

PROFESSIONAL SERVICES AGREEMENT

UNIFIED DEVELOPMENT CODE (UDC)

for

SIMONTON, TEXAS

STATE OF TEXAS §
 §
FORT BEND COUNTY §

KNOW BY THESE PRESENTS:

This Agreement made this ___ day of _____, 2026, by and between the Simonton, Texas, acting by and through Ms. Laurie Boudreaux, Mayor, hereinafter referred to as the "CLIENT," and Kendig Keast Collaborative, an Illinois Corporation, acting by and through its Chief Executive Officer, Mr. Bret C. Keast, with an office located at 77 Sugar Creek Center, Suite 600, Sugar Land, Texas 77478, hereinafter referred to as the "CONSULTANT," do hereby make and enter into the following Agreement.

ARTICLE I
CONSULTANT

- 1.1 The CONSULTANT, as an independent contractor, covenants and agrees to perform the professional planning services related to the Unified Development Code (UDC) as described in Article II, Scope of Services. Such services shall be performed by the CONSULTANT in strict accordance with the terms of this Agreement and for the consideration stated. Subject to the provisions of Article VII below, CONSULTANT covenants and agrees to perform the specific services identified in Exhibit "A" – Scope of Services. The CONSULTANT shall complete the Scope of Services and shall submit deliverables to the CLIENT as identified in Exhibit "A" – Scope of Services.
- 1.2 The CONSULTANT shall provide its services under this Agreement with the same degree of care, skill, and diligence as is ordinarily provided by a professional planner under similar circumstances for the preparation of a Unified Development Code (UDC) and to which the Agreement applies.

ARTICLE II
SCOPE OF SERVICES

- 2.1 The CONSULTANT will perform the professional planning services related to the development of the Unified Development Code (UDC) as set forth in Exhibit "A" – Scope of Services, which is attached and made a part of this Agreement.
- 2.2 Pursuant to this Agreement, the CLIENT shall have the option to obtain the services of the CONSULTANT to perform Additional Services. All such Additional Services shall be described in a written Amendment to this Agreement, as provided by Article XI, Changes or Termination, including description of the additional work, associated compensation, and time schedule as applicable. By way of illustration, matters which may constitute Additional Services shall include, but are not limited to, the following:

- (a) Requested additional workshops or meetings other than the number identified in the Scope of Services and project schedule that require added preparation or follow-up or displace other planned trip activities;
- (b) Requested additional trips other than the number identified in the Scope of Services and Project schedule;
- (c) Requested additional days or nights added to a scheduled trip that require additional time and direct expenses (e.g., meals, hotel nights, extended car rental and gasoline use, airline change fees, extended airport parking, etc.);
- (d) Other requested work tasks, study activities, or documentation not foreseen or specifically identified in the Scope of Services;
- (e) Requested additional deliverables or additional physical copies of deliverables, including the submission at key milestones of draft and final written reports or maps other than those specified, or in a quantity greater than the number identified, in the Scope of Services;
- (f) Requested additional revisions (individual or cumulative) to draft and final deliverables that are beyond the single comprehensive round of revisions that are to be collected, consolidated, and annotated by the CLIENT as specified in the Scope of Services; and
- (g) Further requested changes to a deliverable which the CONSULTANT has already revised based on review comments and which the CLIENT has already accepted as revised, and which the CONSULTANT determines to be significant and substantive changes to a deliverable already at a point of substantial completion in accordance with the Scope of Services and available budget.

2.3 Pursuant to this Agreement, the CLIENT shall also have the option to obtain the services of the CONSULTANT to perform On-Call Services on an hourly rate or work order authorization basis for requested services relating to planning, development or zoning related issues and matters other than those for which such findings and recommendations are specified in the Scope of Services or other related or unrelated services that may be requested by the CLIENT which are not specified in the Scope of Services. These services will be in one of two forms, as follows:

- (a) General authorization on an hourly rate basis for work activities that are brief and periodic (e.g., teleconference) or ongoing and of a general support nature; or
- (b) Work order authorization for work assignments with defined tasks and deliverables to be accomplished within a specified timeframe as reflected in a Scope of Services for which CONSULTANT prepares and CLIENT accepts after any mutually agreed revisions. CONSULTANT agrees to perform the services within schedules as may be set forth within work orders issued by the CLIENT.

2.4 The time of performance and compensation to CONSULTANT shall be as provided for in Articles V and VI, below.

ARTICLE III
CONDITIONAL ACCESS TO ENCODEPLUS PLATFORM

3.1 During the term of this Agreement, the Consultant will provide the City with conditional, password-protected access to the enCodePlus web-based, cloud-hosted software platform solely for purposes of supporting the Unified Development Code (UDC) project. This access is provided as a Supplemental Service and is limited to use by authorized City staff. No additional fees will be charged to the City for such access during the term of this Agreement.

- 3.2 This conditional access is not a software license and does not grant the City any ownership interest or continuing rights in the enCodePlus platform. Upon or before the one-year anniversary of this Agreement, the City may elect to execute a separate enCodePlus License Agreement. Execution of that agreement will provide the City with a non-transferable, non-exclusive, limited, non-assignable, and non-sublicensable right to use the enCodePlus platform as defined in the License Agreement.

ARTICLE IV
CONSULTANT PERSONNEL

- 4.1 The CONSULTANT represents that it has or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the CLIENT.
- 4.2 The CONSULTANT may contract with subconsultants for portions of the work or services under this Agreement with the prior written approval of the CLIENT. Any work or services subcontracted hereunder shall be specified by a written agreement and shall be subject to the provisions of this Agreement.

ARTICLE V
SUPPORT SERVICES

- 5.1 The CLIENT agrees to provide the CONSULTANT with support services during conduct of the services listed in Article II, Scope of Services.
- 5.2 To the extent authorized by law, the readily available existing data and documentation obtained by the CLIENT that are relevant to the accomplishment of the Scope of Services specified in Article II shall be made available by the CLIENT for use by the CONSULTANT.
- 5.3 The CLIENT shall consider and act on all documents and project work items submitted by the CONSULTANT that require review, comments or approval by the CLIENT within a timeframe specified in Exhibit "A" Scope of Services and/or in the project schedule so as to enable the CONSULTANT to complete the work on schedule as provided in Article V of this Agreement.
- 5.4 The CLIENT agrees to provide the CONSULTANT with support services needed to organize, schedule, notify, provide meeting locations, conduct meetings, and prepare minutes of meetings including committees, workshops, public meetings, and public hearings. The CONSULTANT will advise and coordinate with the CLIENT to accomplish these support services.
- 5.5 In the event CLIENT fails to provide any of the needed Support Services in a timely or adequate manner, as documented in a progress report, any additional time or expenses incurred or required by CONSULTANT as a result of such failure shall be compensated on a basis of reimbursement of Actual Costs Incurred ("ACI") by CLIENT in the same manner as, and shall be considered to be, Additional Services.

ARTICLE VI
TIME OF PERFORMANCE

- 6.1 The CONSULTANT shall commence services upon execution of this Agreement and receipt of written Notice-to-Proceed from the CLIENT.
- 6.2 The CONSULTANT shall make a good faith effort to complete the services described in Article II, Scope of Services within twelve (12) months from receipt of written Authorization to Proceed by the CLIENT, unless one or more of the following occur:
- (a) This Agreement is terminated in accordance with Article XI, Changes or Termination;
 - (b) The Scope of Services and/or Time of Performance are changed in accordance with Article II, Scope of Services or Article XI, Changes or Termination; or
 - (c) Matters documented by CONSULTANT in progress reports render such completion schedule impossible or impractical.
- 6.3 The completion schedule set forth in Section 6.2 may be subject to causes that result in delay over which neither the CONSULTANT nor the CLIENT has any control. Notification and justification for any such delays identified by the CONSULTANT must be included in progress reports. The schedule of work will be extended to include any such delays pursuant to Article XI, Changes or Termination.
- 6.4 This Agreement shall terminate upon the CLIENT's final acceptance of work completed by the CONSULTANT, unless otherwise terminated or modified as hereinafter provided.

ARTICLE VII
COMPENSATION TO CONSULTANT

- 7.1 The CLIENT shall compensate the CONSULTANT for the professional services performed under this Agreement. For the Basic Services described in Exhibit "A" Scope of Services under Article II, Scope of Services, the CLIENT shall pay to the CONSULTANT on a basis of reimbursement of Actual Costs Incurred ("ACI") an amount of One Hundred Eighty-Six Thousand and zero dollars (\$186,000.00). ACI includes salary costs, overhead, direct expenses, and profit. The above ACI amount may be modified pursuant to Article XI, Changes or Termination, in the event of increased cost, change in the Scope of Services, an extension of time beyond that specified in Section 7.2, or an increase or decrease in the complexity or character of the work. In addition to ACI, CLIENT agrees to compensate CONSULTANT on a basis of reimbursement of Actual Costs Incurred ("ACI") for any Additional Services as provided by Article II, Scope of Services, provided that such Additional Services are agreed upon in writing prior to their being undertaken. The cost of such Additional Services shall be invoiced separately by CONSULTANT and paid by CLIENT upon receipt of billing for such services. Such payments shall be in addition to and have no bearing on the above ACI amount. Payments by CLIENT under this Agreement, including the timeliness of payment and the payment of interest on overdue amounts, are subject to Chapter 2251, Texas Government Code.
- 7.2 Each invoice from the CONSULTANT shall be due and payable by the CLIENT upon receipt by the CLIENT, subject to the terms of Section 7.1. The billing statement, certified true and correct by CONSULTANT, shall show the total amount paid and the amount due and payable as of the date

of the current statement. Amounts paid and due for Additional Services shall be identified on a separate invoice.

- 7.3 The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the CLIENT for the performance of this Agreement. If at any time during the period of performance under this Agreement, sufficient appropriations and authorization are not made by the CLIENT, this Agreement shall terminate upon written notice being given by the CLIENT to the CONSULTANT. In such event, CLIENT shall comply with the provisions of Section 12.4 below. The CLIENT's decision as to whether sufficient appropriations are available shall be accepted by the CONSULTANT and shall be final.
- 7.4 CONSULTANT reserves the right to escalate the hourly rates by no more than three (3) percent of the then current price for each anniversary of the Effective Date for the current term of the Agreement. CONSULTANT further reserves the right to escalate travel prices once per year upon written notice to client. Such travel price increases will only affect future travel prices and will not change the price or amount due to CONSULTANT for previously rendered travel.

ARTICLE VIII
PRODUCT OF SERVICES, COPYRIGHT

- 8.1 The CONSULTANT and the CLIENT mutually agree that reports, maps and materials prepared or developed under the terms of this Agreement shall be delivered to and become the property of the CLIENT. The CONSULTANT shall have the right to retain copies and to utilize the product of services for marketing purposes, except for any confidential information, as defined in Article XI, hereof.
- 8.2 The CONSULTANT shall furnish the CLIENT with the number of copies of reports as shown in Exhibit "A" – Scope of Services.
- 8.3 Nothing produced in whole or in part by the CONSULTANT under this Agreement shall be the subject of an application for copyright by or for the CONSULTANT. The CONSULTANT will use existing proprietary software as required.

ARTICLE IX
PRIVATE INTERESTS OF PUBLIC OFFICIALS AND CONSULTANT

- 9.1 No official, employee, agent, or member of the local public body of the CLIENT shall have any financial interest, direct or indirect in this Agreement or the proceeds thereof.

ARTICLE X
CERTIFICATIONS OF CONSULTANT

- 10.1 The CONSULTANT has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement, and it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, any commission, percentage, brokerage fee, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

10.2 The CONSULTANT presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services under this Agreement.

ARTICLE XI
CHANGES OR TERMINATION

11.1 This Agreement may not be altered, changed or amended except by instrument in writing executed by the parties hereto.

11.2 The CLIENT may, from time to time, request changes in the Scope of Services and/or time of performance for the services of the CONSULTANT to be performed hereunder. Such changes, including any increase or decrease in the amount of the CONSULTANT'S compensation, which are mutually agreed upon by and between the CLIENT and the CONSULTANT, shall be incorporated in written amendments to this Agreement.

11.3 This Agreement may be terminated before the termination date stated in Article VI, Time of Performance, by any of the following conditions:

(a) Right of Either Party to Terminate for Cause - This Agreement may be terminated by either of the parties hereto for failure by the other party to perform in a timely and proper manner its obligations under this Agreement. A signed, written notice of such termination shall be delivered to the other party by express mail with point-by-point tracking and such termination shall take effect twenty (20) days after the notice is deposited in the express mail, provided that the failure to perform has not been remedied by that time. By such termination, neither party may nullify obligations already incurred for performance or failure to perform before the date of termination.

(b) Right of the CLIENT to Terminate for Convenience - This Agreement may also be terminated by the CLIENT for reasons other than failure by the CONSULTANT to perform in a timely manner and proper manner its obligations under this Agreement. A signed, written notice of such termination shall be delivered to CONSULTANT by registered or certified mail and such termination shall take effect not less than seven (7) days following the date the notice is received by the CONSULTANT.

11.4 Upon receipt of a notice of termination under any of the conditions under Sections 6.3 or 11.3 above, the CONSULTANT shall, unless the notice otherwise directs, immediately discontinue all services in connection with the performance of this Agreement. Within thirty (30) days after receipt of the notice of termination, the CONSULTANT shall submit a Final Statement, showing the services performed under this Agreement prior to the effective date of termination. Such Final Statement shall also include any unpaid amounts or unreimbursed expenses, as well as any financial obligations incurred by CONSULTANT on behalf of CLIENT and which cannot reasonably be refunded to CONSULTANT, all of which CLIENT agrees to pay upon receipt of said Final Statement. Data and study products prepared by the CONSULTANT and paid for by CLIENT under this Agreement shall be delivered to the CLIENT if requested.

11.5 Notwithstanding the provisions of this Article XI, the CONSULTANT shall not be relieved of liability to the CLIENT for damages sustained by the CLIENT by virtue of any negligent act or omission or any breach of this Agreement by the CONSULTANT.

ARTICLE XII
CONFIDENTIALITY

12.1 Any information determined to be confidential that is provided to the CONSULTANT by the CLIENT or obtained or developed by the CONSULTANT for the benefit of the CLIENT in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the CONSULTANT without prior written approval of the CLIENT.

ARTICLE XIII
INSPECTION OF RECORDS

13.1 The CONSULTANT shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by the CLIENT to assure proper accounting for all project funds. These records will be retained for three years after the expiration of this Agreement.

13.2 Any time during normal business hours and as requested by the CLIENT, the CONSULTANT shall make available to the CLIENT for examination all of its project records with respect to all matters covered by this Agreement and will allow the CLIENT to review, examine, and make excerpts from such records, and to make copies of all contracts, invoices, materials, payrolls, records of personnel conditions of employment, and other data relating to all matters covered by this Agreement. The financial records of the CONSULTANT are maintained in its corporate office located in Sugar Land, Texas, and copies will be available upon request in a timely manner in this office for audit purposes to the CLIENT or its authorized representative.

ARTICLE XIV
INSURANCE

14.1 Insurance

A. The CONSULTANT agrees to maintain Worker's Compensation Insurance to cover all of its own personnel engaged in performing services for the CLIENT under this contract in the following amounts:

Worker's Compensation: Statutory

B. The CONSULTANT also agrees to maintain Commercial General Liability, Business Automobile Liability, Umbrella Liability, and Errors and Omissions Insurance, covering claims against the CONSULTANT for any incidents arising in the course of work performed under this Agreement, in the following amounts:

Commercial General Liability Insurance: Personal injury and property damage -- \$1,000,000.00 combined single each occurrence and \$2,000,000.00 general aggregate

Business Automobile Liability for all vehicles: Bodily injury and property damage -- \$1,000,000.00 combined single limit each occurrence

Umbrella Liability: \$2,000,000.00

Errors and Omissions: \$1,000,000.00

ARTICLE XV
MISCELLANEOUS PROVISIONS

- 15.1 Force Majeure. Neither the CLIENT nor the CONSULTANT shall be required to perform any term, condition, or covenant of this Agreement while such performance is delayed or prevented by acts of God, material or labor restriction by any governmental authority, terrorism, civil riot, floods, hurricanes, or other natural disasters, any other cause not within the control of the CLIENT or the CONSULTANT that by the exercise of due diligence the CLIENT or the CONSULTANT is unable, wholly or in part, to prevent or overcome and supersedes all prior agreements and understanding between CLIENT and CONSULTANT concerning the subject matter of this Agreement.
- 15.2 Entire Agreement. This Agreement constitutes the entire agreement between the CLIENT and the CONSULTANT. No other agreements, amendments, modifications, implied or otherwise, shall be binding on any of the parties unless set forth in writing and signed by both parties.
- 15.3 Choice of Law. The CLIENT and the CONSULTANT agree that this Agreement shall be construed in accordance with the laws of the State of Texas
- 15.4 Dispute Resolution. Any dispute, controversy or claim between the parties shall be resolved in the following manner:

The parties will attempt in good faith to resolve any dispute, controversy or claim arising out of or relating to this Agreement promptly by negotiation between designated executives or other representatives of the parties who have the authority to settle the controversy. No terms of resolving the dispute, controversy or claim discussed or offered shall be binding on either party or otherwise detrimental to the interest of either party in the event it is not resolved by negotiation.

The disputing party shall give the other party written notice of the dispute by registered or certified mail. Within ten (10) days after receipt of said notice, the receiving party shall submit to the disputing party a written response. Unless shown otherwise, receipt will be presumed to have occurred three (3) days following the mailing. The notice and response shall include: (a) a statement of each party's position and a summary of the evidence and arguments supporting its position; and (b) the name and title of the designated executive or other representative who will represent the party in negotiations. The negotiators so designated shall meet at a mutually acceptable time and place within twenty (20) days of the date of receipt by the receiving party of the disputing party's notice and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute.

If the controversy or claim has not been resolved within thirty (30) days of the meeting of the designated executives or representatives, the parties shall endeavor to settle the dispute by non-binding mediation.

If the matter has not been resolved pursuant to the aforesaid non-binding mediation procedures within ninety (90) days of the commencement of such procedure, parties are free to bring their claim in a court of law. Venue for all actions brought pursuant to this Agreement is in Fort Bend County, Texas; and all parties consent to Fort Bend County, Texas, being the exclusive jurisdiction to resolve said claims or controversies arising pursuant to this Agreement.

15.5 Severability. If one or more of the provisions of this Agreement, or the application of any provision to any party or circumstance, is held invalid, unenforceable, or illegal in any respect, the remainder of this Agreement and the application of the provision to other parties or circumstances shall remain valid and in full force and effect.

15.6 Notice. Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be mailed by certified or registered mail addressed as set forth below or at such other address as may be specified by written notice:

CLIENT: Laurie Boudreaux, Mayor
City of Simonton
35011 FM 1093
PO Box 7
Simonton, TX 77476

CONSULTANT: Bret C. Keast, Chief Executive Officer
Kendig Keast Collaborative
77 Sugar Creek Center, Suite 600
Sugar Land, Texas 77478

15.7 Assignment. The CONSULTANT shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the CLIENT thereto. Provided however, that claims for money by the CONSULTANT from the CLIENT under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the CLIENT.

15.8 Successors and Assigns. The CLIENT and the CONSULTANT each binds itself and its successors, executors, administrators and assigns to the other parties of the Contract and to the successors, executors, administrators and assigns of such other parties, in respect to all covenants of this Agreement. Nothing herein shall be construed as creating any personal liability on the part of any officer, board member, commissioner, employee or agent of any public body, which is a party hereto.

15.9 Reports and Information. The CONSULTANT, at such times and in such forms as the CLIENT may require, shall furnish the CLIENT such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the cost and obligations incurred or to be in connection therewith, and any other matter covered by this Agreement.

15.10 Incorporation of Provisions Required by Law. Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein and this Agreement shall be

read and enforced as though each were included herein. If through mistake or otherwise any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.

- 15.11 Waiver. The failure on the part of any party herein at any time to require the performance by any other party of any portion of this Agreement shall not be deemed a waiver of, or in any way affect that party's rights to enforce such provision or any other provision. Any waiver by any party herein of any provision hereof shall not be taken or held to be a waiver of any other provision hereof or any other breach hereof.

- 15.12 Survival. Any and all representations and conditions made by the CONSULTANT under this Agreement are of the essence of this Agreement and shall survive the execution, delivery and termination of it, and all statements contained in any documents required by the CLIENT, whether delivered at the time of the execution or at a later date, shall constitute representations hereunder.

- 15.13 Cumulative Remedies. In the event of default by any party herein, all other parties shall have all rights and remedies afforded to it at law or in equity to recover damages and to interpret or enforce the terms of this Agreement. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.

- 15.14 State or Federal Laws. This Agreement is performed in Fort Bend County, Texas, and is subject to all applicable federal and state laws, statutes, codes, any and applicable permits, ordinances, rules, orders, and regulations of any local, state, or federal government authority having or asserting jurisdiction.

- 15.15 Equal Employment Opportunity. In the performance of this Agreement, the CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, or national origin. The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of it, state that it is an Equal Opportunity Employer.

- 15.16 Multiple Originals. Two (2) copies of this Agreement are executed; each shall be deemed an original.

* * * * *

The parties have executed this Agreement in duplicate originals.

This _____ day of _____, 2026.

FOR SIMONTON, TEXAS

FOR KENDIG KEAST COLLABORATIVE:

By: _____
Laurie Boudreaus
Mayor

By: _____
Bret C. Keast, AICP
Chief Executive Officer

ATTEST:
