any expressions on our part concerning the outcome of your matter are expressions of our best professional judgment, but are not guarantees. Such opinions are necessarily limited by our knowledge of the facts and are based on the state of the law at the time they are expressed. We cannot guarantee the success of any given matter, but we will strive to represent your interests professionally and efficiently.

4. Client Responsibilities

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

5. Responsibilities of the Bojorquez Law Firm

The Firm is committed to meeting your legal needs. In doing so, the Firm will: act competently and in a timely manner; protect the privileged information and ensure appropriate confidentiality; promote your interests; discuss your objectives and how they

should best be achieved; and provide information about the work to be done, who will do it, when the work is expected to be completed, and the way the services will be provided.

II. Fees, Billing, and Administrative

1. Fees for Legal Services

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

Principal Attorney:	One hundred-ninety dollars (\$190.00) per hour
Attorney Of Counsel:	One hundred eighty-five dollars (\$185.00) per hour
Senior Associate Attorney:	One hundred eighty dollars (\$180.00) per hour
Associate Attorney:	One hundred seventy-five dollars (\$175.00) per hour
Junior Associate Attorney:	One hundred sixty-five dollars (\$165.00) per hour
Municipal Court Prosecution:	One hundred fifty dollars (\$155.00) per hour
Legal Secretary/Office Assistant:	One hundred dollars (\$100.00) per hour
City Secretary Consulting:	One hundred twenty-five dollars (\$125.00) per hour
Land Planner:	One hundred twenty-five dollars (\$125.00) per hour
Municipal Court Consulting:	One hundred twenty-five dollars (\$125.00) per hour
Litigation:	Two hundred fifty to three hundred dollars (\$250.00 - \$300.00) per hour
Specialized Sub-Contractors:	Negotiated
Packaged Plans for Consultants:	Negotiated

The foregoing hourly rates shall be billed in 1/10th of an hour (0.1) increments.

2. Rate Adjustment

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

3. Other Charges and Handling Fees

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

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

4. Billing Procedures & Terms of Payment

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

5. Fee Estimates

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

6. Retainers

A retainer is not required at this time; however, substantial new matters for existing or new clients, may require a retainer. The retainer amount is not meant to be an estimate or limit of the fees and expenses required to complete the work on this matter, but is intended as your good faith deposit against a portion of such fees and expenses. The retainer will be placed in our Trust Account and we will bill our fees and disbursements against the retainer. We will advise you if additional amounts are necessary to be placed in trust against which to bill future work. If our work is completed, and your account is paid-in-full, yet a balance remains in the retainer, we will refund the retainer to you upon request.

7. Retention of Documents

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

8. Governing Law

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

III. Termination of Services

You have the right to terminate our services at any time upon providing written notice to us. Upon receipt of written notice from you, we will immediately cease to render additional services to the extent we can do so without jeopardizing your legal interests or our ethical obligations. We reserve the right to discontinue work on pending matters or terminate our attorney-client relationship with you at any time that payment of your account becomes delinquent. We also reserve the right to withdraw when obligated by the *Texas Rules of Disciplinary Conduct*. Additionally, in the event that you fail to follow our advice and counsel, or otherwise fails to cooperate reasonably with us, we reserve the right to withdraw from representing you upon short notice, regardless of the then status of your matter. No termination shall relieve you of the obligation to pay fees and expenses incurred prior to such termination. Unless otherwise agreed in writing, representation will cease upon your payment in full of all fees due, and our Firm's conveyance of your files to the destination you designate. The firm's files (work product), will be retained at the Firm.

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

1. Independent Contractor (IC)

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

2. The Internal Revenue Service

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

3. The Texas Workforce Commission

The TWC has adapted the old IRS twenty-factor test, known as the "direction or control" test, to determine who is an employee and who is an IC (*see* TWC Form C-8). Depending on the type of business and the services performed, not all of the twenty common law factors may apply and the weight assigned to a specific factor may vary depending upon the facts. Below are considerations for the TWC's twenty-factor test, which also generally address issues of behavioral control, financial control, and relationship of the worker and Firm.

(a) Financial Control

In general, an employee is usually paid for their time, whereas an independent contractor is usually paid by the job. An employee usually does not negotiate their

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

(b) Relationship of Worker & Business Entity

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

(c) Behavioral Control

In general, an employer contracting for IC services is normally interested in the end result, not in the details of how the work is done. The employer should have no interest in how the IC allocates his or her time, or who the IC hires to assist (other than requiring proper licensure).

V. Questions

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

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

If this arrangement is acceptable to you, please sign this letter and return it to Firm at the earliest convenience. We are truly honored to be representing you.

AGREED TO & ACCEPTED:

by: Connie Schroeder
The Honorable Connie Schroeder
Mayor, City of Bastrop

date: Oct 10, 2017

by: Alan Bojorquez
Alan Bojorquez
Principal, Bojorquez Law Firm, PC

date: September 29, 2017

Please return a signed original of the Standard Terms of Engagement to the Bojorquez Law Firm via mail, fax, or email.