

ARCHITECTURAL SERVICES CONTRACT

STATE OF TEXAS

COUNTY OF BURNET

THIS CONTRACT FOR ARCHITECTURAL SERVICES is made by and between the County of Burnet, hereinafter called "County" and Levy Dykema, hereinafter called "Architect" for the purpose of contracting for Architectural services.

WITNESSETH

WHEREAS, Government Code, Chapter 2254, Subchapter A, "Professional Services Procurement Act" provides for the procurement of professional services of Architects; and

WHEREAS, the County desires to contract for architectural services described as follows: Amendment to Agreement dated August 7, 2023 for renovation of a vacant two story building adjacent to the Annex on the Square.

NOW, THEREFORE, the County and the Architect, in consideration of the mutual covenants and agreements herein contained, do hereby mutually agree as follows:

AGREEMENT

ARTICLE 1

SCOPE OF SERVICES TO BE PROVIDED BY ARCHITECT

The Architect shall perform those Architectural services for the fulfillment of the contract as identified in Architect's Proposal provided by the Architect, attached hereto and made a part thereof this contract.

The Architect agrees to furnish the work as described above for a fee not to exceed \$97,758.00.

ARTICLE 2

CONTRACT PERIOD

This contract shall terminate at the close of business on May 27, 2024, unless extended by supplement agreement duly executed by the Architect and the County prior to the date of termination, as provided in Article 6– Supplemental Agreements, or otherwise terminated, as provided in Article 11 – Termination. Any work performed or cost incurred after the date of termination shall be ineligible for reimbursement.

ARTICLE 3

COMPENSATION AND METHOD OF PAYMENT

The maximum amount payable under this contract is **\$97,758.00**. Late payment interest will be applied as allowed by Texas law.

ARTICLE 4 SUSPENSION

The County may suspend the work, but not terminate the contract, by giving written notice a minimum of thirty (30) calendar days prior to the date of suspension. The thirty (30) day notice may be waived if approved in writing by both parties.

The work will be reinstated and resumed in full force and effect within sixty (60) calendar days of receipt of written notice from the County to resume the work. The sixty (60) day notice may be waived if approved in writing by both parties.

If the County suspends the work, the contract period, as determined in Article 2 – Contract Period, is not affected and the contract will terminate on the date specified unless the contract is amended as provided in Article 6-Supplemental Agreements.

ARTICLE 5 ADDITIONAL WORK

If the Architect determines that any work it has been directed to perform is beyond the scope of this agreement and constitutes extra work, it shall promptly notify the County in writing. In the event the County determines that such work constitutes extra work and exceeds the maximum amount payable, the County shall so advise the Architect and a supplemental agreement may be executed, as provided in Article 6 – Supplemental Agreements.

The Architect shall not perform any additional work or incur any additional costs prior to the execution, by both parties, of a supplemental agreement. The County shall not be responsible for actions by the Architect or any costs incurred by the Architect relating to additional work not directly associated with the performance of the work authorized in this contract or as amended.

ARTICLE 6 SUPPLEMENTAL AGREEMENTS

The terms of this contract may be modified by supplemental agreement if the County determines that there has been a significant change in the scope, complexity, or character of the service to be performed, or the duration of the work.

Any supplement agreement must be executed by both parties within the contract period specified in Article 2 Contract Period.

No claim for extra work done or materials furnished shall be made by the Architect until full execution of the supplemental agreement and authorization to proceed is issued by the County. The County reserves the right to withhold payment pending verification of satisfactory work performed.

ARTICLE 7 PUBLIC INFORMATION ACT

All data, basic sketches, charts, calculations, plans, specifications, and other documents created or collected under the terms of this contract are the exclusive property of the County and shall be furnished to the County upon request. All documents prepared by the Architect and all documents

furnished to the Architect by the County shall be delivered to the County upon completion or termination of this contract. The Architect, at its own expense, may retain copies of such documents or any other data which it has furnished the County under this contract. Release of information will be in accordance with the Texas Public Information Act.

ARTICLE 8 PERSONNEL, EQUIPMENT, AND MATERIAL

The Architect shall furnish and maintain, at its own expense, office space for the performance of all services, and adequate and sufficient personnel and equipment to perform the services as required. All employees of the Architect shall have such knowledge and experience as will enable them to perform the duties assigned to them.

The County may instruct the Architect to remove any employee from association with the work authorized in this contract if, in the sole opinion of the County, the work of the employee does not comply with the terms of this contract or if the conduct of the employee is detrimental to the work.

The Architect certifies that it presently has adequate qualified personnel in its employment for performance of the services required under this contract. The Architect may not change the project manager without prior consent of the County.

ARTICLE 9 SUBCONTRACTING

The Architect shall not assign, subcontract, or transfer any portion of the work under this contract without prior written approval of the County. All subcontracts shall include the provisions required in this contract and shall be approved as to form, in writing, by the County prior to work being performed under the subcontract.

ARTICLE 10 VIOLATION OF CONTRACT TERMS / BREACH OF CONTRACT

Violation of the contract terms or breach of contract by the Architect shall be grounds for termination of the contract and any increased cost arising from the Architect's default, breach of contract, or violation of contract terms shall be paid by the Architect. This agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

ARTICLE 11 TERMINATION

This contract shall terminate at the close of business on May 27, 2024 unless extended as provided in Article 6 – Supplemental Agreements.

This contract may be terminated before the stated termination date by any of the following conditions:

1. By mutual agreement and consent, in writing, of both parties;
2. By the County, by notice in writing to the Architect as a consequence of failure by the Architect to perform the services set forth herein in a satisfactory manner;

3. By either party, upon the failure of the other party to fulfill its obligations as set forth herein;
4. By the County, for reasons of its own and not subject to the mutual consent of the Architect upon not less than thirty (30) calendar days written notice to the Architect; and
5. By written notice from the County upon satisfactory completion of all services and obligations described herein.

Should the County terminate this contract as herein provided, no fees other than fees due and payable at the time of termination shall thereafter be paid to the Architect. In determining the value of the work performed by the Architect prior to termination the County shall be the sole judge. Compensation for work at termination will be based on a percentage of the work completed at that time. Should the County terminate this contract under Item 4 of the above paragraph, the amount charged during the thirty (30) calendar day notice period shall not exceed the amount charged during the preceding thirty (30) calendar days.

If the Architect defaults in the performance of this contract or if the County terminates this contract for fault on the part of the Architect, the County will give consideration to the actual costs incurred by the Architect in performing the work to the date of default, the amount of work which was satisfactorily completed to the date of default, the value of the work which is usable to the County.

The termination of this contract and payment of an amount in settlement as prescribed above shall extinguish all rights, duties, and obligations of the County and the Architect under this contract, except the obligations set forth in this contract. If the termination of this contract is due to the failure of the Architect to fulfill its contract obligations, the County may take over the project and prosecute the work to completion. If the County asserts that any services provided by the Architect do not comply with the requirements of this contract, the County shall allow the Architect a reasonable opportunity and effort to cure the claimed breach.

ARTICLE 12 COMPLIANCE WITH LAWS

The Architect shall comply with all applicable Federal, State, and local laws, statutes codes, ordinances, rules, and regulations, and the orders and decrees of any court, or administrative bodies or tribunals, in any manner affecting the performance of this contract, including, without limitation, worker's compensation laws, minimum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Architect shall furnish the County with satisfactory proof of its compliance.

It is expressly understood by County and Architect, that from the date of award of Architect to one year after termination or expiration of contract term, it is prohibited for any county official or employee thereof, to receive gifts described by the County Personnel Policy or Civil Service Rules, and/or campaign or political contributions regardless of amount from Contractor or principal owners of said Architect. County Official is defined as those individuals described as county and precinct officers in Subchapter B of Chapter 152 of the Local Government Code. Architect is furthermore prohibited from making political campaign or personal contributions to candidates for county and precinct office from the date of award of Architect to one year after termination or

expiration of contract term. It is also prohibited for Architect to contribute to employee associations or for the benefit of groups of employees.

ARTICLE 13 INDEMNIFICATION

THE ARCHITECT SHALL SAVE HARMLESS THE COUNTY AND ITS OFFICERS AND EMPLOYEES FROM ALL CLAIMS AND LIABILITY DUE TO ACTIVITIES OF ITSELF, ITS AGENTS, OR EMPLOYEES PERFORMED UNDER THIS CONTRACT AND WHICH ARE CAUSED BY OR RESULT FROM ERROR, OMISSION, OR NEGLIGENT ACT OF THE ARCHITECT OR OF ANY PERSON EMPLOYED BY THE ARCHITECT. THE ARCHITECT SHALL ALSO SAVE HARMLESS THE COUNTY FROM ANY AND ALL EXPENSE, INCLUDING, BUT NOT LIMITED TO, ATTORNEY FEES WHICH MAY BE INCURRED BY THE COUNTY IN LITIGATION OR OTHERWISE RESISTING SAID CLAIM OR LIABILITIES WHICH MAY BE IMPOSED ON THE COUNTY AS A RESULT OF SUCH ERROR, OMISSION, OR NEGLIGENT ACTIVITY BY THE ARCHITECT, ITS AGENTS, OR EMPLOYEES.

ARTICLE 14 ARCHITECT'S RESPONSIBILITY

The Architect shall be responsible for the accuracy of its work and shall promptly make necessary revisions or corrections resulting from its errors, omissions, or negligent acts without compensation. The Architect will not be relieved of the responsibility for subsequent correction of any such errors or omissions or for clarification of any ambiguities until after the construction phase of the project has been completed.

ARTICLE 15 INSURANCE

The Architect shall obtain and maintain insurance as required by state and federal law:

ARTICLE 16 SUCCESSORS AND ASSIGNS

The Architect and the County do hereby bind themselves, their successors, executors, administrators, and assigns to each other party of this agreement and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this contract.

The Architect shall not assign, subcontract, or transfer its interest in this contract without the prior written consent of the County.

ARTICLE 17 SEVERABILITY

In the event any one or more of the provisions contained in this contract, for any reason, shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and; this contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLE 18
PRIOR CONTRACT SUPERSEDED

This contract constitutes the sole agreement of the parties hereto and supersedes any prior understandings or written or oral contracts between the parties respecting the subject matter defined herein.

ARTICLE 19
NOTICES

All notices to either party by the other, required under this contract, shall be personally delivered or mailed to such party at the following respective address:

COUNTY

James Oakley, County Judge
Burnet County Courthouse
220 S. Pierce Street
Burnet, Texas 78611

ARCHITECT

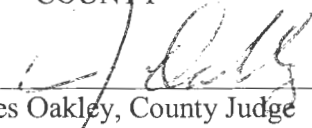
Stephen V. Levy
Levy Dykema
620 Congress Ave., Suite 100
Austin, TX 78701

ARTICLE 20
SIGNATORY WARRANTY

The undersigned signatory for the Architect hereby represents and warrants that the signatory is an officer of the organization for which he or she has executed this contract on behalf of the firm.

IN WITNESS WHEREOF, the County and the Architect have executed these presents in duplicate.

COUNTY

BY: 
James Oakley, County Judge

Burnet County Courthouse
220 S. Pierce Street
Burnet, TX 78611

Date: 2/27/24

ARCHITECT

BY: _____
Stephen V. Levy

Levy Dykema
620 Congress Ave, Suite 100
Austin, TX 78701

Date: _____

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EXHIBIT A

Amendment to Agreement

February 22, 2024

County Judge James Oakley
Burnet County Courthouse
220 S. Pierce Street
Burnet, TX 78611

Project: 10-23055 Burnet County Annex

Amendment No.: 01

Sent via email: judgejamesoakley@gmail.com

The contract between LEVY Architects, PLLC and the County of Burnet, original executed agreement dated August 7, 2023 is amended as follows:

Original Proposal

Any fees and phases that have not been invoiced to date will be considered null & void.

Fee: Construction Drawings: \$55,000, including up to 3 site visits during design.

Permitting: \$5,000

Structural: \$25,410, includes 2 site visits during design.

MEP: \$12,348, includes 2 site visits during design.

Total: \$97,758

LEVY DYKEMA proposes to provide Construction Documents on the previously approved Schematic Design package dated December 8, 2023. The Construction Documents will be limited in nature. They will include site plan, floor plan, reflected ceiling plan, roof plan, elevations, sections, and building details.

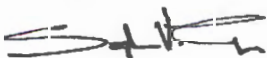
It is understood and agreed that LEVY DYKEMA's Scope of Services does not include project construction observation or any other construction phase services, such services will be provided by the Client. Client assumes all responsibility for completion and/or interpretation of the Construction Documents. Client shall be responsible for any Geotech.

All other terms and conditions of the original agreement shall remain in full force and effect. If you decide to proceed, please sign and initial where indicated formalizing your acceptance and return to our office.

Please contact me with any questions/comments.

Sincerely,

LEVY Architects, PLLC



Stephen V. Levy
President

LEVY
DYKEMA

Burnet County
Approved By
J. Oakley
Signature
2/27/24
Date

EXHIBIT B
STANDARD PURCHASE TERMS AND CONDITIONS
DEPARTMENT OF PURCHASING
BURNET COUNTY, TEXAS

Seller and Buyer agree as follows:

1. **SELLER TO PACKAGE GOODS** - Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows: (a) Seller's name and address; (b) Consignee's name, address and purchase order or purchase release number and the supply agreement number if applicable; (c) Container number and total number of containers, e.g. box 1 of 4 boxes; and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform to requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
2. **SHIPMENT UNDER RESERVATION PROHIBITED** - Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.
3. **TITLE & RISK OF LOSS** - The title and risk of loss of the goods shall not pass to Buyer until Buyer actually accepts the goods at the point or points of delivery.
4. **FOB POINT** - Delivery of all products under this contract shall be made Free On Board to final destination, at the address shown in this contract or as indicated on each Delivery Order placed against this contract. The title and risk of loss of the goods shall not pass to Burnet County until receipt and acceptance takes place at the F.O.B. point.
5. **NO REPLACEMENT OF DEFECTIVE TENDER** - Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender, provided, where the time for performance has not yet expired, the Seller may seasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.
6. **PLACE OF DELIVERY** - The place of delivery shall be that set forth in the block of the purchase order release entitled "Ship To". Any change thereto shall be effected by modification as provided for in Clause 20, "Modifications", hereof. The terms of this agreement are "no arrival, no sale".
7. **INVOICES AND PAYMENTS**
 - a. Seller shall submit separate invoices on each purchase order after each delivery. Invoices shall indicate the purchase order number and the supply agreement number, if applicable. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and the freight waybill when applicable, should be attached to the invoice. Mail to: Burnet County Auditor's Office, 133 E. Jackson St, Burnet, Texas 77806. Payment shall not be due until the above instruments are submitted after delivery. Suppliers should keep the Auditor's Office advised of any changes in your remittance addresses.
 - b. Buyer's obligation is payable only and solely from funds available for the purpose of this purchase. Lack of funds shall render this contract null and void to the extent funds are not available and any delivered but unpaid for goods will be returned to Seller by Buyer.
 - c. Do not include Federal Excise, State, County, or City Sales Tax. The County shall furnish tax exemption certificate upon request.
8. **GRATUITIES** - The Buyer may, by written notice to the Seller, cancel this contract without liability to Seller if it is determined by Buyer that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Seller, or any agent or representative of the Seller, to any officer or employee of Burnet County with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such a contract. In the event this contract is canceled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.
9. **SPECIAL TOOLS & TEST EQUIPMENT** - If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by Seller for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the Buyer and to the extent feasible shall be identified by the Seller as such.
10. **WARRANTY PRICE**
 - a. The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on orders by others for products of the kind and specification covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by others, or in the alternative, Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense.
 - b. The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty the Buyer shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
11. **PRODUCT WARRANTIES** - Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specifications, drawings, and descriptions listed in the bid invitation, and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings, and descriptions, the specifications shall govern.
12. **SAFETY WARRANTY** - Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event the Seller fails to make the appropriate correction within a reasonable time, correction made by Buyer will be at Seller's expense.
13. **NO WARRANTY BY BUYER AGAINST INFRINGEMENTS** - Seller warrants that all applicable patents and Copyrights which may exist on items bid upon have been adhered to and further warrants that Burnet County shall not be liable for any infringement of those rights. Seller agrees to defend Burnet County in any legal cause of action resulting from any violations to existing patents, licenses, or copyrights applicable to items sold hereunder.
14. **RIGHT OF INSPECTION** - Buyer shall have the right to inspect the goods at delivery before accepting them.
15. **CANCELLATION** - Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof including warranties of Seller or if Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.
16. **TERMINATION** - The performance of work under this order may be terminated in whole or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to the Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of rights of Buyer set forth in Clause 15, herein.
17. **FORCE MAJEURE** - If, by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemies, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgement of the party having the difficulty.
18. **ASSIGNMENT DELEGATION** - No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
19. **WAIVERS** - No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
20. **MODIFICATIONS** - This contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.
21. **INTERPRETATION PAROL EVIDENCE** - This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.
22. **APPLICABLE LAW** - This agreement shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.
23. **ADVERTISING** - Seller shall not advertise or publish, without Buyer's prior consent, the fact that Buyer has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state, or local government.
24. **RIGHT TO ASSURANCE** - Whenever one party to this contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give written assurance of his intent to perform. In the event a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.
25. **VENUE** - Both parties agree that venue for any litigation arising from this contract shall be in Burnet County, Texas.
26. **INSURANCE** - Construction and professional service providers shall purchase and maintain the following insurance the entire term of the contract. 1. Worker's Compensation in accordance with statutory requirements. 2. Commercial General Liability insurance with a combined minimum of \$1,000,000 per occurrence. 3. Automobile Liability Insurance, covering owned, hired and non-owned vehicles with combined minimum limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence; or separate limits of \$250,000 for bodily injury (per person), \$500,000 bodily injury (per accident), and \$100,000 for property damage.
27. **POTENTIAL CONFLICTS OF INTEREST** - An outside consultant or contractor is prohibited from submitting a bid for services on a Burnet County project of which the consultant or contractor was a designer or other previous contributor, or was an affiliated, subsidiary, joint venturer or was in any other manner associated by ownership to any party that was a designer or other previous contributor. If such a consultant or contractor submits a prohibited bid, that bid shall be disqualified on the basis of conflict of interest, no matter when the conflict is discovered by Burnet County. Potential bidders are advised that they may have disclosure requirements pursuant to Texas Local Government Code Chapter 176. This law requires persons desiring to do business with the County to disclose any gifts valued in excess of \$250.00 given to any County Official, or the County Official's family member during the preceding twelve (12) month period. The disclosure questionnaire must be filed with the Burnet County Clerk. Refer to Texas Local Government Code, Chapter 176 for the details of this law.
28. By accepting this Purchase Order, the seller verifies that it does not boycott Israel and will not boycott Israel during the term of the contract with Burnet County.