



## MASTER PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between the **City of Pflugerville, TX** ("Client") and **Bureau Veritas North America, Inc.**, and its parent, affiliates, divisions, subsidiaries, agents, successors and assigns, hereinafter the Consultant, ("Consultant").

WHEREAS, Consultant is specially trained, experienced and competent to perform the special services which will be required by this Agreement; and

WHEREAS, Consultant is willing to render the professional services described herein on the following terms and conditions.

NOW, THEREFORE, the parties agree as follows:

1. **Scope of Services:** The Consultant shall furnish the following services in a professional manner:  
"Consultant shall perform the services described on **Exhibit A** which is attached hereto and incorporate herein by reference. Consultant shall provide said services at the time, place, and in the manner specified in **Exhibit A**, subject to the direction of the Client through its staff that it may provide from time to time."
2. **Time of Performance:** The services of Consultant are to commence upon execution of this Agreement and shall continue until all authorized work is approved by the Client. Consultant shall not be responsible for delays caused by circumstances beyond its reasonable control.
3. **Compensation:** Compensation to be paid to Consultant shall be in accordance with the Schedule of Fees set forth in **Exhibit B**, which is attached hereto and incorporated herein by reference. Payment by Client under this Agreement shall not be deemed a waiver of defects even if such defects were known to the Client at the time of payment.
4. **Method of Payment:** Consultant shall submit an invoice for services rendered in accordance with Exhibit A as set in Exhibit B on a monthly basis, due net 30 days.
5. **Ownership of Documents:** All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the Client upon payment to Consultant for such work, and the Client shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and other writings to Client upon written request.  
The Consultant shall not be responsible for damage caused by subsequent changes to or uses of the plans or specifications, where the subsequent changes or uses are not authorized or approved by the Consultant.
6. **Independent Contractor:** It is understood that Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the Client. Consultant shall obtain no rights to retirement benefits or other benefits which accrue to Client's employees, and Consultant hereby expressly waives any claim it may have to any such rights.
7. **Professional Ability of Consultant:** Client has relied upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. Consultant shall, therefore, provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.
8. **Indemnity:** Consultant shall indemnify and hold harmless Client from and against all losses, liabilities, and reasonable costs and expenses for property damage and bodily injury (including reasonable attorney's fees), to the extent directly and proximately arising from Consultant's negligent performance of services or breach of warranty under this Agreement. Client shall defend, indemnify and hold harmless Consultant, its employees, directors, officers, and agents, from and against any and all claims, losses, liabilities, and reasonable costs and expenses (including reasonable attorney's fees) that are: i) related to, or caused in any way by, the negligence or willful misconduct of Client, its employees, or agents; ii) related to this Agreement or the work to be performed by Consultant for which Consultant is not expressly responsible; or iii) the expressed responsibility of the Client under this Agreement.
9. **Insurance:** Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies with insurers possessing a Best's rating of no less than A:VII:
  - a. **Workers' Compensation Coverage:** Consultant shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the state where the services are being performed. In addition, Consultant shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the state where the services are being performed for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the Client at least thirty (30) days prior to such change.

- b. **General Liability Coverage:** Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.
- c. **Automobile Liability Coverage:** Consultant shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence.
- d. **Professional Liability Coverage:** Consultant shall maintain professional errors and omissions liability for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's operations under this Agreement, whether such operations are by the Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than one million dollars (\$1,000,000) on a claims-made annual aggregate basis.
- e. **Policy Endorsements:** Each general liability and automobile liability insurance policy shall be endorsed with the following specific language:
- 1) The Client, its officers, employees, and agents are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work or operations.
  - 2) This policy shall be considered primary insurance as respects the Client, its officers, employees, and agents. Any insurance maintained by the Client, including any self-insured retention the Client may have shall be considered excess insurance only and shall not contribute with it.
  - 3) This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
  - 4) The insurer waives all rights of subrogation against the Client, its officers, employees or agents.
  - 5) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Client, its officers, employees, and agents.
  - 6) Should any of the above described policies be cancelled before the expiration date thereof, the insurer shall deliver notification to the Client / Owner in accordance with the policy provisions
- f. **Certificates of Insurance and Endorsements:** Consultant shall provide certificates of insurance with original endorsements to Client as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the Client on or before commencement of performance of this Agreement, if requested to do so by Client. Current certification of insurance shall be kept on file with the Client at all times during the term of this Agreement.
10. **Risk Allocation and Limitation of Liability:** to the fullest extent permitted by law, and notwithstanding any other provision of this agreement, the total liability, in the aggregate, of the Consultant, and its officers, directors, partners, employees, agents and sub-consultants, and any of them, to the Client and anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from or in any way related to the project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract or warranty, express or implied, of the Consultant, and its officers, directors, employees, agents or sub-consultants, or any of them, shall not exceed the total compensation received by the Consultant, under this Agreement, or the total amount of \$50,000.00, whichever is greater. Client also agrees that Consultant shall not be responsible for the means, methods, procedures performance or safety of the construction contractors or subcontractors, or for their errors or omissions.
11. **Compliance with Laws:** Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinance and regulations.
12. **Resolution of Disputes:** All claims, disputes, controversies or matters in question arising out of, or relating to, this Agreement or any breach thereof, including but not limited to disputes arising out of alleged design defects, breaches of contract, errors, omissions, or acts of professional negligence, (collectively "Disputes") shall be submitted to mediation before and as a condition precedent to pursuing any other remedy. Upon written request by either party to this Agreement for mediation of any dispute, Client and Consultant shall select a neutral mediator by mutual agreement. Such selection shall be made within ten (10) calendar days of the date of receipt by the other party of the written request for mediation. In the event of failure to reach such agreement or in any instance when the selected mediator is unable or unwilling to serve and a replacement mediator cannot be agreed upon by Client and Consultant within ten (10) calendar days, a mediator shall be chosen as specified in the Mediation Rules of the American Arbitration Association then in effect, or any other appropriate rules upon which the parties may agree. Any cause of action brought against Consultant shall be brought within one (1) year of the work or services performed under this Agreement.

Should either party to this Agreement commence any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorney's fees.

13. **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the state where the services are being performed in a court of competent jurisdiction.

14. **Waiver of Jury Trial**

Each party waives its right to a jury trial in any court action arising between the parties, whether under this Agreement or otherwise related to the work being performed under this Agreement.

15. **Third Party Beneficiary**

It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to the Client and the Consultant. Nothing contained in the agreement shall give or allow any claim or right of action whatsoever by any third person. It is the express intent of the Client and the Consultant that any such person or entity, other than Client or consultant, receiving services or benefits under this agreement shall be deemed an incidental beneficiary.

16. **Licenses:** Consultant represents and warrants to Client that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Consultant to practice its profession. Consultant represents and warrants to Client that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Consultant to practice its profession. Consultant shall maintain a Client business license if required.

17. **Written Notification:** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent prepaid, first class mail. Any such notice, demand, etc., shall be addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

*If to Client:* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*If to Consultant:* Bureau Veritas North America, Inc.  
Attn: Contract Processing  
1000 Jupiter Road, Suite 800  
Plano, Texas 75074

*With cc to:* Bureau Veritas North America Inc.  
Attn: Legal Department  
1601 Sawgrass Corporate Parkway, Suite 400  
Fort Lauderdale, Florida 33323

18. **Consultant's Books and Records:**

- a. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to Client for a minimum period of seven (7) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.
- b. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of seven (7) years, or for any longer period required by law, from the date of termination or completion of this Agreement.
- c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the Client.

19. **Assignment and Subcontracting:** Neither party may assign this Agreement or any right or obligation hereunder without the prior written consent of the other party, which shall not be unreasonably withheld or delayed; provided, however, that no consent shall be necessary in the event of an assignment to a successor entity resulting from a merger, acquisition or consolidation by either party or an assignment to an Affiliate of either party if such successor or Affiliate assumes all obligations under this Agreement. Any attempted assignment, which requires consent hereunder, shall be void and shall constitute a material breach of this Agreement if such consent is not obtained.

20. **Waiver:** No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

21. **Amendments:** This Agreement may be modified or amended only by a written document executed by both Consultant and Client.

22. **Entire Agreement:** This Agreement constitutes the complete and exclusive statement of Agreement between the Client and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

23. **Execution:** This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counter part.
24. **Termination:** This Agreement may be terminated immediately for cause or by either party without cause upon ninety (90) days written notice of termination. Upon termination, Consultant shall be entitled to compensation for services performed up to the effective date of termination.
25. **Interpretation of Agreement:** This Agreement shall be interpreted as though prepared by all parties and shall not be construed unfavorably against either party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

**CLIENT:**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Title*

Date: \_\_\_\_\_

**CONSULTANT:**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Title*

Date: \_\_\_\_\_

Attachments:      Exhibit A - Scope of Services  
                         Exhibit B - Schedule of Fees

**EXHIBIT A  
SCOPE OF SERVICES**

Consultant will have an exclusive agreement with the Client to ensure compliance with the provisions of the Jurisdiction’s Adopted Food Establishment Ordinance. In absence of said ordinance, the provisions of 25 Texas Administrative Code Chapter 229, sections 161 – 171 & 173 – 175, regarding the regulation of food establishments, known as the Texas Food Establishment Rules (TFER), will be enforced and the Texas Administrative Code (TAC), Standards for Public Pools and Spas, Section 265.181 - 265.200.

Consultant services for this proposal include the following per permitted installation.

- Review plans for compliance with the applicable laws and rules required.
- Perform inspections to determine compliance with the applicable laws and rules required.
- Inspections will be performed by a Texas Registered Sanitarian
- Update or create the required Health forms.
- Web-based project tracking of Health permits.
- Provide written report of any deficiencies.
- Investigation of complaints on permitted facilities.

The Client will have final interpretive authority over all plans, specifications and inspections and is charged with the issuance of all permits and certificates of occupancy.

**EXHIBIT B  
SCHEDULE OF FEES**

**FULL SERVICE :**

Cost of Service for Permanent Food Establishment permit (2 TFER inspections) (No fee for one re-inspection, per permit year, if required)	\$400.00
Cost of Service for Mobile Food Vendor (Hot and Cold Truck) and Seasonal Vendor permits (1 TFER inspection) (No fee for one re-inspection, per permit year, if required)	\$200.00
Cost of Service for Public Swimming Pool inspections (1 inspection per year) (No fee for one re-inspection, per permit year, if required)	\$200.00
Cost of Service for each Temporary Event permit (1 TFER inspection)	\$ 50.00
Cost of Service for each Complaint Investigation (1 TFER inspection)	\$ 50.00
Hourly Cost of Service for consultation outside of the aforementioned scope of services: Health Plan review, Health Final and CO inspections and/or for more than one re-inspection.	\$100.00