

STATE OF TEXAS           §  
                                     §                   AGREEMENT FOR PROFESSIONAL SERVICES  
COUNTY OF COLLIN       §

This Agreement for Professional Services ("Agreement") is made by and between the City of Allen, Texas ("City") and Bureau Veritas North America, Inc., a Delaware corporation ("Professional") (each a "Party" and collectively the "Parties"), acting by and through their authorized representatives.

**RECITALS:**

**WHEREAS**, the City desires to engage the services of the Professional as an independent contractor, and not as an employee, to provide the building inspection services described in Exhibit "A" (the "Scope of Services") on the terms and conditions set forth in this Agreement; and

**WHEREAS**, the Professional desires to render professional services for the City on the terms and conditions set forth in this Agreement;

**NOW THEREFORE**, in exchange for the mutual covenants set forth herein, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

**WHEREAS**, the Professional desires to render professional services for the City on the terms and conditions set forth in this Agreement;

**NOW THEREFORE**, in exchange for the mutual covenants set forth herein, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

**Article I**  
**Term**

1.1 The term of this Agreement shall be for a period of two (2) years commencing on the last date of execution hereof ("Effective Date"), unless sooner terminated as provided herein.

1.2 Either Party may terminate this Agreement by giving thirty (30) days prior written notice to the other Party. In the event of such termination the Professional shall deliver to City all finished and unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by the Professional in connection with this Agreement. Professional shall be entitled to compensation for any services completed to the reasonable satisfaction of the City in accordance with this Agreement prior to such termination.

## **Article II**

### **Scope of Service**

2.1 The Professional shall provide the services set forth in the Scope of Services, including the necessary personnel to conduct building inspection services as set forth in the Scope of Services. All such personnel shall possess and hold and maintain in current standing during the term of this Agreement such licenses and permits required to provide the building inspection services.

2.2 The City shall provide the Professional with: (i) adequate space where the services are to be performed to accommodate the Professional's reasonable needs; (ii) suitable access to such space for Professional's personnel, equipment and materials; and (iii) shall appoint an individual hereafter referred to as the project manager who shall be authorized to act on behalf of City and with whom Professional may consult at reasonable times.

2.3 The Parties acknowledge and agree that any and all opinions provided by the Professional in connection with the Scope of Services represent the professional judgment of the Professional, in accordance with the professional standard of care applicable by law to the services performed hereunder.

2.4 The City acknowledges that all intellectual property rights related to the names, service marks, trademarks, inventions, logos and copyrights of the Professional and its affiliates (collectively, the "Rights"), are and shall remain the sole property of the Professional or its affiliates and shall not be used by the City, except solely to the extent that the City obtains the prior written approval of the Professional and then only in the manner prescribed by the Professional.

2.5 All materials and reports prepared by the Professional in connection with this Agreement are "works for hire" and shall be the property of the City. The City shall have the right to publish, disclose, distribute and otherwise use such materials and reports in accordance with applicable laws of the State of Texas. Professional shall, upon completion of the services, or earlier terminated, provide the City with reproductions of all materials and reports, and in electronic format if requested by the City.

## **Article III**

### **Schedule of Work**

The Professional agrees to provide the required services when requested by the City Chief Building Official and complete such services as set forth in the request for inspection services.

## **Article IV**

### **Compensation and Method of Payment**

4.1 Professional will be compensated in accordance with the fee schedule and amounts set forth in the Scope of Services. Unless otherwise provided herein, payment to the Professional

shall be monthly based on the Professional's monthly progress report and detailed monthly itemized statement for services that shows the names of the Professional's employees, agents, contractors performing the services, the time worked, the actual services performed, and the rates charged for such service, in a form reasonably acceptable to the City. The City shall pay such monthly statements within thirty (30) days after receipt and City verification of the services unless otherwise provided herein. If a monthly invoice is not paid within such period, City shall be liable to Professional for a late charge accruing from the date of such invoice to the date of payment at the lower of eighteen percent (18%) per annum or the maximum rate allowed by law. If City fails to pay any monthly invoice fully within thirty (30) days after invoice date, Professional may, at any time, and without waiving any other rights or claims against City, elect to terminate performance of services immediately following written notice from Professional to City. City shall pay Professional for such services completed to the reasonable satisfaction of the City in accordance with this Agreement as of the date of termination.

4.2 The Professional shall be responsible for all expenses related to the services provided pursuant to this Agreement, including, but not limited to, travel, copying and facsimile charges, telephone, internet and email charges.

## **Article V**

### **Devotion of Time; Personnel; and Equipment**

5.1 The Professional shall devote such time as reasonably necessary for the satisfactory performance of the services under this Agreement. Should the City require additional services not included under this Agreement, the Professional shall make reasonable effort to provide such additional services within the time schedule without decreasing the effectiveness of the performance of services required under this Agreement, and shall be compensated for such additional services on a time and materials basis, in accordance with Professional's standard hourly rate schedule, or as otherwise agreed between the Parties.

5.2 To the extent reasonably necessary for the Professional to perform the services under this Agreement, the Professional shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Professional may deem proper to aid or assist in the performance of the services under this Agreement. The Professional shall provide written notice to and approval from the City prior to engaging services not referenced in the Scope of Services. The cost of such personnel and assistance shall be included as part of the total compensation to be paid Professional hereunder, and shall not otherwise be reimbursed by the City unless provided differently herein.

5.3 The Professional shall furnish the facilities, equipment and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

5.4 The Professional shall submit monthly progress reports and attend progress meetings as may be required by the City from time to time based upon Project demands. Each progress report shall detail the work accomplished and special problems or delays experienced on

the Project during the previous report period, and the planned work activities and special problems or delays anticipated for the next report period.

## **Article VI Miscellaneous**

6.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

6.2 Assignment. The Professional may not assign this Agreement without the prior written consent of City. In the event of an assignment by the Professional to which the City has consented, the assignee shall agree in writing with the City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

6.3 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.

6.4 Governing Law. The laws of the State of Texas shall govern this Agreement without regard to any conflict of law rules; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

6.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

6.7 Independent Contractor. It is understood and agreed by and between the Parties that the Professional, in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Professional pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Professional shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

6.8 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City:

Attn: Peter H. Vargas  
City Manager  
City of Allen, Texas  
3<sup>rd</sup> Floor, Allen City Hall  
305 Century Parkway  
Allen, Texas 75013

With a copy to:

Peter G. Smith  
Nichols, Jackson, Dillard, Hager & Smith, LLP  
1800 Ross Tower  
500 N. Akard Street  
Dallas, Texas 75201

If intended for Professional:

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

With a copy to:

Bureau Veritas North America, Inc.  
Attention: Legal Department  
1601 Sawgrass Corporate Parkway, Suite 400  
Fort Lauderdale, FL 33323

6.9 Insurance.

- (a) Professional shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Professional's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage; (ii) policy of automobile liability insurance covering any vehicles owned and/or operated by Professional, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$500,000.00 combined single limit and aggregate for bodily injury and property damage; (iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Professional's employees involved in the provision of services under this Agreement with policy limit of not less than \$500,000.00; and (iv) Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limit of not less than \$1,000,000.00 per claim and \$2,000,000.00 in the aggregate.
- (b) All policies of insurance shall be endorsed and contain the following provisions: (1) name the City, its officers, and employees as additional insureds as to all applicable coverage, with the exception of Workers Compensation Insurance and Professional Liability; and (2) provide for at least thirty (30) days prior written notice to the City for cancellation of the insurance or material change of, or to the policies of insurance; (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability Insurance. In the event the companies providing the required policies of insurance are

prohibited by law to provide written notice of cancellation or material change of, or to any policy required herein the Professional shall provide thirty (30) days prior written notice thereof to the City.

- (c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.
- (d) A certificate of insurance and copies of the policy endorsements evidencing the required insurance shall be submitted prior to commencement of services and upon request by the City.

6.10 Indemnification. CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY TO THE EXTENT ARISING FROM THE SERVICES OF THE PROFESSIONAL PURSUANT TO THIS AGREEMENT. PROFESSIONAL HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR BREACH OF CITY'S OBLIGATIONS HEREUNDER. PROFESSIONAL AGREES TO INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE PROFESSIONAL'S NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF PROFESSIONAL, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF THE CITY, IN WHOLE OR IN PART, IN WHICH CASE PROFESSIONAL SHALL INDEMNIFY CITY ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO PROFESSIONAL. 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.

6.11 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.

6.12 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

6.13 Consequential and Punitive Damages. Neither Professional nor City shall be liable under any circumstances for loss of profits, loss of product, consequential damages of any kind, indirect damages of any kind or special damages of any kind to the other Party, or to any third party. No punitive or exemplary damages of any kind shall be recoverable against either Party under any circumstances.

6.14 Audit. City shall have the right during the term of this Agreement and continuing until one (1) year after termination of this Agreement to audit Professional's books and records relating to the services provided and the fees paid to the Professional.

6.15 Prevailing Party. In all disputes arising under this Agreement, the Parties agree that the prevailing party shall be entitled to recover its reasonable attorney's fees and court costs from the other party.

6.16 Standard of Care. The services provided by Professional pursuant to this Agreement, if performed by a licensed engineer or registered architect such person shall perform the services: (i) with the professional skill and care ordinarily provided by competent engineers or architects, as the case may be, practicing in the same or similar locality and under the same or similar circumstances and professional license; and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect, as the case may be. If the services provided by the Professional pursuant to this Agreement, is not performed by a licensed engineer or registered architect, such person shall perform the services: (i) with the skill and care ordinarily provided by similar consultants practicing in the same or similar locality and under the same circumstances and applicable licenses or certifications; and (ii) as expeditiously as is prudent considering the ordinary skill and care of similar competent consultants.

*[Signature Page to Follow]*

EXECUTED this 11<sup>th</sup> day of August, 2016.

CITY OF ALLEN, TEXAS

By: 

Peter H. Vargas, City Manager

ATTEST:

By: 

Shelley B. George, City Secretary

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

BUREAU VERITAS NORTH AMERICA, INC.

By: 

Name: VAN TRAN

Title: Vice President

DTQR Daniel Stanford 8/9/2016



## **EXHIBIT "A"**

### **Scope of Services**

Professional and the representatives of Professional are charged with the enforcement of the provisions of the City's Building Code, Residential Code, Mechanical Code, Electrical Code, Plumbing Code, Fuel Gas Code and Energy Code, acting in good faith and without malice in the discharge of the duties required by these codes or other pertinent law or ordinance shall not thereby be rendered personally liable for damages that may accrue to persons or property as a result of an act or by reason of an act or omission in the discharge of such duties. The City has final interpretive authority over all plans, specifications and inspections. Permits and Certificates of Occupancy are issued by the City.

#### **Staffing Support**

Professional will provide inspection staffing support. Professional inspection personnel shall be available eight (8) hours per day, Monday through Friday during the normal working hours of Client, except on holidays observed by Client.

#### **Backup Inspection Services**

Inspection services shall be conducted on an as-needed basis as required by the City. Special inspections as specified in chapter 17 and non-prescriptive structural inspections of the adopted International Building Code are not included and may be required as specified in the International Building Code. Any violations of the City's codes, or concealment of any work prior to approval by Professional will be reported to the Building Official of the City.

#### **Project Plan Review**

Non-Structural Plan Review services shall be conducted as required by the City's Building Code, Residential Code, Mechanical Code, Electrical Code, Plumbing Code, Fuel Gas Code and Energy Code, and other provided code related documents, as approved by the City. Applicants will be notified of Plan Review Comments and are responsible for addressing comments to the satisfaction of the City.

#### **Project Inspections**

Inspection services shall be conducted as required by the City's Building Code, Residential Code, Mechanical Code, Electrical Code, Plumbing Code, Fuel Gas Code and Energy Code. Special inspections as specified in chapter 17 and non-prescriptive structural inspections of the adopted International Building Code are not included and may be required as specified in the International Building Code. Any violations of the City's codes or concealment of any work prior to approval by Professional will be reported to the Building Official of the City.

#### **Staffing Support**

Inspection personnel, eight (8) hours per day, Monday through Friday during normal working hours of Client, except on holidays observed by Client.

\$125.00 per hour

#### **Back-up inspections**

## EXHIBIT "A"

### Scope of Services

Backup inspections will be performed during normal working hours of Client, except on holidays observed by Client.

Single Family Residential  
Commercial and non-Single Family Residential

\$76.92 per address/building  
\$125.00 per address/building/unit

#### Project Commercial and Multi-Family construction plan review

Valuation	Fee
\$1. <sup>00</sup> to \$10,000. <sup>00</sup>	\$50. <sup>00</sup>
\$10,001. <sup>00</sup> to \$25,000. <sup>00</sup>	\$70.69 for the first \$10,000. <sup>00</sup> plus \$5.46 for each additional \$1000. <sup>00</sup>
\$25,001. <sup>00</sup> to \$50,000. <sup>00</sup>	\$152.59 for the first \$25,000. <sup>00</sup> plus \$3.94 for each additional \$1000. <sup>00</sup>
\$50,001. <sup>00</sup> to \$100,000. <sup>00</sup>	\$251.09 for the first \$50,000. <sup>00</sup> plus \$2.73 for each additional \$1000. <sup>00</sup>
\$100,001. <sup>00</sup> to \$500,000. <sup>00</sup>	\$387.59 for the first \$100,000. <sup>00</sup> plus \$2.19 for each additional \$1000. <sup>00</sup>
\$500,001. <sup>00</sup> to \$1,000,000. <sup>00</sup>	\$1,263.59 for the first \$500,000. <sup>00</sup> plus \$1.85 for each additional \$1000. <sup>00</sup>
\$1,000,001. <sup>00</sup> and up	\$2,188.59 for the first \$1,000,000. <sup>00</sup> plus \$1.23 for each additional \$1000. <sup>00</sup>

#### Project Single Family Residential construction plan review and inspection

#### Project Commercial and Multi-Family construction inspection

Valuation	Fee
\$1. <sup>00</sup> to \$10,000. <sup>00</sup>	\$76. <sup>92</sup>
\$10,001. <sup>00</sup> to \$25,000. <sup>00</sup>	\$108.75 for the first \$10,000. <sup>00</sup> plus \$8.40 for each additional \$1000. <sup>00</sup>
\$25,001. <sup>00</sup> to \$50,000. <sup>00</sup>	\$234.75 for the first \$25,000. <sup>00</sup> plus \$6.06 for each additional \$1000. <sup>00</sup>
\$50,001. <sup>00</sup> to \$100,000. <sup>00</sup>	\$386.25 for the first \$50,000. <sup>00</sup> plus \$4.20 for each additional \$1000. <sup>00</sup>
\$100,001. <sup>00</sup> to \$500,000. <sup>00</sup>	\$596.25 for the first \$100,000. <sup>00</sup> plus \$3.36 for each additional \$1000. <sup>00</sup>
\$500,001. <sup>00</sup> to \$1,000,000. <sup>00</sup>	\$1,940.25 for the first \$500,000. <sup>00</sup> plus \$2.85 for each additional \$1000. <sup>00</sup>
\$1,000,001. <sup>00</sup> and up	\$3,365.25 for the first \$1,000,000. <sup>00</sup> plus \$1.89 for each additional \$1000. <sup>00</sup>

\* For projects using the valuation tables above, fees are billed upon issuance of the permit by the City

The construction valuation is determined by the greater of the declared valuation of the project or the valuation calculated using the International Code Council Building Valuation Data table, first update of each calendar year.

Example:

#### Square Foot Construction Costs

Group (2012 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
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**EXHIBIT "A"**  
**Scope of Services**

B Business	179.29	172.71	166.96	158.70	144.63	139.20	152.43	126.93	121.32
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The Square Foot Construction Cost does not include the price of the land on which the building is built. The Square Foot Construction Cost takes into account everything from foundation work to the roof structure and coverings but does not include the price of the land. The cost of the land does not affect the cost of related code enforcement activities and is not included in the Square Foot Construction Cost.

New Building

Group B occupancy

Type VB construction

10,000 square feet total building area

Declared construction valuation \$1,100,000.

Calculated construction valuation - 10,000 square feet X \$121.32 per square foot = \$1,213,200.

The calculated construction valuation is greater than the declared construction valuation so \$1,213,200 is used to calculate the Bureau Veritas fee for the project.

\* Note: Professional fees do not include any taxes, licensing or other fees imposed by governmental or outside agencies