

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN JOHN ALMAREZ, DBA 360 ZONE, AND
THE CITY OF JOHNSON CITY, TEXAS
FOR GOOGLE BUSINESS PHOTOGRAPHY**

STATE OF TEXAS §
 §
COUNTY OF BLANCO §

This Agreement is entered into by and between the City of Johnson City, a Texas Municipal Corporation (“City”), acting by and through its Chief Administrative Officer, and John Almaraz, *dba* 360 Zone, (“Photographer”), both of which may be referred to herein singularly as “Party” or collectively as the “Parties.”

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

“City” is defined in the preamble of this Agreement and includes its successors and assigns.

“Photographer” is defined in the preamble of this Agreement and includes its successors.

“Chief Administrative Officer” shall mean the Chief Administrative Officer and/or his designee.

II. EFFECTIVE DATE AND TERM

2.1 The term of this Agreement is for twelve (12) months, beginning October 1, 2023, and ending September 30, 2024, and shall thereafter automatically renew for three 1-year extensions. The Agreement may be terminated by either Party for convenience upon thirty (30) days written notice to the other.

III. SCOPE OF SERVICES AND PROJECT SCHEDULE

Photographer agrees to provide the services described in this Article III entitled Scope of Services and Project Schedule in exchange for the compensation described in Article IV. Compensation. Scope of Services are detailed in Exhibit A which are incorporated by reference as if written and copied herein. The terms and conditions of this Agreement shall control in the event of a conflict with any terms and conditions set forth therein.

All work performed by Photographer hereunder shall be performed to the satisfaction of the Chief Administrative Officer. The determination made by Chief Administrative Officer shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Photographer which is not satisfactory to Chief Administrative Officer. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Photographer’s work not be satisfactory to Chief Administrative Officer; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. COMPENSATION TO PHOTOGRAPHER

4.1 In consideration of Photographer's performance in a satisfactory and efficient manner, as determined solely by Chief Administrative Officer, of all services and activities set forth in this Agreement, City agrees to pay Photographer _____ Dollars and ___ Cents (\$ _____) as total compensation. Photographer shall be reimbursed Seventy Five Dollars and No Cents (\$75.00) for mileage per each round trip between San Antonio and the City undertaken solely for the performance of photography services under this Agreement.

4.2 No additional fees or expenses of Photographer shall be charged by Photographer nor be payable by City. The parties hereby agree that all compensable expenses of Photographer have been provided for in the total payment to Photographer as specified in section 4.1 above. Total payments to Photographer cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the City.

4.3 Final acceptance of work products and services require written approval by City. The approval official shall be the Chief Administrative Officer. Payment will be made to Photographer following written approval of the final work products and services by the Chief Administrative Officer. City shall not be obligated or liable under this Agreement to any party, other than Photographer, for the payment of any monies or the provision of any goods or services.

4.4 Photographer will refund the Service Fees paid by the City to the Photographer and will have no further liability with respect to the Agreement if Google rejects the photographs for failure to meet the Google Business Photos technical specifications, and Photographer does not correct the failure.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Photographer pursuant to the provisions of this Agreement are the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Photographer.

5.2 Photographer understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction. Any use of such writings, documents and information on extensions of this project or on any other project without specific adaptation by Photographer shall be at the City's sole risk and without liability to the Photographer.

VI. RECORDS RETENTION

6.1 Photographer and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Photographer shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Photographer shall retain the records until the resolution of such litigation or other such questions. Photographer acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Photographer to return said documents to City prior to or at the conclusion of said retention.

6.3 Photographer shall notify City, immediately, in the event Photographer receives any requests for information from a third party which pertain to the documentation and records referenced herein. Photographer understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 *Termination Without Cause.* This Agreement may be terminated by either Party upon fifteen (15) calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 *Termination For Cause.* Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 *Defaults With Opportunity for Cure.* Should Photographer default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Photographer shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Photographer fails to cure the default within such 15-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Photographer's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets

7.4.2 Failing to perform or failing to comply with any covenant herein required

7.4.3 Performing unsatisfactorily

7.5 *Termination By Law.* If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Photographer shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Photographer, or provided to Photographer, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Photographer in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Photographer's sole cost and expense. Payment of compensation due or to become due to Photographer is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Photographer shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Photographer to submit its claims within said 45 calendar days shall negate any liability on the part of City and constitute a **Waiver** by Photographer of any and all rights or claims to collect monies that Photographer may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Photographer shall cease all operations of work being performed by Photographer or any of its subcontractors pursuant to this Agreement.

7.9 *Termination not sole remedy.* In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Photographer for any default hereunder or other action.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. Mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either Party may from time to time designate in writing.

If intended for City, to:

City of Johnson City
Attn: Rick A. Schroder
Chief Administrative Officer
P.O Box 369
Johnson City, Texas 78636

If intended for Photographer, to: John Almaraz
dba 360 Zone
11623 Brae Valley
San Antonio, Texas 78249

IX. INSURANCE

9.1 Prior to the commencement of any work under this Agreement, Photographer shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City, which shall be clearly labeled "*Google Business Photography*" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original Certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City. No officer or employee, other than the City Attorney, shall have authority to waive this requirement.

9.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City Attorney based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

9.3 Photographer's financial integrity is of interest to the City; therefore, subject to Photographer's right to maintain reasonable deductibles in such amounts as are approved by the City, Photographer shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Photographer's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

Insurance Requirements

Photographer performing work on City property or public right-of-way for the City of Johnson City shall provide the City a certificate of insurance evidencing the coverage provisions identified herein. Photographer shall provide the City evidence that all subcontractors performing work on the project have the same types and amounts of coverage as required herein or that the subcontractors are included under the contractor's policy. The City, at its own discretion, may require a certified copy of the policy.

All insurance companies and coverage must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must be acceptable to the City of Johnson City.

Listed below are the types and amounts of insurance required. The City reserves the right to amend or require additional types and amounts of coverage or provisions depending on the nature of the work.

| Type of Insurance | Amount of Insurance | Provisions |
|---|--|--|
| Commercial (Public) Liability to include coverage for: Premises/Operations | General 1,000,000 per occurrence, 2,000,000 general aggregate Or | City to be listed as additional insured and provide 30 days' notice of cancellation or material change in coverage |
| Products/ Completed Operations | 2,000,000 combined single coverage limit | City to be provided a waiver of subrogation |
| Independent Contractors | | City prefers that insurer be rated B+V1 or higher by A.M. Best or A or higher by Standard & Poors |
| Personal Injury | | |
| Contractual Liability | | |
| Business Auto Liability | 1,000,000 combined single limit | City to be provided a waiver of subrogation |
| Workers' Compensation & Employers Liability | Statutory Limits 1,000,000 each accident | City to be provided a waiver of subrogation |
| Professional Liability | 1,000,000 | |

Questions regarding this insurance should be directed to the City of Johnson City, (830) 868-7111. A contract will not be issued without evidence of Insurance. City will only accept the ACORD 25 or ISO certificate of insurance forms.

9.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties hereto or the underwriter of any such policies). Photographer shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within ten (10) days of the requested change. Photographer shall pay any costs incurred resulting from said changes.

City of Johnson City
P.O. Box 369
Johnson City, Texas 78636

9.5 Photographer agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as ***additional insured by endorsement under terms satisfactory to the City***, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of Johnson City where the City is an additional insured shown on the policy;

- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

9.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Photographer shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Photographer's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

9.7 In addition to any other remedies the City may have upon Photographer's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Photographer to stop work hereunder, and/or withhold any payment(s) which become due to Photographer hereunder until Photographer demonstrates compliance with the requirements hereof.

9.8 Nothing herein contained shall be construed as limiting in any way the extent to which Photographer may be held responsible for payments of damages to persons or property resulting from Photographer's or its subcontractors' performance of the work covered under this Agreement.

9.9 It is agreed that, excepting Professional Liability, Photographer's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Johnson City for liability arising out of operations under this Agreement.

9.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

9.11 Photographer and any of its subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNIFICATION

10.1 PHOTOGRAPHER covenants and agrees to INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, or liability for damages caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the PHOTOGRAPHER or PHOTOGRAPHER's agent, PHOTOGRAPHER under contract, or another entity over which the PHOTOGRAPHER exercises control. Such acts may include personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to PHOTOGRAPHER's activities under this Agreement, including any negligent or intentional acts or omissions of PHOTOGRAPHER, any agent, officer, director, representative, employee, consultant or subcontractor of

PHOTOGRAPHER, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its elected officials, employees, officers, directors, volunteers and representatives, in instances where such negligence causes personal injury, death, or property damage. In no event shall the indemnification obligation extend beyond the date with when the institution of legal or equitable proceedings for the professional negligence would be barred by any applicable statute of repose or statute of limitations.

10.2 The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. PHOTOGRAPHER shall advise the CITY in writing within twenty-four (24) hours of any claim or demand against the CITY or PHOTOGRAPHER known to PHOTOGRAPHER related to or arising out of PHOTOGRAPHER's activities under this AGREEMENT.

10.3 Duty to Defend – PHOTOGRAPHER covenants and agrees to hold a DUTY TO DEFEND the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all claims, liens, proceedings, actions or causes of action, other than claims based wholly or partly on the negligence of, fault of, or breach of contract by the CITY, the CITY'S agent, the CITY'S employee or other entity, excluding PHOTOGRAPHER or PHOTOGRAPHER's agent, employee or sub-consultant, over which the CITY exercises control. PHOTOGRAPHER is required under this provision and fully satisfies this provision by naming the CITY and those representatives listed above as additional insured under the PHOTOGRAPHER's general liability insurance policy and providing any defense provided by the policy upon demand by CITY.

10.4 PHOTOGRAPHER is required to perform services to the City under the standard of care provided for in Texas Local Government Code § 271.904 (d)(1-2).

10.5 Employee Litigation – In any and all claims against any Party indemnified hereunder by any employee of PHOTOGRAPHER, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for PHOTOGRAPHER or any subcontractor under worker's compensation or other employee benefit acts.

10.6 Force Majeure - City agrees that the PHOTOGRAPHER is not responsible for damages arising from any circumstances such as strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; pandemics; or failure of any third-party governmental agency to act in timely manner not caused or contributed to by PHOTOGRAPHER.

XI. ASSIGNMENT AND SUBCONTRACTING

11.1 Photographer shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Photographer. Photographer, its employees or its subcontractors shall perform all necessary work.

11.2 It is City's understanding and this Agreement is made in reliance thereon, that Photographer intends to use the following subcontractors in the performance of this Agreement: NA. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City prior to the provision of any services by said subcontractor.

11.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Photographer. City shall in no event be obligated to any third party, including any subcontractor of Photographer, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City.

11.4 Except as otherwise stated herein, Photographer may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Photographer shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor to Photographer, assignee, transferee or subcontractor.

11.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Photographer assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Photographer shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Photographer shall in no event release Photographer from any obligation under the terms of this Agreement, nor shall it relieve or release Photographer from the payment of any damages to City, which City sustains as a result of such violation.

XII. INDEPENDENT CONTRACTOR

Photographer covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Photographer shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Photographer, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Photographer. The Parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Photographer under this Agreement and that Photographer has no authority to bind the City.

XIII. CONFLICT OF INTEREST

13.1 Photographer acknowledges that it is informed that the Charter of the City of Johnson

City and its Code of Ordinances prohibit a City officer or employee, as those terms are defined in Chapter 9 Article 2 of City's Code of Ordinances, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a Party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

13.2 Pursuant to the subsection above, Photographer warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Photographer further warrants and certifies that it will comply with the City's Code of Ordinances.

13.3 Certificate of Interested Parties (TEC Form 1295). For contracts needing City Council approval, or any subsequent changes thereto requiring City Council approval, the City may not accept or enter into a contract until it has received from Photographer a completed, signed, and notarized TEC Form 1295 complete with a certificate number assigned by the Texas Ethics Commission ("TEC"), pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. Photographer understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the City from entering into this Agreement. Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC's website, assigned a certificate number, printed, signed and notarized, and provided to the City. The TEC Form 1295 must be provided to the City prior to the award of the contract. The City does not have the ability to verify the information included in a TEC Form 1295, and does not have an obligation or undertake responsibility for advising Photographer with respect to the proper completion of the TEC Form 1295.

XIV. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Photographer, and, if applicable, subject to formal approval by the City Council.

XV. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Code of Ordinances, or ordinances of the City of Johnson City, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVI. LICENSES/CERTIFICATIONS

Photographer warrants and certifies that Photographer and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVII. COMPLIANCE

Photographer shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XVIII. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XIV. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XIX. LAW APPLICABLE

19.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BLANCO COUNTY, TEXAS.

19.2 Venue for any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in a court of competent jurisdiction in Blanco County, Texas.

XX. LEGAL AUTHORITY

The signer of this Agreement for Photographer represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Photographer and to bind Photographer to all of the terms, conditions, provisions and obligations herein contained.

XXI. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXII. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIII. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the Parties, and shall be incorporated herein for all purposes:

Exhibit A – Project Information, Scope of Services, Cost and Terms

XXIV. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its Exhibits, if any, constitute the final and entire agreement between the Parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the Parties, in accordance with Article XIV. Amendments.

XXV. MISCELLANEOUS CITY CODE PROVISIONS

25.1 Representations and Warranties by Photographer. If Photographer is a corporation, partnership or a limited liability company, Photographer warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas.

25.2 Franchise Tax Certification. Photographer certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the Photographer is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

25.3 Eligibility Certification. Photographer certifies that the individual or business entity named in the Agreement is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

25.4 Payment of Debt or Delinquency to the State or Political Subdivision of the State. Photographer agrees that any payments owing to Photographer under the Agreement may be applied directly toward any debt or delinquency that Photographer owes the City of Johnson City, State of Texas or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

25.5 Texas Family Code Child Support Certification. Photographer certifies that they are not delinquent in child support obligations and therefore are not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

25.6 Texas Government Code Mandatory Provision. The City of Johnson City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it (i) does not boycott Israel; (ii) will not boycott Israel during the term of the contract; (iii) does not boycott energy companies; (iv) will not boycott energy companies during the term of the contract; (v) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and (vi) will not discriminate during the term of the contract against a firearm entity or firearm trade association (Texas Government Code, Chapter 2271.002; 2274.002).

Photographer hereby verifies that it does not boycott Israel, and agrees that, during the term of this agreement, will not boycott Israel as this term is defined in the Texas Government Code, Section 808.001, as amended. Photographer hereby verifies that it does not boycott energy companies, and agrees that, during the term of this Agreement, will not boycott energy companies as this term is defined in Texas Government Code, Section 809.001, as amended. Photographer hereby verifies that it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and agrees that, during the term of this Agreement, will not discriminate against a firearm entity or firearm trade association as those terms are defined in Texas Government Code, Section 2274.001, as amended.

Further, Photographer hereby certifies that it is not a company identified under Texas Government Code, Section 2252.152 as a company engaged in business with Iran, Sudan, or Foreign Terrorist Organizations.

(Signature Page Follows)

EXECUTED and **AGREED** to as of the dates indicated below.

**CITY OF JOHNSON
CITY**

JOHN ALMAREZ, DBA 360 ZONE

(Signature)

Printed Name: Rick Schroder

Title: Chief Administrative
 Officer

Date: _____

(Signature)

Printed Name: John Almaraz

Title: _____

Date: _____

APPROVED AS TO FORM:

Charles E. Zech
City Attorney
DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.

Exhibit A
Project Information, Scope of Services, Cost and Terms

1. Photographer will provide the still photography and 360 virtual tour services in accordance with the rules and guidelines specified by Google for the Google Business Photos Program (“Program”) and this Agreement.
2. Photographer will coordinate with the City to contact sales and use tax producing businesses with a Certificate of Occupancy (“Business”) in the City of Johnson City about participation in the Program. Photographer will coordinate with the City to contact each interested business to schedule a time and date for the photographic services.
3. A Business which meets Google’s requirement and expresses an interest in the Program will be eligible for a photo session on a first-come, first-served basis, and on the continued availability of City funding.
4. Photographer will take photographs of those portions of the exterior and interior of the business premises designated by the Business as acceptable for photographing.
5. Photographer will use commercially reasonable efforts to ensure that the photographs meet the Program’s technical specifications.
6. Photographer will assign or procure the assignment of all ownership rights in the photographs, including intellectual property rights, to the respective Business and to the City.
7. Prior to taking any photographs, Photographer shall obtain a signed application form from each Business as contained in Exhibit B, attached hereto and incorporated fully herein. No service shall be provided until said application is received and approved by the City.
8. Photographer will be responsible for transferring all photographs to a media device supplied by the City.
9. Photographs taken each month shall be released to the City prior to payment for services.
10. Photographer shall provide a monthly progress report of businesses photographed.

PRICE GUIDELINES

Although the hosting of the Google Business View tours and photos are free with no time constrains, there is a onetime fee for photography services done by John Almaraz of 360 Zone. The fee structure is based on the number of PANO's (Individual Panoramic spheres) outlined below. Milage fee of \$75.00 will be added for every round trip from San Antonio & Johnson City.

| Business Size | Still Photos for Business | City Price |
|------------------------------------|----------------------------------|-------------------|
| 7-10 PANO's (Small Business) | 5 photos | \$300.00 |
| 10-15 PANO's (Med Business) | 7 photos | \$450.00 |
| 15-25 PANO's (Large Business) | 10 photos | \$650.00 |
| 25-40 PANO's (Very Large Business) | 15-20 photos | \$800.00 |
| Beyond 40+ PANO's (XL Business) | 20 + photos | \$1000.00 |

*Businesses cannot exceed more than 200 PANO's for any one business.

Packages for cities (only). This will show you about how many businesses are covered by a budget allocation. Number of businesses will very upon size of business photographed and milage fee driven per round trip.

| | | |
|-------------|---|----------------------|
| \$2,500.00 | Will cover about 6 small locations for the city. | 6 BUSINESSES |
| \$5,000.00 | Will cover about 6 small locations and 5 Medium locations. | 11 BUSINESSES |
| \$10,000.00 | Will cover about 14 small locations and 9 Medium locations. | 23 BUSINESSES |
| \$20,000.00 | Will cover about 25 small, 9 Medium and 8 Large locations. | 42 BUSINESSES |
| \$30,000.00 | Will cover about 31 small, 12 Medium, 8 Large, and 7 Very Large. | 58 BUSINESSES |
| \$40,000.00 | About 35 small, 16 Medium, 11 Large, 10 Very Large and 1 XL Location. | 73 BUSINESSES |

DETAILS OF THE PROJECT

Johnson City will be charged monthly for businesses completed in a one-month period. The invoice will be sent to Rick Schroeder and payable upon receipt. The Google/Johnson City project will be completed after all funds have been utilized from allotted budget fund. Time length of a project is determined by the amount of businesses photographed or time period of the project. All businesses that are to be photographed must have a Google info page and sign a Google contact. They must also meet all Google specified guidelines to be photographed. All businesses that are not eligible will be detailed in the city proposal. These are home businesses, police stations, & military installations. All businesses & cities will be provided a copy of the high resolution still photography. The Google Business View tour will be host on the Google Maps for free with no time limit. The City will be provided a month to month progress report of businesses photographed under contract.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/10/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | | |
|---|---|------------------------|
| PRODUCER Hiscox Inc. 5 Concourse Parkway Suite 2150 Atlanta GA, 30328 | CONTACT NAME: PHONE (A/C, No, Ext): (888) 202-3007 FAX (A/C, No): | |
| | E-MAIL ADDRESS: contact@hiscox.com | |
| INSURED JOHN ALMAREZ DBA 360 ZONE 11623 Brae Valley San Antonio, TX 78249 | INSURER(S) AFFORDING COVERAGE | |
| | INSURER A: Hiscox Insurance Company Inc | NAIC # 10200 |
| | INSURER B: | |
| | INSURER C: | |
| | INSURER D: | |
| | INSURER E: | |
| INSURER F: | | |

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|----------|---|---|----------|-----------------|-------------------------|-------------------------|--|-----------------------------------|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY | | | P100.062.739.12 | 01/24/2024 | 01/24/2025 | EACH OCCURRENCE \$ 1,000,000 | |
| | <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 | |
| | GEN'L AGGREGATE LIMIT APPLIES PER: | | | | | | | MED EXP (Any one person) \$ 5,000 |
| | <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC | | | | | | PERSONAL & ADV INJURY \$ 1,000,000 | |
| | OTHER: | | | | | | GENERAL AGGREGATE \$ 2,000,000 | |
| | | | | | | | PRODUCTS - COMP/OP AGG \$ S/T Gen. Agg. | |
| | | | | | | | \$ | |
| | AUTOMOBILE LIABILITY | | | | | | COMBINED SINGLE LIMIT (Ea accident) \$ | |
| | <input type="checkbox"/> ANY AUTO | | | | | | BODILY INJURY (Per person) \$ | |
| | <input type="checkbox"/> ALL OWNED AUTOS | | | | | | BODILY INJURY (Per accident) \$ | |
| | <input type="checkbox"/> HIRED AUTOS | | | | | | PROPERTY DAMAGE (Per accident) \$ | |
| | | | | | | | \$ | |
| | <input type="checkbox"/> UMBRELLA LIAB | | | | | | EACH OCCURRENCE \$ | |
| | <input type="checkbox"/> EXCESS LIAB | | | | | | AGGREGATE \$ | |
| | <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$ | | | | | | \$ | |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | | | | | <input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER | |
| | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) | | | | | | E.L. EACH ACCIDENT \$ | |
| | If yes, describe under DESCRIPTION OF OPERATIONS below | <input type="checkbox"/> Y <input type="checkbox"/> N | N/A | | | | E.L. DISEASE - EA EMPLOYEE \$ | |
| | | | | | | | E.L. DISEASE - POLICY LIMIT \$ | |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**


| | |
|---|--|
| [Empty space for Certificate Holder Name] | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. |
| | AUTHORIZED REPRESENTATIVE  |

Exhibit B
Signed Application Form



**APPLICATION AND AGREEMENT FOR
GOOGLE BUSINESS PHOTOS SERVICE PROGRAM
BY THE CITY OF JOHNSON CITY AND
RELEASE AND WAIVER OF LIABILITY**

Program Description

The City of Johnson City, Texas (“City”) is providing the Google Business Photos Service Program (“Program”) to qualifying businesses within the City to increase promotion of area businesses and to expand economic development within the City. Through this Program, a business can expand its online marketing presence and, in turn, increase name recognition and foot traffic. Under the Program, photos of a business will be taken by the City’s contracted photographer. These will be posted on Google Business View to provide an online 360 virtual tour of the business. This is at no cost to the business, but is available only on a first-come, first-served basis.

Application and Agreement

Name of Business Applicant: _____

Name of Owner or Authorized Representative and Title:

Address: _____

Phone: _____ E-mail: _____

Terms and Conditions

I, the undersigned, state that I am the owner, or authorized representative on behalf of the business named above (“Business”), and hereby submit this application to participate in the Program under the following terms and conditions of this Agreement:

- 1) Permission is given for photographs of the Business to be taken by the City’s contracted photographer, 360 Zone (“Photographer”). Date and time of the photo sessions will be coordinated between the Business and the Photographer.
- 2) Business shall designate those portions of the interior and exterior of the business premises for photographing. The photographs shall meet the Program’s technical specifications.
- 3) Only those photographs taken by the Photographer will be uploaded onto Google Business View.
- 4) The Business and the City will acquire ownership rights, including intellectual property rights, of the photographs.

- 5) Business authorizes and licenses the City the right to use the photography for the purposes of creating or updating the Google Business Profile, City Business Directory Website, and other promotional materials.
- 6) It is understood that there are no costs or fees to Business for this service. Business is not responsible for any payment to the City or Photographer for this service.
- 7) Release and Waiver. In consideration for being allowed to participate in this Program, Business agrees to release from liability and waive its right to sue the City, their employees, officers, volunteers and agents from any and all claims, including claims of the City's or Photographer's negligence, resulting in any damage, physical injury, illness (including death) or economic loss which Business may suffer, or which may result from Business' participation in this Program, or from any events or activities incidental or relating to this Program.
- 8) **INDEMNIFICATION**. BUSINESS AGREES TO INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, OFFICIALS AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, INJURIES, DAMAGES, LOSSES OR SUITS ARISING OUT OF OR RESULTING FROM THE CITY'S OR PHOTOGRAPHER'S PERFORMANCE UNDER THIS AGREEMENT OR FROM A THIRD PARTY'S ACTS RELATING TO OR INCIDENTAL TO SERVICES RECEIVED UNDER THIS AGREEMENT. THIS PROVISION DOES NOT EXPIRE AND CONTINUES BEFORE AND AFTER RECEIPT OF THE PROGRAM SERVICES. If the City incurs any of these types of expenses, Business agrees to reimburse the City.

By my signature, the undersigned below, on behalf of and under authority by the Business, accept and agree to bind the Business to the terms and conditions described above for the Google Business Photos Service Program.

Business Owner or Authorized Agent

Date

Printed Name and Title

*****For City Use Only*****

Date Application Received: _____

Date Application Approved: _____

City Approval (signature): _____

Printed Name: _____