

11675 Jollyville Road
Suite 300
Austin, Texas 78759



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 statement and contact us promptly if you have any questions. We suggest that you retain this document in your file.

I. Our Relationship

1. Identity of Client

The *Bojorquez Law Firm, PC* ("Firm") will be representing the interests of the *City of New Braunfels* ("Client") as an organization.

2. Nature of Representation

While in the future we may be directed to represent the Client on other matters, our present relationship can be described as follows:

Legal guidance regarding the Redistricting process, including analysis, recommendations, and mapping/GIS/ demographic services.

3. Scope of Work

The Firm shall evaluate 2020 Census data as applied to the Client, and provide guidance for achieving proportional balance under the constitutional One Person / One Vote standard, continued compliance with the U.S. Voting Rights Act, Texas law, and conformance to New Braunfel's Home Rule Charter.

As the client, it is imperative that you have a clear understanding of the services 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 the Client's municipal matters 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

The Client agrees to cooperate fully with the Firm and to provide us promptly with all information known or available to you relevant to our representation. The Client agrees 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 the Client's legal needs. In doing so, the Firm will act competently and in a timely manner; protect the Client's privileged information and ensure appropriate confidentiality; promote the Client's interests; discuss the Client's 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. The Firm will comply with Section 2252.908 of the Texas Government Code and file the Disclosure of Interested Parties. The Firm verifies that the Firm does not boycott Israel and will not boycott Israel during the term of this agreement.

6. Ethical Conflict of Interest Disclosure

The representation of more than one (1) municipal entity may present special ethical considerations under the *Texas Rules of Disciplinary Conduct*. The Firm may undertake representation of multiple municipal entities if the Client agrees in writing after consultation about the risks of joint representation. The Client may also consult with legal counsel other than the Firm regarding this representation.

A potential conflict could arise with respect to the subject matter of this representation. Based on the information now available at this time, the Firm is not aware of any actual conflicts among the Client and any other municipal entity. If the Client becomes aware of anything that may suggest an actual conflict of interest, please bring it to the Firm's attention immediately.

If circumstances arise during the course of this matter that require or make it desirable that any of the clients obtain separate representation in this matter, the Firm would be free to continue to represent the remaining members of the client group in this matter. By signing these **STANDARD TERMS OF ENGAGEMENT** and accepting our joint representation, the Client agrees that, if it becomes necessary or desirable for the Client to retain other counsel, the Client will not seek to disqualify the Firm from continuing to represent the remaining members of the client group.

II. Fees, Billing and Administrative

1. Fees for 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.

Hourly Rates: All billings shall be as follows, and are invoiced in increments of one-tenth (.10) hours (i.e., in six-minute increments):

| Attorney / Service | Billing Rate |
|---|---------------------|
| Managing Attorney (<i>Alan Bojorquez</i>) | \$285.00 per hour |
| Of Counsel Attorney | \$250.00 per hour |
| Senior Associate Attorney | \$225.00 per hour |
| Associate Attorney | \$200.00 per hour |
| Junior Associate Attorney | \$185.00 per hour |
| Land Planner | \$135.00 per hour |
| Paralegal/Law Clerk | \$100.00 per hour |
| Redistricting Demographer: | \$150.00 per hour |

2. Fee Estimate

Based upon our Firm's prior experience with Redistricting municipalities, it is reasonable to anticipate that project costs can range from **\$20,000- \$90,000** for professional services fees and related expenses. Variables that could affect the actual expenses include the degree of deviation under the current districting system when considered in terms of 2020 Census data, number of maps the Client wants prepared, the number of public meetings or hearings the Client wants us to conduct (virtually or in-person), and the nature of consultations with special interest groups (i.e., advocacy groups, neighborhood associations, etc.).

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. All estimates made by the Firm shall be subject to the Client's 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.

3. Other Charges and Handling Fees

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

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 and 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 of the Client. Typically, such issues can be resolved to the satisfaction of both sides with little formality.

5. Retainers

No retainer is required for this representation. However, if the Client becomes unreasonably delinquent in making timely payments, the Firm reserves the right to request a reasonable retainer from which to draw upon for future payments.

6. 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 you desire among your own files for future reference. After our representation expires or terminates, we will provide you or a successor attorney whom you designate in writing with in a reasonable time with copies of any or all client paper and electronic files still in our possession that you may request in writing, at your sole expense for locating, reviewing, copying and delivering the requested materials.

7. 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 Comal or Guadalupe counties, 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, if you fail to follow our advice and counsel, or otherwise fail 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 my 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 and not an employee of the Client. 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 good 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.

Signature Page Follows

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

If this arrangement is acceptable to you, please sign these Terms and return to the Firm at your earliest convenience. We are truly honored that you are willing to make our Firm part of your team.

AGREED TO & ACCEPTED:

by: _____
Robert Camareno, City Manager
City of New Braunfels

date: _____

by:  _____
Alan Bojorquez, Managing Attorney
Bojorquez Law Firm, PC

date: January 12, 2021

Please sign and return to the Bojorquez Law by email to:
bmitchell@texasmunicipallawyers.com