

# **INDEPENDENT CONTRACTOR AGREEMENT FOR SERVICES AS MUNICIPAL COURT JUDGE**

by and between

TOWN OF ANTHONY, TEXAS

and

IDA BAEZA-GARDNER

This agreement is entered into on 9<sup>th</sup> day of October 2023 by and between the TOWN OF ANTHONY, TEXAS, a Type A general-law municipality, ("TOWN") and IDA BAEZA-GARDNER, ("CONTRACTOR"), a person.

FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND STIPULATIONS CONTAINED HEREIN, AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

## **SECTION ONE**

### **ENGAGEMENT OF CONTRACTOR**

TOWN is a municipality for which state law (Government Code Section 29.002) creates a municipal court. Pursuant to state law (Government Code Section 29.004(b)) and town ordinance (Anthony Municipal Code Section 2.12.020(B)) the municipal court judge shall be appointed by the mayor and subject to the confirmation of the town council. Pursuant to state law (Government Code Section 29.005) and town ordinance (Anthony Municipal Code Section 2.12.020(C)) the term of office for the municipal court judge shall be one (1) year. TOWN agrees to engage CONTRACTOR to perform services as municipal court judge, which services are as provided by law. CONTRACTOR agrees to perform said services under the terms and conditions set forth in this agreement.

## **SECTION TWO**

### **DUTIES OF CONTRACTOR**

CONTRACTOR agrees to perform any and all services as provided by law and generally performed by municipal court judges, required or requested by TOWN or necessary for the completion of CONTRACTOR's duties and obligations set forth in this agreement (hereinafter referred to as the "Contracted Services").

## **SECTION THREE**

### **TERM**

CONTRACTOR shall perform the above-described services for a term of one (1) year to commence on the 1<sup>st</sup> day of October, 2023, and the agreement will remain in full force until completion of said one (1) year term which shall be completed no later than the 30<sup>th</sup> day of

September, 2024. CONTRACTOR shall be under a six (6) month probation period to commence on the same date of commencement of this contract.

#### **SECTION FOUR**

##### **COMPENSATION**

As compensation for services performed under this agreement, TOWN shall pay CONTRACTOR a monthly compensation amount of \$1,400.00 for no more than for (6) monthly court sessions. A court session is defined as an individual session consisting of either a morning session, afternoon session or evening session. For example, a morning session shall be counted as one monthly session, an afternoon session shall be counted as one monthly session, and an evening session shall be counted as one monthly session. The monthly compensation amount shall be payable on the 15<sup>th</sup> of every month commencing on November 15, 2023 and with subsequent payments continuing on the 15<sup>th</sup> of every month thereafter. Submitted statements of warrant with magistrate warnings shall be payable to CONTRACTOR by the TOWN at \$25.00 each. TOWN will not compensate CONTRACTOR for services performed prior to October 1, 2023, after the expiration of this agreement, or in excess of the maximum dollar amount of this agreement.

CONTRACTOR shall retain all funds paid for weddings performed by CONTRACTOR.

#### **SECTION FIVE**

##### **ASSIGNMENT AND SUB-CONTRACTING**

CONTRACTOR shall not assign or transfer any interest in this agreement or assign any claims for money due or to become due under this agreement without prior written approval of TOWN. CONTRACTOR may not subcontract any portion of the services to be performed under this agreement without written approval of the TOWN.

#### **SECTION SIX**

##### **NOTICES**

All notices and communications from one party to the other in connection with this agreement must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile as follows:

**To CITY at:**

Town of Anthony, Texas  
Attention: Mayor  
401 Wildcat  
P.O. Box 1269  
Anthony, Texas 79821  
Tel. No.: (915) 886-3944  
Fax No.: (915) 886-3115

**To CONTRACTOR at:**

Ida Baeza-Gardner  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Tel. No.: (915) 253-5830\_  
Fax No.: (915) \_\_\_\_-\_\_\_\_\_

## **SECTION SEVEN**

### **TERMINATION**

TOWN and CONTRACTOR shall each have the option of terminating this agreement at any time and for any reason or no reason provided that TOWN or CONTRACTOR gives thirty (30) days advance written notice to the other party. Upon receipt of the "Notice of Termination" from the TOWN or delivery of the "Notice of Termination" by the CONTRACTOR, the CONTRACTOR shall immediately suspend any further work unless otherwise mutually agreed in writing by the parties. By such termination neither party may nullify obligations already incurred for performance or failure to perform for the services rendered prior to the date of termination of this agreement. However, neither party shall have any obligation to perform services or make payment for services rendered after such date of termination.

## **SECTION EIGHT**

### **GOVERNING LAW**

This agreement shall be governed, construed and enforced in accordance with the laws of the State of Texas. Venue shall be in El Paso County, Texas.

## **SECTION NINE**

### **RESOLUTION OF DISPUTES**

In an effort to resolve any conflicts that arise during the term of this agreement or following completion of the engagement the subject of this agreement, the TOWN and CONTRACTOR agree to negotiate all disputes between them in good faith for a period of thirty (30) days from the date of notice prior to submission of this matter to mediation, unless compliance with this provision may result in barring the aggrieved party from pursuing this matter through litigation because of the lapse of any applicable statute of limitations. The CONTRACTOR and TOWN agree that if the dispute(s) between them cannot be resolved through negotiation, this matter shall be submitted to mediation with a mutually agreed mediator, unless compliance with this provision may result in barring the aggrieved party from pursuing this matter through litigation because of the lapse of any applicable statute of limitations. If the CONTRACTOR and TOWN cannot agree on a mutually acceptable mediator, either party may submit this matter to a court of competent jurisdiction for appointment by the court of a mediator. The CONTRACTOR and TOWN agree that if the dispute(s) between them cannot be resolved through mediation, either party may pursue their dispute(s) in a court of competent jurisdiction.

## **SECTION TEN**

### **EFFECT OF PARTIAL INVALIDITY**

The invalidity of any portion of this agreement shall not be deemed to affect the validity of any other provision. If any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

## **SECTION ELEVEN**

### **ENTIRE AGREEMENT**



This agreement embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this agreement.

## **SECTION TWELVE**

### **MODIFICATION OF AGREEMENT**

No modification of this agreement shall be valid or binding unless such modification is in writing, duly dated and signed by all parties.

## **SECTION THIRTEEN**

### **BINDING EFFECT**

This agreement shall inure to the benefit of, and be binding upon the parties hereto, their heirs, successors, administrators, executors and assigns.

## **SECTION FOURTEEN**

### **ATTORNEY'S FEES**

Any signatory to this agreement who is the prevailing party in any legal proceedings against any other signatory brought under or with relation to this agreement, or transaction, shall be additionally entitled to recover court costs and reasonable attorney's fees, and all other litigation expenses, including but not limited to deposition costs, travel and expert witness fees from the non-prevailing party. This paragraph survives closing.

## **SECTION FIFTEEN**

### **INDEMNIFICATION AND LIABILITY**

The CONTRACTOR shall hold harmless, indemnify, and defend the TOWN from any demands, claims, causes of action or liability arising from damage to or destruction of real or personal property or bodily or personal injuries, whether arising from tort, contract, or otherwise, that occur directly or indirectly from the failure of the CONTRACTOR to comply with its obligations and responsibilities as set forth in this agreement or from the intentional conduct, gross negligence, or negligence of the CONTRACTOR, his, her, or its officials, officers, directors, principals, partners, affiliates, shareholders, employees, servants, agents and representatives, including attorney fees and costs, that arise from, relate to, or are connected with the CONTRACTOR's obligations and responsibilities as set forth in this agreement. CONTRACTOR shall not, under any circumstances, be entitled to recover any consequential, incidental, exemplary, special, or punitive damages from the TOWN, including, without limitation, loss of income or profits. With respect to TOWN, the TOWN reserves and does not waive its right of governmental immunity from litigation and liability, and does not waive its rights under the Texas Tort Claims Act. No provision of this agreement that imposes an obligation or restriction on the TOWN not permitted by applicable law shall be enforceable. This paragraph is intended only to define the liabilities between the parties hereto and is not intended to modify, in any way, the parties' liabilities as governed by common law or the Texas Tort Claims Act. By entering into this agreement, TOWN, and its "public employees" as defined in the Texas Tort Claims Act, do not waive any sovereign immunity, nor do they waive any limitations(s) of liability pursuant to law. No provision of this agreement modifies or waives any

provision of the Texas Tort Claims Act. Further, this agreement is not intended to alter or reallocate any defense or immunity presently authorized by law, or to create or transfer any liability arising under the law. The parties respectively shall each bear any liability or risk of loss for claims arising from the acts or omissions of their respective employees and agents. Each party agrees that it shall be responsible for its own officers, agents and employees who are performing duties under this agreement, and neither shall be liable or responsible for the acts or omissions of the other's officers, agents or employees.

#### **SECTION SIXTEEN**

##### **RELEASE**

CONTRACTOR agrees not to purport to bind TOWN to any obligation not assumed herein by TOWN, unless CONTRACTOR has express, written authority to do so from TOWN, and then, only within the strict limits of that authority.

#### **SECTION SEVENTEEN**

##### **CO-PARTNERS**

Nothing herein contained is intended or should be construed in any way to create or establish the relationship of co-partners between the parties or to establish either party as an agent, representative or employee of the other party for any purpose or manner whatsoever.

#### **SECTION EIGHTEEN**

##### **THIRD PARTY BENEFICIARIES**

It is specially agreed between the parties executing this agreement that it is not intended by any of the provisions of any part of this agreement to create the public or any member thereof a third party beneficiary or to authorize anyone not a party to this agreement to maintain pursuant to the provisions of this agreement a suit of any nature based upon this agreement.

#### **SECTION NINETEEN**

##### **CONFLICTS OF INTEREST**

CONTRACTOR warrants that he, she, or it presently has no interest, and shall not acquire any interest, directly or indirectly, that would conflict in any manner or degree with the performance of services required under this agreement. When and if such provisions become applicable, CONTRACTOR also shall promptly provide a disclosure to TOWN.

#### **SECTION TWENTY**

##### **WAIVER**

No waiver of any breach of this agreement or any of the terms or conditions thereof shall be held to be a waiver of any other or subsequent breach; nor shall any waiver be valid or binding unless the same shall be in writing and signed by the party alleged to have granted the waiver.

#### **SECTION TWENTY ONE**



## APPROPRIATIONS

This agreement's terms are contingent upon the TOWN making sufficient appropriations and authorization for the performance of this agreement. If the TOWN does not make sufficient appropriations and authorizations, this agreement may be terminated upon the TOWN giving written notice to CONTRACTOR as set out in this agreement. The TOWN's decision whether sufficient appropriations are available shall be accepted by CONTRACTOR and shall be final.

## SECTION TWENTY TWO

### STATUS OF CONTRACTOR

CONTRACTOR, his, her, or its officials, officers, directors, principals, partners, affiliates, shareholders, employees, servants, agents and representatives, function as an independent contractor in performing the specified services for the TOWN. CONTRACTOR shall have control of the work and the manner in which it is performed. CONTRACTOR shall be free to contract for similar services to be performed for other employers while CONTRACTOR is under contract with TOWN. CONTRACTOR, his, her, or its officials, officers, director's principals, partners, affiliates, shareholders, employees, servants, agents and representatives are not employees of TOWN. CONTRACTOR, his, her, or its officials, officers, directors, principals, partners, affiliates, shareholders, employees, servants, agents and representatives shall not, as a result of this agreement, accrue leave, retirement, workers' compensation benefits, insurance, bonding, use of TOWN vehicles, or any other benefits afforded to employees of TOWN, as a result of this agreement. The TOWN provides no liability coverage to CONTRACTOR. CONTRACTOR acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as business income.

## SECTION TWENTY THREE

### COMPLIANCE WITH LAW

CONTRACTOR agrees to comply with all federal, state, and local statutes, rules, regulations and ordinances applicable to the work or services authorized in this agreement.

## SECTION TWENTY FOUR

### PERMITS, LICENSES AND INSURANCE

CONTRACTOR shall procure all permits and licenses, and insurance as required by law and pay all charges, fees, royalties, and give all notices necessary and incidental to the due and lawful prosecution of the services set forth in this agreement. CONTRACTOR and CONTRACTOR's agents and employees will not be considered TOWN employees. Any claims that may arise under the State of Texas workers' compensation laws on behalf of CONTRACTOR and/or CONTRACTOR's agents and/or employees and any claims made by any third party as a consequence of any act or omission on the part of CONTRACTOR and/or CONTRACTOR's agents and/or employees are in no way TOWN's obligation or responsibility. If CONTRACTOR fails to comply with the State of Texas workers' compensation law and applicable rules when required to do so, the agreement may be canceled by the TOWN effective immediately.

**SECTION TWENTY FIVE**

JOINTLY DRAFTED

The parties acknowledge that this agreement has been jointly drafted by all of the parties.

**SECTION TWENTY SIX**

COUNTERPARTS

If this agreement is executed in a number of identical counterparts, each counterpart is an original and all counterparts, collectively, constitute one instrument.

**SECTION TWENTY SEVEN**

HEADINGS

The headings of the sections of this agreement are inserted only for convenience or reference and are not intended to be construed to modify, define, limit, or expand the intent of the parties.

**SECTION TWENTY EIGHT**

AUTHORITY

Each person signing below represents that he or she has read this agreement in its entirety; understands its terms; is duly authorized to execute this agreement on behalf of the party indicated below by his or her name; and agrees on behalf of such party that such party will be bound by those terms.

IN WITNESS WHEREOF, each party has executed this agreement on the date first written above.

CONTRACTOR:

Ida Baeza Gardner

IDA BAEZA-GARDNER

TOWN:

TOWN OF ANTHONY, TEXAS, a Type A  
general-law municipality

By: 

Mayor