

**STANDARD AGREEMENT
BETWEEN OWNER AND CONTRACTOR**

This Agreement is made as of February 12, 2019 (the "Effective Date"), by and between

The Owner:

City of Georgetown
PO Box 409
Georgetown, Texas 78627

and Contractor:

O'Haver Contractors
12831 O'Conner Rd
San Antonio, TX 78233

for the Project:

Construction Services for Fire Station No. 7

Contract Number:

19-0020-CIP

Project Architect:

BRW Architects
75 Century Square Drive
Suite 350
College Station, Texas 77840
979.694.1791

The Owner and the Contractor agree as follows:

TABLE OF CONTENTS

ARTICLE

- 1 SCOPE OF WORK
- 2 CONTRACT DOCUMENTS
- 3 THE CONTRACT SUM
- 4 TIME OF COMPLETION
- 5 LIQUIDATED DAMAGES

- 6 HUB SUBCONTRACTING PLAN
- 7 SAFETY
- 8 CERTIFICATION OF NO ASBESTOS
CONTAINING MATERIALS OR WORK

- 9 PRE-EXISTING CONDITIONS
- 10 BONDS AND INSURANCE
- 11 CONTRACTOR'S SPECIAL
WARRANTIES AND
RESPONSIBILITIES

- 12 INDEMNITY
- 13 PARTY REPRESENTATIVES
- 14 NOTICES
- 15 MISCELLANEOUS PROVISIONS

LIST OF EXHIBITS

The following Exhibits are incorporated into the Agreement as if set out verbatim.

- Ex.A General Conditions
- Ex.B Owner's Special Conditions and Specifications with the date they were issued (if applicable)
- Ex.C Contractor's Proposal (if incorporated into the Project)
- Ex.D List of Drawings, Specifications Addenda, details and other documents developed by Project Architect that describe the Project with the date they were issued.

ARTICLE 1 SCOPE OF WORK

The Contractor has overall responsibility for and shall provide and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Work, or any phase of the Work, in accordance with the Owner's requirements and the terms of the Contract Documents.

ARTICLE 2 CONTRACT DOCUMENTS

2.1 The Contract Documents consist of:

- a. This Agreement and all exhibits and attachments listed, contained or referenced in this Agreement;
- b. The General Conditions;
- c. Special Conditions and Owner's Specifications;
- d. All Addenda issued before the Effective Date of this Agreement;
- e. All Alternate Bid Proposals accepted by the Owner before the Effective Date of this Agreement;
- f. All Change Orders issued after the Effective Date of this Agreement;
- g. The Drawings, Specifications, details and other documents developed by Project Architect to describe the Project and accepted by Owner;
- h. The Drawings and Specifications developed or prepared by Owner's other consultants, if any, and accepted by the Owner; and
- i. Contractor's Proposal if incorporated into the Project. To the extent of any conflict between Contractor's Proposal and any other Contract Document, the Contract Document shall govern.

2.2 The Contract Documents form the entire and integrated Contract between Owner and Contractor and supersede all prior negotiations, representations or agreements, written or oral.

ARTICLE 3 THE CONTRACT SUM:

3.1 The Owner shall pay the Contractor for performance of the Contract, including the Base Proposal and Alternate Proposal(s), the sum of Five Million Two Hundred and Sixty One Thousand dollars and 00/100 (\$ 5,261,000.00), and make payment on account as provided in the General Conditions.

3.2 The following Alternate Proposals, fully described in the Specifications and Drawings, are included as a part of the contract sum: Alternate #1 and \$50,000 Discount.

ARTICLE 4 TIME OF COMPLETION:

The Owner shall issue a Notice to Proceed identifying the date for commencement of the Work. The commencement date shall be 10 or more days after the date the notice is issued. The Contractor shall achieve substantial completion of the Work within Three Hundred and Thirty (330) calendar days after the commencement date, as such completion date may be extended by approved Change Orders. **THE TIME SET FORTH FOR COMPLETION OF THE WORK IS AN ESSENTIAL ELEMENT OF THE CONTRACT.**

ARTICLE 5 LIQUIDATED DAMAGES:

For each consecutive calendar day after the expiration of the substantial completion period set forth in Article 4 that any incomplete Work prevents or impairs the Owner's ability to operate and use the Project for its intended purposes, including the correction of deficiencies found during the final testing and inspection, the amount of three hundred dollars (\$300) for projects with a contract sum of less than five million dollars (\$5,000,000) and five hundred dollars (\$500) for projects with a contract sum of five million dollars (\$5,000,000) or more will be deducted from the money due or that becomes due the Contractor, not as a penalty but as liquidated damages representing the parties' estimate at the time of executing this Agreement of the damages that the Owner will sustain for late completion.

ARTICLE 6 SAFETY

6.1 In accordance with the General Conditions, Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The safety program shall comply with all applicable requirements of the Occupational Safety and Health Act of 1970 and all other applicable federal, state and local laws and regulations and with the requirements of Owner's project safety specification.

6.2 Contractor shall provide recommendations and information to Owner and Project Architect regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Contractor shall verify that appropriate safety provisions are included in the Construction Documents. The existence or creation of any Owner controlled insurance program in connection with the Work shall not lessen or reduce the Contractor's safety responsibilities.

ARTICLE 7 CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK

7.1 The Contractor shall be responsible for ensuring that no asbestos containing materials or work is included within the scope of the Work. The Contractor shall take whatever measures it deems necessary to insure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns, comply with this requirement.

7.2 The Contractor shall ensure that Texas Department of Health licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.

7.3 At Substantial Completion and Final Completion the Contractor shall provide a certification letter certifying that the Work does not contain asbestos.

ARTICLE 8 PRE-EXISTING CONDITIONS

The Contractor acknowledges that it has been provided unrestricted access to the existing improvements and conditions on the Project site and that it has thoroughly investigated those conditions. Contractor's investigation was instrumental in preparing its Proposal to perform the Work. Contractor shall not make or be entitled to any adjustment to the Contract Time or the Contract Sum arising from Project conditions that Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor's investigation.

10.10 Contractor shall establish and maintain a numbering and tracking system for all Project records including, but not limited to, changes, requests for information, submittals, and supplementary instructions and shall provide updated records to the Owner when requested.

10.11 Except for the obligation of Owner to pay Contractor certain fees, costs, and expenses pursuant to the terms of this Agreement, Owner shall have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Contractor, no present or future partner or affiliate of Owner or any agent, officer, director, or employee of Owner, or anyone claiming under Owner has or shall have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.

ARTICLE 11 INDEMNITY

11.1 SEE ARTICLE 3 OF THE GENERAL CONDITIONS FOR CONTRACTOR'S GENERAL INDEMNIFICATION OBLIGATIONS.

ARTICLE 12 PARTY REPRESENTATIVES

12.1 The Owner's Designated Representative authorized to act in the Owner's behalf with respect to the Project is:

Eric Johnson
Capital Improvements Project Manager
PO Box 409, Georgetown, Texas 78627
(512) 819-3145
Eric.Johnson@Georgetown.org

12.2 The Contractor's designated representative authorized to act on the Contractor's behalf and bind the Contractor with respect to the Project is:

Don O'Haver
President
12831 O'Conner Rd., San Antonio, Texas 78233
(210) 590-2889
Don@ohcltd.net

12.3 The parties may make reasonable changes in their designated representatives upon advance written notice to the other party.

ARTICLE 13 NOTICES

Notices of claims or disputes or other legal notices required by this Agreement shall be sent to the following persons at the indicated locations.

If to Owner:

City of Georgetown
300-1 Industrial Ave.
Georgetown, Texas 78626

Attn: Purchasing

With Copies to: N/A

If to Contractor:

**O'Haver Contractors
Don O'Haver, President
12831 O'Conner Rd.
San Antonio, Texas 78233
(210) 798-3187 fax**

The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other party.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 Assignment. This Agreement is a personal service contract for the services of Contractor, and Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party without the written consent of the Owner.

14.2 Records of expenses pertaining to Additional Services and services performed on the basis of a Worker Wage Rate or Monthly Salary Rate shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board and shall be available for audit by the Owner or the Owner's authorized representative on reasonable notice.

14.3 Family Code Child Support Certification. Pursuant to Section 231.006, Texas Family Code, Service Provider certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

14.4 Franchise Tax Certification. A corporate or limited liability company Contractor 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 corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

14.5 Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Contractor and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the Project. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Contractor and Owner.

14.6 Captions. The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

14.7 Governing Law and Venue. This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions.

Williamson County, Texas or the county where the Project is located shall be the sole places of venue for any legal action arising from or related to this Agreement or the Project in which the Owner is a party.

14.8 Waivers. No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement.

14.9 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

14.10 Appointment. Owner hereby expressly reserves the right from time to time to designate by notice to Contractor a representative(s) to act partially or wholly for Owner in connection with the performance of Owner's obligations. Contractor shall act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.

14.11 Records. Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for four (4) years after final Payment or abandonment of the Project, unless Owner otherwise instructs Contractor in writing.

14.12 Notices. All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Contractor or Owner for whom it is intended; or sent by U. S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing.

14.13 Severability. Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

14.14 Illegal Dumping. The Contractor shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, *Texas Health and Safety Code*, Chapter 365.

14.15 By signature hereon, Contractor certifies that no member of the City Council, has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.

14.16 Disclosure of Interested Parties. By signature hereon, Contractor certifies that it has complied with Section 2252.908 of the Texas Government Code and Part 1 Texas Administrative Code Sections 46.1 through 46.3 as implemented by the Texas Ethics Commission (TEC), if applicable, and has provided the Owner with a fully executed TEC Form 1295, certified by the TEC and signed and notarized by the Contractor.

14.17 Contractor Certification regarding Boycotting Israel. Pursuant to Chapter 2270, *Texas Government Code*, Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

14.18 Contractor Certification regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*], Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

14.19 Domestic Iron and Steel Certification. Pursuant to Sections 2252.201-2252.205 of the Government Code, Service Provider certifies that it is in compliance with the requirement that any iron or steel product produced through a manufacturing process and used in the project is produced in the United States.

BY SIGNING BELOW, the Parties have executed and bound themselves to this Agreement as of the day and year first above written.

[SIGNATURES PROVIDED ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first written above.

CITY OF GEORGETOWN

By: _____

ATTEST:

City Secretary

APPROVED AS TO FORM:

By: _____
City Attorney

THE STATE OF TEXAS §
§
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on the _____ day of _____, _____, by _____, Mayor of the City of Georgetown, on behalf of the City.

Notary Public – State of Texas

Project Contractor

Printed Name: _____

Title: _____

THE STATE OF TEXAS §
§
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on the _____ day of _____, _____, by _____ on behalf of _____.

Notary Public – State of Texas