



CITY OF HEARNE

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Hearne Economic Development Corporation – Type A

August 30, 2017

SUBJECT: Deliberation and possible action: Approval of HEDC-A selection of Floyd Akers as Type A attorney of record effective October 1, 2017.

1. BACKGROUND/HISTORY

During our meeting of August 28, 2017, the Type-A board approved the selection and agreement of Floyd Akers as our attorney of record effective October 1, 2017, subject to City Council approval. The attached agreement between Type A Corporation and Floyd Akers is for your consideration and approval.

2. RECOMMENDATION

- Approve the selection of Floyd Akers as Type A attorney.
- Approve the written agreement between Type A and Floyd Akers for legal services as independent contractor (attached).
- Approve monthly payment of \$750 for legal services render from the HEDC-A funds.

STATE OF TEXAS §
 §
COUNTY OF ROBERTSON §

**Independent Contractor Agreement between
Floyd Akers and
Hearne Type A Economic Development
Corporation**

This agreement is entered into this 1st day of October, 2017, between the Hearne Type A Economic Development Corporation; hereinafter called "TYPE A CORPORATION", and Floyd M. Akers, an individual, hereinafter called "Mr. Akers."

WITNESS:

WHEREAS, The TYPE A CORPORATION will retain the service of Mr. Akers as its Attorney; and

WHEREAS, it is the desire of the TYPE A CORPORATION to provide a certain salary, establish certain conditions of agreement and to set working conditions of Mr. Akers and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

Section 1. Duties

The TYPE A CORPORATION hereby contracts Mr. Akers as its TYPE A CORPORATION Attorney to perform the functions and duties of a TYPE A CORPORATION Attorney and all legally permissible and proper duties and functions of the TYPE A CORPORATION Attorney as may from time to time be assigned.

Section 2. Term

The initial term of this agreement shall end one year after the Effective Date. This agreement shall renew automatically for an additional year unless the TYPE A CORPORATION affirmative denies the automatic renewal at least 90 days prior to the expiration of the initial term.

Section 3. Termination

- A. Notwithstanding any other provision herein, the TYPE A CORPORATION Attorney may be terminated before expiration of the term of this Agreement with or without cause. If Mr. Akers' agreement is terminated without good cause he shall be paid on a monthly basis until the expiration of this agreement. Mr. Akers may choose a lump sum disbursement; provide however, such disbursement will be discounted by 25%. No deductions will be withheld from this payment.
- B. If Mr. Akers voluntarily cancels his agreement as TYPE A CORPORATION Attorney, he shall not be entitled to any further compensation under this agreement. Mr. Akers shall provide the TYPE A CORPORATION of Hearne with a minimum of 30 day notice, in advance, unless otherwise granted relief by the TYPE A CORPORATION Council.
- C. In the event that Mr. Akers is terminated due to good cause, gross negligence or he is convicted of any illegal act involving personal gain, fraud, theft, or a felony, the TYPE A CORPORATION shall have no obligation to pay the sum specified in paragraph 3. A..

Section 4. Salary

- A. The TYPE A CORPORATION agrees to pay Mr. Akers an annual gross compensation of no less than \$9,000. Payments shall be made in equal and alike installments of \$750 on the 1st day of the month or as close to the 1st day of the month as possible. This gross compensation amount provides for Mr. Akers appearance at one regular TYPE A CORPORATION meeting per month. In addition, Mr. Akers will be available in person or by phone, email, text message or other electronic media for an additional 10 hours per month. The TYPE A CORPORATION may increase Mr. Akers salary during this agreement by mutual agreement of the parties.
- B. *Legal Matters outside scope of the Independent Contractor Agreement.* In the event Mr. Akers is authorized by the TYPE A CORPORATION to work on matters in excess of the hours contemplated by this agreement Mr. Akers will charge a rate of \$130 per hour. Matters outside the scope of this agreement include but are not limited to court appearances in County or District Court, and appearances in Hearne for reasons other than regular TYPE A CORPORATION meetings. Mr. Akers will charge for time spent in activities including but not limited to the following: telephone and office conferences with clients, representatives of clients, opposing counsel, and others; factual investigation, if needed; legal research; file management; responding to requests from you that Mr. Akers provides information to you or your auditors; drafting letters and other documents; and travel, if needed. Legal fees and costs outside this agreement are difficult to estimate. Mr. Akers will make every effort to manage fees and costs by working efficiently and cost-effectively. In the event other lawyers or

personnel may be assigned as necessary to achieve proper staffing, Mr. Akers shall inform the TYPE A CORPORATION with explanation and obtain prior authorization for additional staff. Upon TYPE A CORPORATION approval, Mr. Akers may then utilize briefing clerks, paralegals, file clerks and other support personnel to perform those tasks not requiring the time of any attorney. Their time will be billed at an amount determined by the experience of the individual. The foregoing rates may be adjusted annually and, if so, will be noted on your bill. Mr. Akers will submit all out-of-pocket expenses incurred for reimbursement, with a fifteen percent (15%) overhead charge added. Mr. Akers will ask the TYPE A CORPORATION to pay directly all filing fees, charges for consultants, etc. due to the size of such fees and to avoid the TYPE A CORPORATION incurring any overhead charge. Mr. Akers will endeavor to have a statement of services rendered and expenses incurred by the 15th of the following month. Full payment is due on receipt of the statement.

Section 5. Performance Evaluation

Annually, the TYPE A CORPORATION may define goals and performance objectives that they determine necessary for the proper operation of the TYPE A CORPORATION and the attainment of the TYPE A CORPORATION's policy objectives; will establish a relative priority among those various goals and objectives; and will reduce the goals and objectives to writing. These goals and objectives will be reasonably attainable within the time limitations as specified and the annual operating, capital budgets, and appropriations provided in progress towards same will be reviewed by the TYPE A CORPORATION as a part of Mr. Akers' annual evaluation.

Section 6. Modification to Agreement

Any modification of this Agreement must have the concurrence of the TYPE A CORPORATION and Mr. Akers and, be in writing, and signed by both parties.

Section 7. Notices

Notices under this Agreement may be given by personal delivery or deposit in the custody of the United States Postal Service, certified mail, postage prepaid, addressed as follows:

City of Hearne
Attn: President TYPE A CORPORATION of Hearne
209 Cedar Street
Hearne, Texas 77859

Mr. Akers:
Law Office of Floyd Akers
P.O. Box 1179
San Marcos, Texas 78667-1179

Notices will be deemed given as of the date of personal service or the third day after the date of the deposit of written notice in a depository of the United States Postal Service.

Section 8. General Provisions

- A. Entire Agreement. This Agreement is the entire agreement of the parties, supersedes any prior understandings or written or oral agreements concerning the subject matter and may be modified or amended only by a written instrument signed by both parties.
- B. Assignment. The Agreement may not be assigned by either party without the prior written consent of the other. The Agreement will be binding upon and inure to the benefit of the parties, and their respective heirs, successors and permitted assigns.
- C. Venue. This Agreement is entered into in Robertson County, Texas, will be construed and interpreted under laws of the State of Texas, and all obligations of the parties created hereunder are performable in Robertson County, Texas.
- D. Severability. If any provision of this Agreement is illegal, invalid, or unenforceable for any reason, it is the intention of the parties that the remainder of this Agreement not be affected; and that, in lieu of each provision that is illegal, invalid, or unenforceable, a provision be added to the Agreement that is similar in terms to the illegal, invalid, or unenforceable, a provision as is possible and is legal, valid, and enforceable.

TYPE A CORPORATION:

By: Cathy Lazarus, Secretary

Date: _____

ATTEST:

Linda Pecina, City of Hearne Secretary

Floyd M. Akers

Date: _____