

**NON-EXCLUSIVE SERVICES AGREEMENT**  
**RFP No. FD-01-15**

This Non-Exclusive Services Agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2015 (but effective as of \_\_\_\_\_) by and between the City of San Angelo, a Texas home-rule municipal corporation ("City") and \_\_\_\_\_, a \_\_\_\_\_ ("Provider").

**RECITAL**

**A.** City has issued a Request for Proposal, Fire Department Vehicle Maintenance Services No. FD-01-15 ("RFP No. FD-01-15") for the provision of repair and preventative maintenance of fire engines and ambulances owned by City ("Services") and Provider's proposal ("Proposal"), in response thereto, has been selected for the provision of Services. The RFP and the Proposal are sometimes referred to herein, collectively, as the Contract Documents, and are by this reference incorporated into and made a part of this Agreement.

**B.** On \_\_\_\_\_, 2015, the City Council of City of San Angelo, approved the selection of Provider and authorized the City Manager to execute a contract, under the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises herein contained, Provider and City agree as follows:

**1. RECITALS**

The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

## **2. TERM**

The term of this Agreement shall be for one (1) year commencing on the effective date hereof.

## **3. OPTION TO EXTEND**

City shall have two (2) options to extend the term hereof for a period of one (1) year each, subject to availability and appropriation of funds. City must notify Provider of its desire to exercise the option to extend the term hereof in writing ninety (90) calendar days prior to the expiration of the agreement.

## **4. SCOPE OF SERVICE**

**A.** Provider agrees to provide Services to repair and maintain City's emergency vehicle fleet, which consists of twelve (12) fire engines, two (2) aerial units, two (2) rescue units, two (2) aircraft rescue and fire fighting units and twelve (12) ambulances, as specifically described or indicated in the Contract Documents and as shown in Exhibit "A" which by this reference are incorporated herein and made a part of this Agreement for all purposes.

**B.** Provider represents and warrants to City that: (i) it possesses all qualifications, licenses and expertise required for the performance of Services; (ii) it is not delinquent in the payment of any sums due City, including payment of permit fees, occupational licenses, etc., nor in the performance of any obligations to City; (iii) all personnel assigned to perform Services are and shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; and (iv) Services will be performed in the manner described in the contract documents and as shown in Exhibit "A".

## **5. COMPENSATION**

**A.** The amount of compensation payable by City to Provider shall be based on the rates described in Exhibit “B” hereto, which by this reference is incorporated into this Agreement.

**B.** Unless otherwise specifically provided in Exhibit “B”, payment shall be made within thirty (30) days after receipt of Provider’s invoice, which shall be accompanied by sufficient supporting documentation and containing sufficient detail, to allow a proper audit of expenditures, should City require one to be performed.

## **6. CONTRACT DOCUMENTS**

The following documents from City are incorporated herein by reference for all purposes, as if fully set out verbatim:

- Request for Proposal No. FD-01-15 for Fire Department Vehicle Maintenance Services (“RFP No. FD-01-15”)
- Contractor’s Bid
- All of the documents, conditions, specifications, technical data, requirements and addenda comprising said Proposal Invitation number as of the time this Agreement is entered by Provider and City.

## **7. OWNERSHIP OF DOCUMENTS**

Provider understands and agrees that any information, document, report or any other material whatsoever which is given by City to Provider or which is otherwise obtained or prepared by Provider pursuant to or under the terms of this Agreement is and shall at all times remain the property of City. Provider agrees not to use any such information, document, report

or material for any other purpose whatsoever without the written consent of City, which may be withheld or conditioned by City in its sole discretion.

## **8. AUDIT AND INSPECTION RIGHTS**

**A.** City may, at reasonable times, and for a period of up to three (3) years following the date of final payment by City to Provider under this Agreement, audit, or cause to be audited, those books and records of Provider which are related to Provider's performance under this Agreement. Provider agrees to maintain all such books and records at its principal place of business for a period of three (3) years after final payment is made under this Agreement.

**B.** City may, at reasonable times during the term hereof, inspect Provider's work and perform such tests, as City deems reasonably necessary, to determine whether the goods or services required to be provided by Provider under this Agreement conform to the terms hereof and/or the terms found in Exhibit "A" and the contract documents, if applicable. Provider shall make available to City all reasonable access and assistance to facilitate the performance of tests or inspections by City representatives.

## **9. AWARD OF AGREEMENT**

Provider represents and warrants to City that it has not employed or retained any person or company employed by City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

## **10. PUBLIC RECORDS**

Provider understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 552, Texas Government Code, and agrees to allow access by City and the public to all documents

subject to disclosure under applicable law. Provider's failure or refusal to comply with the provisions of this section shall result in the immediate cancellation of this Agreement by City.

#### **11. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS**

Provider, its agents, employees and sub-providers understands that agreements between private entities and local governments are subject to certain laws and regulations, including laws pertaining to public records, conflict of interest, record keeping, etc. City and Provider agree to comply with and observe all applicable laws, city charter, codes and ordinances as they may be amended from time to time. Provider must obtain all necessary permits and licenses that are required in completing the work contracted for in this Agreement.

#### **12. INDEMNIFICATION**

**Provider shall indemnify, defend and hold harmless City and its officials, employees and agents (collectively referred to as "Indemnitees") and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including attorney's fees) or liabilities (collectively referred to as "Liabilities") by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with (i) the performance or non-performance of the services contemplated by this Agreement which is or is alleged to be directly or indirectly caused, in whole or in part, by any act, omission, default or negligence (whether active or passive) of Provider or its employees, agents or sub-providers (collectively referred to as "Provider"), regardless of whether it**

is, or is alleged to be, caused in whole or part (whether joint, concurrent or contributing) by any act, omission, default or negligence (whether active or passive) of the Indemnitees, or any of them or (ii) the failure of Provider to comply with any of the paragraphs herein or the failure of Provider to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal or state, in connection with the performance of this Agreement. Provider expressly agrees to indemnify and hold harmless the Indemnitees, or any of them, from and against all liabilities which may be asserted by an employee or former employee of Provider, or any of its sub-providers, as provided above, for which Provider's liability to such employee or former employee would otherwise be limited to payments under state Workers' Compensation or similar laws. This indemnification shall survive the term of this Agreement as long as any liability could be asserted. Nothing herein shall require Provider to indemnify, defend, or hold harmless any indemnified party for the indemnified party's own gross negligence or willful misconduct.

### **13. DEFAULT**

If Provider fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Provider shall be in default. Upon the occurrence of a default hereunder City, in addition to all remedies available to it by law, may immediately, upon written notice to Provider, terminate this Agreement whereupon all payments, advances, or

other compensation paid by City to Provider shall be immediately returned to City. Should Provider be unable or unwilling to commence to perform the Services within the time provided or contemplated herein, then, in addition to the foregoing, Provider shall be liable to City for all expenses incurred by City in preparation and negotiation of this Agreement, as well as all costs and expenses incurred by City in the re-procurement of Services, including consequential and incidental damages.

#### **14. RESOLUTION OF CONTRACT DISPUTES**

Provider understands and agrees that all disputes between Provider and City based upon an alleged violation of the terms of this Agreement by City shall be submitted to the City Manager for his resolution. The Provider shall make a written request for resolution of the dispute (the "Request") to the City Manager or his designee (the "Official") for determination of the matter in dispute. The Request shall clearly state the disputed issue and include or incorporate by specific reference all information or documents that Provider wants the Official to consider in reaching a determination. The Official shall issue a written notice of decision upon Provider's Request within thirty (30) days of receipt of Provider's Request. If the Official cannot issue a decision within thirty (30) days of the receipt of Provider's Request, the Official shall notify Provider the date upon which a decision shall be issued. Submission of a Provider's Request for determination of the dispute is a condition precedent to Provider's ability to engage in litigation against City. If a decision is not issued by the date indicated by the Official or within ninety (90) days after the submission of Provider's written Request for determination, whichever occurs first, Provider will be deemed to have met the condition precedent required by this provision. Should the dispute be resolved through the submission of Provider's Request, the resolution of the dispute will be documented, if necessary, through a change to the Agreement in

accordance with the provisions contained in the Agreement. Should the dispute fail to reach resolution through the submission by Provider's Request, the dispute may be submitted to mediation at the sole discretion of City. City agrees that it shall make an election within no later than sixty (60) days after the issuance of a determination by the Official in response to a Provider's Request, final completion, abandonment or termination of the Project, whichever is later. Such mediation shall be conducted by and between the parties in accordance with the AAA Rules of Mediation for Construction Cases then in effect. Provider understands and agrees that it shall continue to perform its work under the Agreement unless further performance has been excused by termination of Provider or stopping work is specifically allowed under the laws of the State of Texas. Provider understands that should a settlement be reached at mediation, it is subject to the approval of the City Council. If either mediation is unsuccessful or City elects to not to proceed to mediation, then the dispute shall be submitted to litigation in keeping with the terms of this Agreement and the laws of the State of Texas.

## **15. TERMINATION RIGHTS OF CITY**

**A.** City shall have the right to terminate this Agreement, in its sole discretion, at any time, by giving written notice to Provider at least five (5) business days prior to the effective date of such termination. In such event, City shall pay to Provider compensation for services rendered and expenses incurred prior to the effective date of termination. In no event shall City be liable to Provider for any additional compensation, other than that provided herein, or for any consequential or incidental damages.

**B.** City shall have the right to terminate this Agreement, without notice to Provider, upon the occurrence of an event of default hereunder. In such event, City shall not be obligated



to pay any amounts to Provider and Provider shall reimburse to City all amounts received by Provider under this Agreement.

#### **16. PROVISION FOR INSURANCE**

Provider shall, at all times during the term hereof, maintain such insurance coverage as may be required by City. All such insurance, including renewals, shall be subject to the approval of City for adequacy of protection and evidence of such coverage shall be furnished to City on Certificates of Insurance indicating such insurance to be in force and effect and providing that it will not be canceled during the performance of Services under this Agreement without thirty (30) calendar days prior written notice to City. Completed Certificates of Insurance shall be filed with City prior to the performance of Services hereunder, provided, however, that Provider shall at any time upon request file duplicate copies of the policies of such insurance with City.

If, in the judgment of City, prevailing conditions warrant the provision by Provider of additional liability insurance coverage or coverage which is different in kind, City reserves the right to require the provision by Provider of an amount of coverage different from the amounts or kind previously required and shall afford written notice of such change in requirements thirty (30) days prior to the date on which the requirements shall take effect. Should Provider fail or refuse to satisfy the requirement of changed coverage within thirty (30) days following City's written notice, this Agreement shall be considered terminated on the date that the required change in policy coverage would otherwise take effect.

#### **17. INSURANCE REQUIRED**

**A. GENERAL CONDITIONS.** The following conditions shall apply to all insurance policies obtained by Provider for the purpose of complying with this Agreement.

1) Satisfactory Companies. Coverage shall be maintained with insurers and under forms of policies satisfactory to City and with insurers licensed to do business in Texas.

2) Named Insureds. All insurance policies required herein shall be drawn in the name of Provider, with City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees named as additional insureds, except on Workers' Compensation coverage.

3) Waiver of Subrogation. Provider shall require its insurance carrier(s), with respect to all insurance policies, to waive all rights of subrogation against City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees.

4) Certificates of Insurance. At or before the time of execution of this Agreement, Provider shall furnish City's Risk Manager with certificates of insurance as evidence that all of the policies required herein are in full force and effect and provide the required coverage and limits of insurance. All certificates of insurance shall clearly state that all applicable requirements have been satisfied. The certificates shall provide that any company issuing an insurance policy shall provide to City not less than thirty (30) days advance notice in writing of cancellation, non-renewal, or material change in the policy of insurance. In addition, Provider and insurance company shall immediately provide written notice to City's Risk Manager upon receipt of notice of cancellation of any insurance policy, or of a decision to terminate or alter any insurance policy. Copies of required endorsements will be attached to the certificates to confirm the required endorsements are in effect. Certificates of insurance and notices of cancellations, terminations, or alterations shall be furnished to City's Risk Manager at City Hall, 72 W. College Ave., San Angelo, Texas 76903.

5) Provider's Liability. The procurement of such policy of insurance shall not be construed to be a limitation upon Provider's liability or as a full performance on its part of the indemnification provisions of this Agreement. Provider's obligations are, notwithstanding any policy of insurance, for the full and total amount of any damage, injury or loss caused by or attributable to its activities conducted at or upon the premises.

Failure of Provider to maintain adequate coverage shall not relieve Provider of any contractual responsibility or obligation.

6) Sub-providers' Insurance. Provider shall cause each Sub-Provider and Sub-Sub-Provider of Provider to purchase and maintain insurance of the types and in the amounts specified below. Provider shall require Sub-providers and Sub-Sub-Providers to furnish copies of certificates of insurance to Provider's Risk Manager evidencing coverage for each Sub-Provider and Sub-Sub-Provider.

**B. TYPES AND AMOUNTS OF INSURANCE REQUIRED.** Provider shall obtain and continuously maintain in effect at all times during the term hereof, at Provider's sole expense, insurance coverage as follows with limits not less than those set forth below:

1) Commercial General Liability. This policy shall be an occurrence-type policy and shall protect Provider and additional insureds against all claims arising from bodily injury, sickness, disease or death of any person (other than Provider's employees) and damage to property of City or others arising out of the act or omission of Provider or its agents and employees. This policy shall also include protection against claims for the contractual liability assumed by Provider under the paragraph of this Agreement entitled "Indemnification," including completed operations, products liability, contractual coverage, broad form property coverage, explosion, collapse, underground, premises/operations, and independent providers (to remain in force for two years after final payment). Coverage limits shall not be less than:

<b>\$500,000.00</b>	<b>General Aggregate</b>
<b>\$500,000.00</b>	<b>Products – Completed Operations</b>
<b>\$500,000.00</b>	<b>Personal &amp; Advertising Injury</b>
<b>\$500,000.00</b>	<b>Each Occurrence</b>
<b>\$ 50,000.00</b>	<b>Fire Damage (any one fire)</b>

2) Business Automobile Liability. This policy shall be written in comprehensive form and shall protect Provider and the additional insureds against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles and shall cover operation on and off the premises of all

motor vehicles licensed for highway use, whether they are owned, non-owned or hired. Coverage shall not be less than:

<b>\$500,000.00</b>	<b>Each Accident Limit</b>
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3) Workers' Compensation and Employer's Liability. If Provider hires any employees, Provider shall maintain Workers' Compensation and Employer's Liability insurance, which shall protect provider against all claims under applicable state workers' compensation laws and employer's liability. The insured shall also be protected against claim for injury, disease or death of employees which for any reason, may not fall within the provisions of a workers' compensation law. Coverage shall not be less than:

Statutory Amount	Workers' Compensation
<b>\$500,000.00</b>	<b>Employer's Liability, Each Accident</b>
<b>\$500,000.00</b>	<b>Employer's Liability, Disease - Each Employee</b>
<b>\$500,000.00</b>	<b>Employer's Liability, Disease – Policy Limit</b>

The foregoing requirement will not be applicable if, and so long as, Provider qualifies as a self-insurer under the rules and regulations of the commission or agency administering the workers' compensation program in Texas and furnishes evidence of such qualification to City in accordance with the notice provisions of this Agreement.

If Provider uses contract labor, Provider shall require its sub-provider to maintain the above referenced coverage and furnish copies of certificates of insurance as required herein.

## **18. NONDISCRIMINATION**

Provider represents and warrants to City that Provider does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with Provider's performance under this Agreement on account of race, color, sex, religion, age, handicap, marital status or national origin. Provider further covenants that no otherwise qualified individual shall, solely by reason of his/her race, color, sex, religion, age, handicap, marital status or national

origin, be excluded from participation in, be denied services, or be subject to discrimination under any provision of this Agreement.

**19. VERIFICATION OF EMPLOYMENT ELIGIBILITY**

Provider must comply with the Immigration Reform and Control Act (IRCA) and may not knowingly obtain labor or services of an unauthorized alien. Provider must verify eligibility for employment as required by IRCA.

**20. INDEBTEDNESS TO CITY**

Provider agrees that no payments owed by him, of any nature whatsoever, to City, including payment in advance for service charges or any sums of any character whatsoever, shall become delinquent or in arrears.

**21. ASSIGNMENT**

This Agreement shall not be assigned by Provider, in whole or in part, without the prior written consent of City, which may be withheld or conditioned, in City's sole discretion.

**22. NOTICES**

All notices or other communications required under this Agreement shall be in writing and shall be given by hand-delivery or by registered or certified U.S. Mail, return receipt requested, addressed to the other party at the address indicated herein or to such other address as a party may designate by notice given as herein provided. Notice shall be deemed given on the day on which personally delivered; or, if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

**TO CITY:**

City of San Angelo  
Attn: Vernon Hancock, Asst. Fire Chief  
306 W. 1<sup>st</sup> St.  
San Angelo, Texas 76903  
Phone: (325) 657-4355  
Email: [support@safiredept.com](mailto:support@safiredept.com)

**TO PROVIDER:**

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**23. MISCELLANEOUS PROVISIONS**

**A.** This Agreement shall be construed and enforced according to the laws of the State of Texas. This Agreement is governed by the laws of the State of Texas both as to interpretation and performance.

**B.** Title and paragraph headings are for convenient reference and are not a part of this Agreement.

**C.** No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

**D.** Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Texas or City of San Angelo, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

**E.** This Agreement constitutes the sole and entire agreement between the parties hereto. No modification or amendment hereto shall be valid unless in writing and executed by properly authorized representatives of the parties hereto.

**F.** Venue for any cause of action arising under this Agreement is Tom Green County, Texas.

**G.** This Agreement shall, in any dispute over its meaning or application, be interpreted fairly and reasonably, and not more strongly for or against either party.

#### **24. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon the parties hereto, their heirs, executors, legal representatives, successors, or assigns.

#### **25. INDEPENDENT CONTRACTOR**

Provider has been procured and is being engaged to provide Services to City as an independent contractor, and not as an agent or employee of City. Accordingly, Provider shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of City, nor any rights generally afforded classified or unclassified employees. Provider further understands that Texas Workers' Compensation benefits available to employees of City are not available to Provider, and agrees to provide workers' compensation insurance for any employee or agent of Provider rendering Services to City under this Agreement.

#### **26. REAFFIRMATION OF REPRESENTATIONS**

Provider hereby reaffirms all of the representations contained in this Agreement and included in the Contract Documents and **Exhibit "A"**.

## **27. HISTORICALLY UNDERUTILIZED BUSINESSES PROCUREMENT PROGRAM**

City has established a Historically Underutilized Businesses Procurement Program (“HUB Program”) designed to increase the volume of City procurement and agreements with minorities and women-owned businesses. Provider understand and agrees that City shall have the right to terminate and cancel this Agreement, without notice or penalty to City, and to eliminate Provider from consideration and participation in future City contracts if Provider, in the preparation and/or submission of the Proposal, submitted false or misleading information as to its status as a minority and/or a woman-owned business and/or the quality and/or type of minority or woman-owned business participation.

## **28. AMENDMENTS**

City or Provider may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of City and Provider, and approved by City. Such amendments shall not invalidate this Agreement, nor relieve or release City or Provider from their respective obligations under this Agreement.

## **29. CONTINGENCY CLAUSE**

Funding for this Agreement is contingent on the availability of funds and continued authorization for program activities and the Agreement is subject to amendment or termination due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days notice.

## **30. DOCUMENTS OF INCORPORATION**

This Agreement is expressly made subject to all exhibits hereto, to all of the exhibits, provisions, requirements, federal, state and local laws, rules and regulations as of the effective



date herein, and to any and all requirements, whether federal, state or local, verbal or written, placed upon City. All of the foregoing are hereby made a part of this Agreement and incorporated herein by reference as if fully set out herein.

**31. ENTIRE AGREEMENT**

This instrument and its exhibits constitute the sole and only agreement of the parties relating to the subject matter hereof and correctly set forth the rights, duties, and obligations of each to the other as of its date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.

**32. COUNTERPARTS**

This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same agreement.

**33. REAFFIRMATION OF REPRESENTATIONS**

Provider hereby reaffirms all of the representations contained in RFP No. FD-01-15.

[Signature Page to follow]

**IN WITNESS WHEREOF**, the parties hereto have caused this instrument to be executed by their respective officials thereunto duly authorized, this the day and year above written.

**“City”**

**CITY OF SAN ANGELO**, a municipal corporation  
of the State of Texas

By: \_\_\_\_\_  
Daniel Valenzuela, City Manager

ATTEST:

\_\_\_\_\_  
Bryan Kendrick, City Clerk

**“Provider”**

\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

## **Exhibit “A”**

### **Scope of Services**

Provider shall provide the Fire Department with professional fire apparatus mechanics that are both factory trained and nationally certified.

### **General Service and Requirements**

1. Provider will assist the Fire Department in maintenance of warranty coverage.
2. Provider shall supply all inspection forms and maintenance forms.
3. Provider shall provide a full vehicle maintenance/inspection report on each vehicle for the life of the Agreement.
4. Provider shall provide detailed documentation to City staff at the time of each repair/inspection
5. Provider shall provide all annual or when service intervals have been reached per manufacturer's specifications, including aerial ladder testing.
6. Vendor shall provide all of their own test equipment and tools necessary to perform their required tasks.
7. Provider shall be responsible for the disposal of all fluids, hazardous material, etc, as required by local, state and federal law.
8. As a result of Preventative Maintenance Service, Provider may make recommendations for repair service. Provider shall support its recommendations for repair service by using diagnostic statistics, accepted performance standards, vehicle history records, mileage, etc. Provider shall obtain prior authorization before commencing any work that is a result of Preventative Maintenance Service. All repair service will be scheduled by City.

**Exhibit “B”**

**NON-EXCLUSIVE SERVICES AGREEMENT**  
**RFP No. FD-01-15**

APPROVED AS TO INSURANCE  
REQUIREMENTS

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Marion McMinn, Risk Manager

APPROVED AS TO CONTENT

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Vernon Hancock, Asst. Fire Chief

APPROVED AS TO FORM

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Maxwell Branham, Assistant City  
Attorney