

**AGREEMENT  
BETWEEN OWNER AND PROJECT ENGINEER**

This Agreement is made as of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”)

By and between

The **Owner:**  
City of Georgetown  
808 Martin Luther King Jr. St.  
Georgetown, Texas 78626

and **Project Engineer :**  
CDS Muery  
100 NE Loop 410, STE 300  
San Antonio, Texas 78216

for the following **Project:**  
**Fuel Station – RFQ No. 202121**

**Project Delivery Method:** Competitive Sealed Proposal

The Owner and the Project Engineer agree as follows:

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## **Article 1      Project Engineer's Services and Responsibilities**

The Project Engineer shall provide the usual and customary Basic Services necessary and reasonably inferable to complete the Project and each phase of the project described as Basic Services in Paragraphs 1.3 through 1.7, below, along with any Additional Services requested by the Owner.

### **1.1      Basic Services**

1.1.1    Basic Services. The Project Engineer's Basic Services include all disciplines identified below and all related usual and customary design, consultant, and other services necessary and reasonably inferable to complete the Project, or any phase of the Project, in accordance with the Owner's requirements and the terms of this Agreement. Basic Services shall include the following disciplines:

- a)      Engineering Services
- b)      Civil Landscape services (Landscape Architect is not included if required)

1.1.2    The Project Description, attached as Exhibit A, describes the intended project scope and character along with the anticipated Project Schedule and the Preliminary Project Cost. It is the Project Engineer's responsibility to review and understand the requirements of the Programming Document and to perform his professional services so as to achieve those objectives.

1.1.3    The Fixed Fee for this Project is specified in Article 4. The Project Engineer is responsible for managing the design of the Project so that its construction does not exceed the Budget.

1.1.4    The Project Engineer shall manage the design of the Project to achieve the Programming Document objectives of scope and cost through completion and acceptance of Construction Documents phase. The Project Engineer shall advise the Owner of any adjustments to the scope or quality of the Project necessary to comply with the Budget during design development as part of Basic Services.

1.1.5    The Project Engineer shall submit the names of all consultants, persons, or firms, which the Project Engineer proposes to use in the execution of its services. The Project Engineer is responsible for coordinating the work of all of its consultants to assure that their services are appropriate for and adequately incorporated into the design of the Project. The Owner reserves the right, in its sole discretion, to reject the employment by Engineer of any consultant for the Project to which Owner has a reasonable objection. Engineer, however, shall not be required to contract with any consultant to which it has a reasonable objection.

1.1.6    The Project Engineer shall pay for its consultants' services out of its fees. The Owner is not responsible for any consultant fees or costs unless expressly agreed to in writing.

1.1.7    The Project Engineer, as part of Basic Services, shall provide Construction Cost Estimates of the Project in a form acceptable to the Owner following the Programming Phase, the Schematic Design Phase, and at the completion of the Design Development phase. If the Construction Cost Estimate exceeds the Budget at any time, the Owner will determine whether to increase the Budget or require the Project Engineer to revise the Project scope or quality to comply with the Budget at no additional cost to Owner. Reductions in Project scope or quality are subject to Owner's review and approval. If the Construction Cost Estimate is below the Budget, the Owner and Project Engineer shall mutually agree on changes to the project scope or the Budget.

1.1.8 The Project Engineer shall submit documents to the Owner for review at completion of the Programming, Schematic Design and Design Development phases and at the 50%, 75%, and 100% stages of completion of the Construction Documents. The Project Engineer shall incorporate into the documents such corrections and amendments as the Owner requests, unless the Engineer objects in writing and receives the Owner's consent not to make the changes. The Project Engineer will be responsible for any damages incurred by the Owner that are caused by Project Engineer's failure to incorporate requested corrections and amendments to the documents.

1.1.9 Project Engineer shall provide a review and comment form acceptable to the Owner for Owner's use during document review. Owner will provide its review comments to Project Engineer on the form and the Project Engineer shall provide a detailed written response to each of the Owner's review comments indicating where and how they have been addressed in the design documents. At each required document submittal stage, the Project Engineer shall include the completed comment form from the preceding submittal along with a cover letter signed by a firm principal affirming that the previous review comments have been fully addressed in the current submittal. Failure to respond to the previous comments or to provide the written affirmation may result in reduction or rejection of the Project Engineer's then current Statement for Architectural/Engineering Services. Owner's approval of the revised drawing shall not be deemed to be an approval of any unlisted changes, and any costs or expense for any Project Engineer's additional services subsequently incurred for such unlisted changes shall be borne or reimbursed by Project Engineer.

1.1.10 Project Engineer agrees and acknowledges that Owner is entering into this Agreement in reliance on Project Engineer's represented professional abilities with respect to performing Project Engineer's services, duties, and obligations under this Agreement. Project Engineer agrees to use Project Engineer's best professional efforts, skill, judgment, and abilities in performing Project Engineer's services. Project Engineer shall perform its Services diligently and shall endeavor to further the interest of the Owner in accordance with Owner's requirements and procedures. Project Engineer agrees to use its best efforts to perform its services (i) in accordance with the usual and customary professional standards of care, skill and diligence consistent with good engineering practices for engineering firms in Texas that provide professional design services for projects that are similar in size, scope, and budget to the Project, and (ii) in compliance with all applicable national, federal, state, municipal, and State of Texas laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. There are no obligations, commitments, or impediments of any kind known to the Project Engineer that will limit or prevent performance by Project Engineer of its services. Project Engineer hereby agrees to correct, at its own cost, any of its Services, and the services of its consultants, that do not meet the standard of care.

1.1.11 Project Engineer shall take reasonable precautions to verify the accuracy and suitability of any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to Project Engineer (by Owner or any other party) that Project Engineer uses for the Project. Project Engineer shall identify to the Owner in writing any such documents or data which, in Project Engineer's professional opinion, are unsuitable, improper, or inaccurate in connection with the purposes for which such documents or data are furnished. Owner does not warrant for the accuracy or suitability of such documents or data as are furnished unless Project Engineer advises Owner in writing that in Project Engineer's professional opinion such documents or data are unsuitable, improper, or inaccurate and Owner confirms in writing that it wishes Project Engineer to proceed in accordance with the documents or data as originally given.

1.1.12 Project Engineer's services shall be reasonably accurate and free from any material errors or omissions. Neither acceptance nor approval of Project Engineer's services by the Owner shall relieve Project Engineer of any of its professional duties or release it from any liability, it being understood that Owner is, at all times, relying upon Project Engineer for its skill and knowledge in performing Project

Engineer's services. Owner shall have the right to reject any of Project Engineer's services because of any fault or defect in the Project due to any material errors or omissions in the plans, drawings, specifications, and other materials prepared by Project Engineer or its consultants. Upon notice of any such errors or omissions, Project Engineer shall promptly provide any and all services necessary to correct or remedy them at no additional cost to the Owner. Project Engineer's obligation to correct its errors and omissions is in addition to, and not in substitution for, any other remedy for defective services which Owner may have at law or in equity, or both.

1.1.13 The Project Engineer shall not proceed to any phase of design not expressly authorized by the Owner, except at the Project Engineer's own financial risk.

1.1.14 Project Engineer agrees to furnish efficient business administration and superintendence and to use Project Engineer's best efforts to design the Project in an expeditious and economical manner consistent with the interest of Owner and Project Engineer's professional skill and care.

1.1.15 Project Engineer shall allocate adequate time, personnel and resources as necessary to perform its services. Project Engineer's Senior Principal(s) responsible for managing the Project is identified in Exhibit C and shall not be changed without the prior approval of the Owner. The day-to-day Project team will be led by the Senior Principal(s) unless otherwise directed by Owner or prevented by factors beyond the control of Project Engineer. The Senior Principal(s) shall act on behalf of Project Engineer with respect to all phases of Project Engineer's Services and shall be available as required for the benefit of the Project and Owner.

1.1.16 Project Engineer shall make reasonable efforts to investigate any documents provided by the Owner and the visible existing conditions at the Project site to identify existing systems and construction which must be modified to accommodate the Project Engineer's design for the Project and the construction of the Project. The Project Engineer shall identify to Owner any discrepancies between the documents and visible conditions, and shall consult with the Owner on any special measures, services or further investigations required for Project Engineer to perform its services free from material errors and omissions and to properly coordinate with existing systems and construction. This investigation shall be accomplished by registered, professional architects and engineers, as appropriate.

1.1.17 The Project Engineer, when requested by the Owner, shall coordinate the purchase of additional reprographic materials for bidding or proposal purposes or when additional review sets, in excess of those required by Article 1.2, 1.3, 1.4, 1.5 and 1.6. is required by the Owner. The Project Engineer shall present a Tax Exemption Certificate to the vendor and coordinate the Owner's requirements for type, quantity and invoice billing. When requested, the Project Engineer will account to the Owner for all additional materials ordered by the Owner through the A/E as the Owner's agent and shall distinguish between those materials ordered on behalf of the Owner without sales tax and any other copies thereof that Project Engineer, or others, may order and pay for which includes sales tax, on its own or their behalf. Forward to the Owner the original vendor's invoice for materials purchased by the Owner and delivered to the A/E as the Owner's agent.

1.1.18 When the project is subject to Texas Commission on Environmental Quality (TCEQ) regulations, Project Engineer shall coordinate all related design efforts, including the civil engineer and landscape architect, so that consideration of site design and Best Management Practices (BMP's) are integrated.

1.1.19 Insurance Coverage. The Project Engineer shall carry professional liability/errors and omissions insurance, covering the services provided under this Agreement and other coverages as required below with companies authorized to do business in the State of Texas or an eligible surplus lines

insurer operating in accordance with the Texas Insurance Code, having an A.M. Best Rating of A-:VII or better, and in amounts as further described, acceptable to and approved by the Owner. The costs of such insurance will be at the expense of the Project Engineer. The insurance policy shall remain in force for a period of two (2) years beyond the final completion date. Each request for payment by the Engineer shall include the expiration date of the insurance. Project Engineer shall deliver to Owner replacement certificates not less than thirty (30) days after the expiration of any such insurance.

- a) Professional Liability (Errors & Omissions) Insurance with limits of not less than \$1,000,000 each occurrence, \$2,000,000 aggregate. Such insurance shall cover all professional services rendered by or on behalf of the Project Engineer and its consultants under the Agreement. Renewal policies written on Claims-Made basis will maintain the same retroactive date as is in effect at the inception of this Agreement. If coverage is written on a claims-made basis, Project Engineer agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of this policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least two years after the expiration or cancellation of this policy.

- b) On Site Insurance: For services performed on Owner's premises, the Project Engineer shall furnish to Owner Certificates of Insurance as set forth below prior to the performance of any work hereunder and shall maintain such coverage during the full term of the Agreement.

<u>Worker's Compensation</u>	<u>Statutory Limits</u>
<u>Employer's Liability</u>	
<u>Bodily Injury by Accident</u>	<u>\$1,000,000 each accident</u>
<u>Bodily Injury by Disease</u>	<u>\$1,000,000 each employee</u>
<u>Bodily Injury by Disease</u>	<u>\$1,000,000 policy limit</u>
<u>Commercial General Liability</u>	<u>\$1,000,000 each occurrence</u> <u>\$2,000,000 aggregate</u>
<u>Business Auto Liability</u>	
<u>Single Limit</u>	<u>\$1,000,000 each occurrence</u>

- c) Notice of Cancellation: Required insurance shall not be cancelable without thirty (30) days' prior written notice to Owner.

1.1.20 Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence of all insurance before the execution and delivery of this Agreement and prior to the performance of any services by Project Engineer under this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than 30 days after each annual insurance policy renewal. All insurance policies, with the exception of worker's compensation, employer's liability and professional liability will be endorsed and name Owner as Additional Insured for activities arising out of this contract on an ISO (CG 20 10 0704) or equivalent form. Workers compensation insurance policies will be endorsed to provide a waiver of subrogation in favor of Owner. Commercial General Liability and Business Auto Liability insurance policies will be endorsed to provide primary and non-contributory coverage.

1.1.21 Project Engineer is responsible for any self-insured retentions, or deductibles that apply to any policy limit required herein.

1.1.22 Certificates of Insurance. Approved Texas Department of Insurance certificates will be mailed or emailed to the following contact.

Contact: City of Georgetown Purchasing

Address: 300-1 Industrial Ave.  
Georgetown, TX 78626

1.1.23 The insurance policies required in this Agreement will be kept in force for the periods specified below:

- a) Required coverages will be kept in force until receipt of Final Payment to Project Engineer ;
- b) Workers' Compensation Insurance and Employer's Liability insurance will be kept in force until the Work has been fully performed and accepted in writing.

## **1.2 Programming Services Phase**

1.2.1 Project Engineer shall complete a comprehensive Programming Phase, which includes external and internal stakeholder input and buy-in for the entirety of the project. Stakeholders include, but are not limited to, Owner, City Council, City Staff, the citizens of Georgetown, and business and property owners nearby, with one focus being adjacent property owners. The Programming Phase will drive the plan development for the entire project.

1.2.2 Before proceeding into the Schematic Design Phase, the Project Engineer and his entire consultant team, including Civil Engineer, shall prepare a comprehensive Programming Document for the project. The anticipated program table of contents are summarized in an attached Exhibit D.

1.2.3 Project Engineer shall work closely with Owner in preparation of Programming Document and shall specifically conform to Owner's requirements for space, storage and aesthetics.

1.2.4 The Project Engineer shall plan to meet with representatives of the Owner as required during the development of the Programming Document and shall revise the Programming Document as necessary to achieve approval of the Owner.

1.2.5 The Project Engineer shall furnish and deliver to the Owner three (3) complete printed sets of the Programming Documents as well as a digital copy.

1.2.6 If requested, the Project Engineer shall provide the Owner with a written itemized fixed cost proposal to provide the designated programming services. Such compensation shall be in addition to the percentage based fee for Basic Services and billed as Additional Services pursuant to this Agreement.

## **1.3 Schematic Design Phase**

1.3.1 Based on the mutually agreed upon Programming Document, Budget and the Project Schedule, the Project Engineer shall prepare sufficient alternative approaches to design and construction of the Project to satisfy Owner's requirements and shall, at completion of this phase, submit Schematic

Design Documents. The Project Engineer shall review alternative approaches to design and construction for the Project and the Schematic Design Documents as they are being prepared at intervals appropriate to the progress of the Project with the Owner at the Project location. Project Engineer shall provide all services necessary to perform the services of this Phase (preparation of Schematic Design Documents).

1.3.2 Project Engineer shall work closely with Owner in preparation of schematic drawings and shall specifically conform to Owner's requirements regarding aesthetic design issues.

1.3.3 The Project Engineer shall furnish and deliver to the Owner three (3) complete printed sets of Schematic Design documents as well as a digital copy.

1.3.4 The Project Engineer shall direct the preparation of a detailed construction cost estimate as described in Sub-paragraph 1.1.7 to confirm compliance with the Budget and include it with the completed Schematic Design Documents.

1.3.5 The Project Engineer shall participate in a final review of the Schematic Design Documents with the Owner at the Project location. Prior to the Owner's approval of the Schematic Design Documents, the Project Engineer shall incorporate such changes as are necessary to satisfy the Owner's review comments, any of which may be appealed for good cause.

#### **1.4 Design Development Phase**

1.4.1 Based on the approved Schematic Design Documents and any adjustments to the Programming Document or Budget authorized by the Owner, the Project Engineer shall prepare, for approval by the Owner, Design Development Documents. The Project Engineer shall review the Design Development Documents as they are being prepared at intervals appropriate to the progress of the Project at the Project location.

1.4.2 The Project Engineer shall furnish and deliver to the Owner three (3) complete printed sets of Design Development documents, as well as a digital copy.

1.4.3 The Project Engineer shall direct the preparation of a detailed construction cost estimate as described in Sub-paragraph 1.1.7 to confirm compliance with the Budget and include it with the completed Design Development Documents.

1.4.4 Before proceeding into the Construction Document Phase, the Project Engineer shall obtain Owner's written acceptance of the Design Development documents and approval of the mutually established Budget and schedule.

1.4.5 The Project Engineer shall prepare presentation materials at completion of Design Development and if so requested shall present same to the Owner's governing body at a regular meeting.

#### **1.5 Construction Document Phase**

1.5.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the Project Budget authorized by the Owner, the Project Engineer shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications in accordance with Owner's written requirements setting forth in detail the requirements for construction of the Project. The plans, drawings and specifications for the entire Project shall be so prepared that same will call for the construction of the building and related facilities, together with its built-in permanent fixtures and equipment which will cost not more than the Budget established by Owner. The Project Engineer will be responsible for managing the design to stay within such Budget. The Project



Engineer shall review the Construction Documents as they are being prepared at intervals appropriate to the progress of the Project with the Owner at the Project location.

1.5.2 The Project Engineer shall advise the Owner on matters such as construction phasing and scheduling, bid or proposal alternates, special cash allowances, liquidated damages, the construction contract time period, and other construction issues appropriate for the Project. The Project Engineer shall assist the Owner in the preparation of the necessary bidding information, bidding forms, RFP information, and RFP forms, and the Conditions of the Contract for each trade and/or subcontractor in accordance with statutory requirements.

1.5.3 The Project Engineer shall assist the Owner in connection with the Owner's responsibility and procedures for obtaining approval of all authorities having jurisdiction over the Project.

1.5.4 The Project Engineer shall ensure coordination and inclusion of sequence of operations for all operable systems in the facility.

1.5.5 The Project Engineer shall furnish and deliver to the Owner three (3) complete printed sets of 75% Construction Documents, as well as a digital copy for final review. All printed Final Construction Documents requested by the owner shall be considered reimbursable as outlined in Article 3. One (1) digital copy of the Final Construction Documents shall be provided to the Owner as part of Basic Services.

1.5.6 The Project Engineer, at the Project Engineer's expense, at each stage of review described, shall furnish and deliver to the Owner the number of complete printed copies of all plans, drawings and specifications of every character made or furnished in connection with the Work, which copies shall become the property of the Owner. The Project Engineer shall incorporate into the plans, drawings and specifications such changes as are necessary to satisfy the Owner's written review comments or published meeting minutes, any of which may be appealed in writing for good cause.

1.5.7 The Project Engineer shall pay for the reproduction of all plans, specifications and other documents for use by the Project Engineer and its consultants and all documents reproduced for the various completion stage reviews by the Owner prior to the reproduction of bidding or proposal documents. All other reproduction costs shall be borne by the Owner, provided that all invoices for such reproduction work are invoiced as a Reimbursable Expense. However, addenda documents issued after the bid documents are reproduced, except for changes generated by Owner, shall be supplied at the Project Engineer's expense.

1.5.8 The Project Engineer shall direct the preparation of a detailed construction cost estimate as described in Sub-paragraph 1.1.7 to confirm compliance with the Budget and include it with the completed Construction Documents.

1.5.9 Construction document drawings shall be produced on a CADD system AND PDF as part of Basic Services. The Owner will define the CADD drawing requirements and the final media for the CADD data.

1.5.10 The Project Engineer shall participate in a final review of the Construction Documents with the Owner at the Project location. Prior to the Owner's approval of the Construction Documents, the Project Engineer shall incorporate such changes as are necessary to satisfy the Owner's review comments.

1.5.11 Before proceeding into the Bidding and Proposal Phase, the Project Engineer shall obtain Owner's written acceptance of the Construction Documents and approval of the mutually established Final Budget.

## **1.6 Bidding and Proposal Phase**

1.6.1 At times as appropriate to the Project, the Project Engineer shall assist the Owner and by receiving and recording requests for Bid and Request for Proposal ("RFP") Documents, issuing Bid and RFP Documents, and accounting for Bid and RFP Documents issued; receiving and resolving questions about Bid and RFP Documents; preparing addenda, issuing addenda, and accounting for addenda issued; attending pre-bid and pre-proposal conferences and HUB meetings; obtaining and evaluating bids and proposals; and assisting in preparing and awarding multiple contracts for construction, including trades and/or subcontractors. Project Engineer shall answer inquiries from bidders and proposers at Owner's request, and shall prepare and issue any necessary addenda to the bidding or proposal documents.

## **1.7 Construction Phase—Administration of the Construction Contract**

1.7.1 The Construction Phase shall commence with the acceptance of the bid and issuance of (i) a Notice to Commence On-Site Work or (ii) a Notice to Proceed with Construction Services and terminate sixty (60) days after Final Payment to the Contractor is made, or when all of Project Engineer's services, including during the Warranty period have been satisfactorily performed, whichever occurs later.

1.7.2 Project Engineer shall provide administration of the Contract for Construction as set forth below.

- a) The Project Engineer shall coordinate with the Contractor to establish and maintain a numbering and tracking system for all Project records, including changes, requests for information, submittals, and supplementary instructions and shall provide updated records at each Owner's monthly meeting and when requested. The Project Engineer shall manage and execute all Change Orders.
- b) The Project Engineer shall chair all meetings scheduled by the Owner or Project Engineer and shall promptly provide summary notes to all parties. The Project Engineer shall attend Contractor's regularly scheduled planning meetings when requested.
- c) The Project Engineer shall assist the Owner in making arrangements for a Pre-Construction Conference and a Partnering Workshop and shall assist in preparation of an administration booklet for the Pre-Construction Conference and shall distribute copies of the bound booklet to all parties. The Project Engineer and its consultants shall participate in the project Partnering process including attendance at all Partnering Workshops.

1.7.3 The Project Engineer shall review the Contractor's list of proposed subcontractors for the work, initial administrative submittals for Project Schedule, Schedule of Values, Submittal Schedule, and Equipment Matrix to establish appropriate bases for construction monitoring, payment processing, and system commissioning. The Project Engineer shall identify necessary revisions to the documents in writing to the Contractor and recommend acceptance of the documents by the Owner when appropriate. The Project Engineer shall review periodic updates of all schedules with Owner and Contractor to evaluate appropriateness.

1.7.4 The Project Engineer and its consultants shall prepare appropriate materials for and conduct a Pre-Construction Conference at the site prior to commencement of construction by the Contractor.

1.7.5 Site Visits. The Project Engineer shall visit the site at least once each month during the entire construction period to observe the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. Each of Project Engineer's consultants shall visit the site at least once each week during construction activities related to the consultant's discipline to observe the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. Project Engineer and its consultants shall submit written reports of their site visits and meetings. The Project Engineer shall not be required to make exhaustive or continuous onsite visits to inspect the quality or quantity of the Work.

- a) On the basis of the onsite observations, the Project Engineer shall keep the Owner informed of the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor. Project Engineer shall notify Owner and the Contractor in writing of any portions of the work which Project Engineer has observed as not being in conformity with the Construction Documents and make recommendations as to correction of the deficiencies or defects. Project Engineer shall make its site representative available and shall consult with Owner and the Contractor on the occasion of all circumstances arising during the course of construction which would make such consultation in Owner's interests.
- b) In addition to site visits for general inspection and observation, the Project Engineer and its consultants shall visit the site for specific purposes related to certification of progress payments, start-up or mock-up reviews for significant work activities and for formal inspections of the Work. The Project Engineer and its consultants shall provide written reports of all site visits to the Owner and Contractor.

1.7.6 The Project Engineer shall prepare an agenda for, and conduct monthly project meetings for attendance by representatives of the Contractor, major subcontractors, the Project Engineer and the Owner, and prepare and distribute minutes of the meetings.

1.7.7 The Project Engineer shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, for the acts or omissions of the Contractor, Subcontractors or any other persons performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Contract Documents.

1.7.8 The Project Engineer shall at all times have access to the Work wherever it is in preparation or progress.

1.7.9 The Project Engineer shall determine the amounts owing to the Contractor based on observations of Work placed at the site and on evaluations of the Contractor's Application for Payment, and shall coordinate its review and evaluation with the Owner's representatives, and shall certify Contractor's Application for Payment in an appropriate amount.

1.7.10 The certification of a Contractor's Application for Payment shall constitute a representation by the Project Engineer to the Owner, based on the Project Engineer's observations at the site and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated; that, to the best of the Project Engineer's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Contractor's Application for Payment); and that the Contractor is entitled to payment in the amount certified. However, the approval of a

Contractor's Application for Payment shall not be a representation that the Project Engineer has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Contract Sum.

1.7.11 The Project Engineer shall be the interpreter of the technical requirements of the Contract Documents and the judge of the performance of the work of the Contractor. The Project Engineer shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Contractor, and shall render written recommendations within a reasonable time, on all claims, disputes and other matters in question between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.

1.7.12 Interpretations and recommendations of the Project Engineer shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in written or graphic form.

1.7.13 Subject to approval of the Owner, the Project Engineer's decisions in matters relating to artistic effect shall be final if consistent with and reasonably inferable from the intent of the Contract Documents. If requested, the Project Engineer shall review interior designs and/or furniture selections proposed by the Owner and advise the Owner on their aesthetic compatibility with the Project Engineer's design.

1.7.14 The Project Engineer shall have the responsibility and the authority, with appropriate notification to the parties, to reject Work which does not conform to the Contract Documents. Whenever, in the Project Engineer's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the Project Engineer will have authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work will then be fabricated, installed or completed. The Project Engineer shall review construction materials testing and any special testing required and shall provide recommendations for retesting, actions, or any appropriate corrective measures as may be necessary or appropriate based on the results of such tests.

1.7.15 The Project Engineer and its consultants shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work set forth in the Contract Documents, and shall respond to Contractor's inquiries and questions and provide supplemental information as appropriate. Action on submittals shall be taken with reasonable promptness so as to cause no delay to the Contractor's scheduled progress, but in any event no more than fourteen (14) business days after receipt. The Project Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Project Engineer's review shall not constitute approval of any construction means or methods.

1.7.16 Project Engineer shall clarify and interpret the intent and scope of the Construction Documents and, if necessary or appropriate, issue supplemental documents to amplify or explain portions of the Construction Documents.

1.7.17 Project Engineer shall provide assistance in the review of the Contractor's requests for change orders or claims for additional time or costs, and make recommendations to Owner as to such requests or claims.

1.7.18 The Project Engineer shall prepare Change Orders for the Owner's approval and execution in accordance with the Contract Documents, and shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents. In conjunction with each Change, the Project

Engineer shall prepare an independent cost and time estimate for comparison with the Contractor's proposal and recommend to the Owner whether the proposal is acceptable.

1.7.19 Project Engineer shall prepare revised Contract Drawings, where appropriate, to illustrate and document the work required by approved Change Orders. All proposed changes to drawings plans and specifications, regardless of how initiated, shall be totally defined in the document depicting them as to scope of work added, removed, or changed. The original copies of the Construction Documents may be revised to show such changes, provided that all such revisions shall be separately recorded on the media acceptable to Owner, including, without limitation, CADD. Such revisions shall be clearly indicated and a current revision date shall be included on the reproducible copy. Changes to the specifications shall be made by consecutively numbered and dated addenda or change orders. All changes to design documents or specifications will be identified with date of change, revision number and other customary identification references. Areas changed on drawings will be "clouded" to show each change. Clouds designating previous changes will be removed so that only the most recent changes will be clouded.

1.7.20 Project Engineer and its consultants shall conduct and participate in concealed space observations, systems start-up observations, systems integration/operational demonstrations, Substantial Completion or pre-Final work observations to determine the Dates of Substantial Completion, and Final work observation. In association with each observation, Project Engineer and its consultants shall prepare a list of items which Project Engineer and its consultants have observed as deficiencies in the Work, requiring remedial work or replacement, assemble and distribute the official punch(s) to all affected parties, and thereafter review the corrected and/or replaced work and assist in verification of correction of all items.

1.7.21 Project Engineer shall review, for conformance with the Contract Documents, Contractor's submission of guarantees and warranties.

1.7.22 The Project Engineer and its consultants shall assist the Owner in checking as-built drawings during the course of the Work in association with certifying progress payments and shall review as-built documents for completeness and compliance with Contract requirements at Substantial Completion and at Final Completion of the Project.

1.7.23 Project Engineer shall receive and review Contractor's submission of record drawings, operating and maintenance instructions, and all manuals, brochures, drawings, and other close-out documentation furnished by the Contractor, shall require necessary revisions to same, and when acceptable under the terms of the Contract between Owner and Contractor, shall forward to Owner. The Project Engineer shall certify final payment to the Contractor when the requirements of the Contract between Owner and Contractor have been met.

1.7.24 Project Engineer shall monitor the Contractor's schedule for the construction phase work and assist the Owner in reviewing all relevant activities and advise the Owner of the Contractor's scheduled progress.

1.7.25 Project Engineer shall provide a milestone schedule that is acceptable to the Owner and shall be submitted on a monthly basis prior to submission of construction payment application, in conformance with the project milestone schedule, so that the desired development and construction schedule for the Project shall be maintained.

1.7.26 The Project Engineer shall be available after final payment to advise the Owner regarding Warranty items and to inspect Warranty work during the Warranty period. Project Engineer shall participate in the Project's one year warranty review.

## **1.8 Additional Services**

1.8.1 Additional Services are those services which shall be provided if authorized or confirmed in writing by the Owner and for which compensation will be provided as described in this Agreement in addition to Basic Compensation. Prior to commencing any Additional Service, Project Engineer shall prepare for acceptance by the Owner an Additional Services Proposal, which shall describe in detail the nature or scope of the Additional Services, the basis upon which Project Engineer has determined that such service are Additional Services, and which shall set forth the maximum amount of fees and reimbursable expenses for which Project Engineer is prepared to perform such Additional Services, together with a proposed schedule for the performances of such Additional Service. Project Engineer shall proceed only after written acceptance by Owner of the Additional Services Proposal.

1.8.2 Upon acceptance by Owner, each Additional Services Proposal and the services performed by Project Engineer pursuant to such Additional Services Proposal shall become part of this Agreement and shall be subject to all terms and conditions of this Agreement, as fully and completely as though the same had been included in this Agreement as a Basic Service at the original execution of this Agreement.

1.8.3 Providing services to make detailed investigations of existing conditions or facilities or to make measured drawings of them is an Additional Service except as reasonably necessary to verify the accuracy and completeness of drawings or other information furnished by the Owner and to the extent necessary for the Project Engineer to complete its responsibilities hereunder free of material errors and omissions. Project Engineer shall not be required to perform any destructive testing or to hire the services of a surveyor unless agreed to as an Additional Service.

## **1.9 Time**

1.9.1 Project Engineer shall perform all of Project Engineer's services described herein as expeditiously as is consistent with (1) Project Engineer's best professional efforts, skill and care, (2) the orderly progress of such services, and (3) in conformance with the project milestone schedules so that the desired development and construction schedule for the Project shall be maintained. Project Engineer shall at all times provide sufficient personnel to accomplish Project Engineer's services within the time limits set forth in the schedules described herein.

1.9.2 Project Engineer shall develop a schedule in the form attached hereto as Exhibit B containing a schedule for completion of each of the phases of services to be performed by Project Engineering pursuant to this Agreement. The project schedule shall contain milestone dates which have been established in the Request for Qualifications previously issued or may be modified by the Owner to reflect current conditions. Supplemental activities shown on the schedule, and any associated dates not yet defined, shall be determined at the completion of the Programming Services Phase or at such time when both parties mutually agree that the project is sufficiently developed and documented. *The Project* Changes in this schedule may be made only with the written approval of Owner. Project Engineer shall perform all of its services in accordance with the then-current schedule approved by Owner.

## **Article 2 Owner's Responsibilities**

2.1 The Owner shall provide the Engineer with a full description of the requirements of the Project.

2.2 The Owner shall furnish surveys, geotechnical reports or other special investigations of the Project site as requested by the Engineer and as reasonably necessary for the completion of

Engineer's Services. The Owner shall furnish structural, mechanical, chemical and other laboratory tests as reasonably required.

2.3 The Owner will review the Engineer's drawings, specifications and other documents of service produced by Engineer in the performance of its obligations under this Agreement (collectively the "Design Documents") as required. Owner will notify Engineer of any design fault or defect in Engineer's Services or Design Documents of which Owner becomes aware.

2.4 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of Engineer's Services.

2.5 The Owner designates City of Georgetown Facilities Director as its representative authorized to act in the Owner's behalf with respect to the Project.

### **Article 3 Reimbursable Expenses**

3.1 Reimbursable Expenses are in addition to Compensation for Engineer's Services and include actual and reasonable expenses incurred by the Engineer, its employees and sub-consultants solely and directly in connection with the performance of Engineer's Services for the following:

3.1.1. Expense of transportation (including coach class air travel) and living expenses in connection with out-of-state travel as directed and approved in advance by the Owner. Transportation and living expenses incurred within the State of Texas are not reimbursable unless expressly approved by the Owner in advance.

3.1.2. Fees paid for securing approval of authorities having jurisdiction over the Project.

3.1.3. Professional models and renderings if requested by the Owner.

3.1.4. Reproductions, printing, binding, collating and handling of reports, and drawings and specifications or other project-related work product, other than that used solely in-house for Engineer and sub-consultants.

3.1.5. Shipping or mailing of all reports, drawings, specifications, and other items in connection with the Project except for: correspondence between the Project Engineer and the Owner; Project Engineer's in-house work or correspondence; or work or correspondence exchanged between the Project Engineer and its consultants.

3.2 Expenses not allowed for reimbursement include the cost of review documents required to be provided to the Owner under Article 1, telephone charges, FAX service, alcoholic beverages, laundry, valet service, entertainment or any non-project related items. All tips must be included within the per diem allowances.

3.3 Owner shall pay a mark-up not to exceed ten percent (10%) on those reimbursables identified in 3.1.1 through 3.1.5 above. A mark-up shall not be paid on lodging, meals or travel expenses. Engineer shall submit receipts for all reimbursable expenses along with any reimbursement request.

### **Article 4 Basis of Compensation**

The Owner shall compensate the Project Engineer for the services provided in accordance with Article 4. Payments to the Project Engineer, and other terms and conditions of this Agreement, as follows:

#### **4.1. Basic Services Fee**

4.1.1 In consideration for the services provided under the contract, the Project Engineer shall be paid a fixed fee not to exceed amount of **\$XX,000.00** in accordance with this Contract. Payment for services provided shall be made monthly and in accordance with the Milestone Phase Schedule inserted below, following acceptance (or Final Acceptance) of the Services by the City. Reimbursable expenses shall be in addition to the fixed fee amount and as approved by City.

<b>Milestone Phase</b>	<b>Amount (%)</b>
Schematic Design	20%
Design Development	15%
Construction Documents	40%
Bidding/Negotiation Services	5%
Construction Administration	20%

#### **4.2. Fees for Change Order Services**

If revised construction documents are required due to material changes ordered by the Owner and not due to errors and omissions on the part of the Project Engineer, the fee for the additional Basic Services required will be calculated using the same percentage fee used to establish the Basic Services Fee times the lowest bona fide bid or negotiated proposal for the changes to the Work or, if no bid or proposal is received, an up-to-date detailed Construction Cost Estimate for the changes to the Work, but only to the extent that services for the changes to the Work are required.

#### **4.3. Reimbursable Expenses**

For reimbursable expenses, as described in Article 3, the Project Engineer's reimbursement shall be calculated as an amount not to exceed 1.10 times the amounts actually expended by the Project Engineer, the Project Engineer's employees and consultants in the interest of the Project.

#### **4.5 Additional Services**

4.5.1 Fees for Additional Services, are in addition to the Basic Services Fee described above.

4.5.2 For additional services of the Project Engineer that are not Basic Services or additional Basic Services due to changes in Project scope, the Project Engineer's fee shall be calculated as follows.

4.5.3 The fees for Additional Services will be negotiated by the Owner and the Project Engineer as the scope of the Additional Services is defined and shall be calculated in one of the following ways:

- a) A pre-established lump sum amount; or
- b) An agreed percentage of the Final Construction Cost of the Work resulting from the service being provided.

4.5.4 In the absence of an agreement between the Owner and the Project Engineer, the fees for Additional Services shall be calculated on an hourly basis.



## **Article 5        Payments to the Project Engineer**

5.1        Engineer shall present monthly Applications for Payment to the Owner detailing the Engineer's Services and approved Additional Services performed and the approved Reimbursable Expenses incurred for the Project in the previous month. With each application for payment, Engineer shall submit payroll information, receipts, invoices and any other evidence of payment which Owner shall deem necessary to support the amount requested.

5.2        Owner shall promptly review the Application for Payment and notify Engineer whether the Application is approved or disapproved, in whole or in part. Owner shall promptly pay Engineer for all approved services and expenses. For purposes of Texas Government Code 2251, the date performance of services is completed is the date when the Owner approves the Application for Payment. Engineer shall pay all sub-consultants and other expenses incurred under this Agreement in accordance with Texas Government Code Chapter 2251.

5.3        Owner shall have the right to withhold from payments due Engineer such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Engineer or failure of Engineer to perform its obligations under this Agreement.

## **Article 6        Project Engineer Accounting Records**

6.1        Records of Project Engineer 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 three years after final Payment or abandonment of the Project, unless Owner otherwise instructs Consultant in writing.

## **Article 7        Ownership and Use of Documents**

7.1        The Owner shall have the title to and ownership of all documents produced or developed by Engineer and any sub-consultant in connection with this Agreement whether the Project is completed or not. Documents include publications, plans drawings, designs, specifications, photographs, studies, reports schedules, computer programs, and other data and work product, in any form or media. Owner shall have sole ownership of all copyright interest in all documents to the extent that documents may be copyrighted. Engineer shall deliver all documents to the Owner at completion of the Project, termination of Services, or upon Owner's request. Engineer may retain copies of its work product.

7.2        The Engineer shall furnish to the Owner one set of digital files representing the final record drawings, in both CADD format and PDF.

## **Article 8        Termination of Agreement**

**8.1        Termination for Cause.** This Agreement may be terminated by either party upon ten (10) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the terminating party and such failure is not fully cured prior to the expiration of the notice period. If a termination for cause under this section is later determined to be improper, the termination shall automatically convert to a termination for convenience and Engineer's recovery for termination shall be strictly limited as provided below.

**8.2        Termination for Convenience.** This agreement may be terminated for convenience by the Owner in whole or in part, upon at least ten (10) days written notice to the Engineer

**8.3 Compensation.** In the event of termination not the fault of the Engineer the Engineer shall be entitled to compensation for all services satisfactorily performed to the termination date, together with approved Reimbursable Expenses then due, provided Engineer delivers to Owner statements, accounts, reports and other materials as required for payment along with all reports, documents and other materials prepared by Engineer prior to termination.

## **Article 9 Successors and Assigns**

The Owner and the Project Engineer , respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, permitted successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. This Agreement is a personal service contract for the services of Project Engineer , and Project Engineer's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party. The benefits and burdens of this Agreement are, however, assignable by Owner.

## **Article 10 Extent of Agreement**

This Agreement supersedes all prior agreements, written or oral, between Project Engineer and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. 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 Owner and Project Engineer

## **Article 11 Indemnity**

**11.1 General Obligation to Indemnify and Defend. TO THE FULLEST EXTENT PERMITTED BY LAW, ENGINEER AGREES TO INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS ELECTED OFFICIALS, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES AND VOLUNTEERS OF AND FROM DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, FORFEITURES, PENALTIES, FINES, COSTS, LAWSUITS, LIABILITIES, ACTIONS, AND CAUSES OF ACTION, OF EVERY KIND WHATSOEVER, AND EXPENSES, INCLUDING BUT NOT LIMITED TO FEES AND CHARGES OF ENGINEERS, ATTORNEYS, AND OTHER PROFESSIONALS, AND COURT, ARBITRATION, OR OTHER DISPUTE RESOLUTION COSTS, AND EXPENSES AND COSTS OF INVESTIGATION, ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY TASK ORDER, OR ANY SPECIFIC PROJECT, TO THE EXTENT CAUSED BY 1) THE NEGLIGENT ACT OR OMISSION OR WILLFUL ACTS OF ENGINEER OR ENGINEER'S OFFICERS, DIRECTORS, PARTNERS, AGENTS, EMPLOYEES, OR CONSULTANTS OR 2) MATERIAL BREACH OF THIS AGREEMENT OR TASK ORDER. ENGINEER FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE, ON BEHALF OF THE OWNER AND IN THE NAME OF THE OWNER, SUITS AND PROCEEDINGS INSTITUTED AGAINST OWNER TO WHICH THE INDEMNITY OBLIGATION APPLIES, AND PAY AWARDS OF DAMAGES ASSESSED WHICH RESULT FROM ANY SUCH CLAIM, SUIT OR PROCEEDING, INCLUDING ASSOCIATED EXPENSES, ATTORNEY FEES, COSTS OF INVESTIGATION, ARBITRATION AND/OR LITIGATION.**

### **11.2 Intellectual Property**

**11.2.1 ENGINEER AGREES TO INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS ELECTED OFFICIALS, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES AND VOLUNTEERS OF AND FROM DAMAGES, CLAIMS, LOSSES, DEMANDS, FORFEITURES, PENALTIES, FINES, COSTS, LAWSUITS, LIABILITIES,**

**ACTIONS, CAUSES OF ACTION OF EVERY KIND WHATSOEVER, AND EXPENSES, INCLUDING BUT NOT LIMITED TO FEES AND CHARGES OF ENGINEERS, ATTORNEYS, AND OTHER PROFESSIONALS, AND COURT, ARBITRATION, OR OTHER DISPUTE RESOLUTION COSTS, AND EXPENSES AND COSTS OF INVESTIGATION, TO THE EXTENT CAUSED BY ALLEGED INFRINGEMENT OF PATENT OR COPYRIGHT OF THE UNITED STATES OR OF ANY TRADEMARK OR TRADE SECRET PROTECTED BY EITHER FEDERAL OR STATE LAW BY ENGINEER OR ENGINEER'S OFFICERS, DIRECTORS, PARTNERS, AGENTS, EMPLOYEES, OR CONSULTANTS. ENGINEER SHALL, AT ITS OWN EXPENSE, DEFEND SUITS OR PROCEEDINGS INSTITUTED AGAINST OWNER, AND PAY AWARDS OF DAMAGES ASSESSED WHICH RESULT FROM ANY SUCH CLAIM, SUIT OR PROCEEDING, INCLUDING ASSOCIATED EXPENSES, ATTORNEY FEES, COSTS OF INVESTIGATION, ARBITRATION AND/OR LITIGATION, AND SHALL ABIDE BY RESULTING DECREES AND COMPROMISES.**

**11.2.2 IF A RESTRAINING ORDER OR TEMPORARY INJUNCTION IS GRANTED, ENGINEER SHALL MAKE EVERY REASONABLE EFFORT, BY GIVING A SATISFACTORY BOND OR OTHERWISE, TO SECURE THE SUSPENSION OF ANY SUCH RESTRAINING ORDER OR TEMPORARY INJUNCTION. IF THE SERVICES ARE HELD TO CONSTITUTE AN INFRINGEMENT, AND PERMANENTLY ENJOINED, ENGINEER SHALL MAKE EVERY REASONABLE EFFORT TO SECURE FOR OWNER A LICENSE AT ENGINEER'S EXPENSE AUTHORIZING THE CONTINUED USE OF THE ALLEGED INFRINGING PORTION OF THE SERVICES. IF ENGINEER IS UNABLE TO SECURE SUCH LICENSE WITHIN A REASONABLE TIME, ENGINEER SHALL, AT ITS OWN EXPENSE AND WITHOUT IMPAIRING PERFORMANCE REQUIREMENTS, EITHER PROVIDE NON-INFRINGEMENT REPLACEMENT OR MODIFY THE SERVICES TO ELIMINATE THE INFRINGEMENT. IN ADDITION TO INDEMNIFYING AND SAVING OWNER HARMLESS, ENGINEER SHALL REIMBURSE OWNER FOR ANY COSTS INCURRED AS A RESULT OF THE UNAVAILABILITY OF THE INFRINGING ITEM OR ITS NON-INFRINGEMENT REPLACEMENT.**

11.3 Engineer's indemnity obligations are independent covenants and shall survive completion of or termination of the Agreement or any claimed breach of the Agreement.

11.4 Owner shall promptly notify Engineer, in writing, of receipt of notice of the commencement or threatened commencement of any civil, administrative or investigative action or proceeding involving a claim for which Owner seeks indemnification. No failure to so notify Engineer shall relieve Engineer of its obligations under this Agreement except to the extent that Engineer can demonstrate damages attributable to such failure. Within fifteen (15) days following receipt of written notice from the Owner, but no later than ten (10) days before the date on which any response to a complaint or summons is due, Engineer shall assume control of the defense and/or resolution of the claim.

11.5 Engineer assumes full responsibility for the Services to be performed and releases, relinquishes, and discharges the Owner, its elected officials, officers, directors, agents, employees, representatives and volunteers from all claims, demands, and causes of action of every kind and character, including the cost of defense, for any injury to or death of any person (whether employees of either Party or other third parties) and any loss of or damage to any property that is caused by or alleged to be caused by, arising out of, or in connection with Services performed under this Agreement or a Task Order. This release shall apply regardless of whether the claims, demands and/or causes of action are covered in whole or in part by insurance, and in the event of injury, death, property damage, or loss suffered by the Engineer, any Consultant, or any person or organization directly or indirectly employed by any of them to perform or furnish Services under this Agreement.

## **Article 12      Miscellaneous Provisions**

**12.1      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.

**12.2      Governing Law.** This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas, without giving effect to principles of conflicts of laws. The Owner and the Project Engineer each submit to exclusive jurisdiction of the courts of Williamson County, Texas. Owner does not waive the defense of sovereign immunity.

**12.3      Waivers.** No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

**12.4      Severability.** In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included herein.

**12.5      Independent Contractor.** Project Engineer acknowledges that it is engaged as an independent Contractor and that Owner has no responsibility to provide Project Engineer or its employees with transportation, insurance or other fringe benefits normally associated with employee status. Project Engineer is not, and will not claim to be, an officer, partner, employee or agent of Owner and shall not make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of Owner, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. Project Engineer hereby agrees to make Project Engineer's own arrangements for any of such benefits as Project Engineer may desire and agrees that Project Engineer is responsible for all income taxes required by applicable law.

**12.6      Proprietary Interests.** All information owned, possessed or used by Owner which is communicated to, learned, developed or otherwise acquired by Project Engineer in the performance of services for Owner, which is not generally known to the public, shall be confidential. Project Engineer shall not, beginning on the date of first association or communication between Owner and Project Engineer and continuing through the term of this Agreement and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for Project Engineer's own benefit or the benefit of another, any such confidential information, unless required by law. Except when defined as part of the Work, Project Engineer shall not make any press releases, public statements, or advertisement referring to the Project or the engagement of Project Engineer as an independent Contractor of Owner in connection with the Project, or release any information relative to the Project for publications, advertisement or any other purpose without the prior written approval of Owner. Project Engineer shall obtain assurances similar to those contained in this Subparagraph from persons, vendors and consultants retained by Project Engineer. Project Engineer acknowledges and agrees that a breach by Project Engineer of the provisions hereof will cause Owner irreparable injury and damage. Project Engineer, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.

**12.7 Appointment.** Owner hereby expressly reserves the right from time to time to designate by notice to Project Engineer a representative to act partially or wholly for Owner in connection with the performance of Owner's obligations hereunder. Project Engineer shall act only upon instructions from such representative unless otherwise specifically notified to the contrary.

**12.8 Dispute Resolution.**

12.8.1 If a dispute arises under this Agreement, Owner and Engineer agree to negotiate the dispute between them in good faith for a period of 30 days from the date of written notice of the dispute.

12.8.2 If the Owner and Engineer fail to resolve a dispute through negotiation, then Owner and Engineer agree that they shall submit any and all unsettled claims, counterclaims, and other matters in question between them arising out of or relating to this Agreement to mediation.

12.8.3 If mediation is unsuccessful in resolving a dispute, then any and all unsettled claims, counterclaims, and other matters in question between Owner and Engineer arising out of or relating to this Agreement (a) may be submitted to binding arbitration by written agreement, or (b) may be filed by either Owner or Engineer in a court of competent jurisdiction.

12.8.4 Upon Owner's request, Engineer shall proceed with performance of Services pending final resolution of a dispute arising under this Agreement.

**12.9 Notices.** All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Owner:

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

With Copies to: N/A

If to Project Engineer :

CDS Muery  
100 NE Loop 410, STE 300  
San Antonio, Texas 78216

or to such other person or address as may be given in writing by either party to the other in accordance with the aforesaid.

**12.10 Authority to Act.** Project Engineer warrants, represents, and agrees that (1) it is a duly organized and validly existing legal entity in good standing under the laws of the state of its incorporation or organization; (2) it is duly authorized and in good standing to conduct business in the State of Texas; (3) it has all necessary power and has received all necessary approvals to execute and deliver this Agreement; and (4) the individual executing this Agreement on behalf of Project Engineer has been duly authorized to act for and bind Project Engineer .

**12.11 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed, construed and considered to be an original, but all of which shall constitute one and the same instrument.

**12.12 179 D Benefit Allocation.** Owner may decide to seek the allocation of certain tax benefits pursuant to Section 179D of the Internal Revenue Code of 1986, as amended, (the “Code”) through this Agreement with Project Engineer .

12.12.1 If the Owner and the Internal Revenue Service (IRS) determine that the Project Engineer is eligible to receive the 179D deduction allocation as a “Designer” for the purposes of Section 179D of the Code or that Project Engineer could otherwise profit financially from the monetization of the benefit (separately and collectively, the “Rebate”), Project Engineer hereby agrees to allocate to the Owner a portion of the Rebate in an amount to be determined and contracted for on mutually agreeable terms when the value of the Rebate becomes ascertainable, net of associated costs realized by the Owner and Project Engineer . At its sole discretion, the Owner shall determine whether to receive its portion of the Rebate in cash, discounted Project Engineer fees or both.

12.12.2 Owner reserves the right to retain a third party consultant (the “Consultant”) to manage and administer the process of obtaining and monetizing the Rebate derived from the Project(s).

12.12.3 Project Engineer agrees to cooperate in all reasonable respects with the Consultant's efforts to obtain and monetize any such Rebates derived from the Project(s) on behalf of the Owner. Certification of eligibility and negotiation of the Rebates should be facilitated by the Owner’s 179D Consultant.

**12.13 Disclosure of Interested Parties.** By signature hereon, Project Engineer certifies that, if the value of this agreement exceeds \$1 Million, it has complied with Section 2252.908 of the Texas Government Code and Part 1 Texas Administrative Code Section 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 Project Engineer t.

**[SIGNATURES PROVIDED ON FOLLOWING PAGE]**



The following Exhibits are fully incorporated into this Agreement by reference:

EXHIBITS

- Exhibit A Project Description
- Exhibit B Project Milestone Schedule
- Exhibit C Personnel Titles and Hourly Rates
- Exhibit D Program Document Table of Contents
- Exhibit E Certificate of Insurance



## **EXHIBIT A**

### **PROJECT DESCRIPTION**

#### **1.0 Background**

##### **1.1 City of Georgetown**

Georgetown is a Home Rule Charter City and operates under a Council - Manager form of government. A mayor, elected at large, and seven council members, elected from single member districts, serve staggered, three-year terms. Georgetown is located on Interstate 35, the major corridor between Dallas and San Antonio, at the intersection of State Highway 130. The City, home of the Most Beautiful Town Square in Texas, was founded in 1848 with a strong agricultural base, in the heart of Williamson County, 26 miles north of Austin. Georgetown has an estimated population of 71,581 within the city limits, with an estimated population of 93,961 within the extra-territorial jurisdiction (ETJ) and serves as the county seat of Williamson County. Since 2008, the City's population has grown by 40 percent and the city limits have expanded from 50 sq. miles in 2010 to 59 sq. miles in 2019.

Georgetown's economic development initiatives to expand jobs and tax base have been with a careful focus of maintaining and expanding its status as a signature destination. The award winning historic downtown square, along with its extensive, award-winning parks and river trail systems along the North and South San Gabriel Rivers and Lake Georgetown have been leveraged to make the City one of the most attractive places to live and work.

This unique character and small-town charm was a key factor for Del Webb Corporation when it built its first Texas development in Georgetown with the 1995 opening of Sun City, Texas. Today, over 7,200 homes with over 13,500 retirees make Sun City and Georgetown their home.

Georgetown is also home to Southwestern University, which continues to receive national recognition. With more than 1,528 students and over 500 employees, the University provides substantial economic and cultural contributions to Georgetown.

##### **1.2 Location**

The existing fuel station is located near the intersection of N. College St and College St, on City owned Property

#### **2.0 Project Elements**

##### **2.1 Fuel Station**

The City of Georgetown is planning the design and construction of a replacement Fuel Station in the location of the current Fuel Station Site. The project includes removal of existing below ground tanks with the addition of 2 new above ground tanks in a new location to allow for a planned roadway realignment. A new shade canopy, new pumps and new pump house will be evaluated during the design process. Successful completion of this project will provide the City of Georgetown with adequate space for vehicle maneuvering; improved operational efficiency; improved security, efficient operational and maintenance expenses (through the incorporation of energy efficient / sustainable design elements); improved service; flexibility; and direction to accommodate future growth.

##### **2.2 Design Scope**

2.2.1 The successful Project Engineer will be involved for the full duration of the programming, design development, preparation of construction and bidding documents, and construction administration phases of the project.

2.2.2 Pay special attention to design and building use and Tank Location.

- 2.2.3 Involve substantive stakeholder and possibly community input;
  - 2.2.4 Provide a conducive work environment for users. The City is a desirable place to live and appeals to a variety of people (seniors, families and young professionals), the City is experiencing significant population growth and expects to double in population by 2030 (from 52,700 to 101,700) and City facilities and services are anticipated to grow accordingly;
  - 2.2.5 Anticipate and prepare for the requirements of future development;
  - 2.2.6 Assess the current and future department needs, evaluating the facility design so that it is the most cost-effective way to address their needs utilizing the available budget and site;
  - 2.2.7 Design a facility that utilizes the latest in energy efficient materials and equipment;
  - 2.2.8 Comply with all design standards established in the City's Unified Development Code;
  - 2.2.9 Develop budget estimates for the construction; and
  - 2.2.10 Make presentations to the Owner's governing body explaining their cost estimates and provide a virtual tour of proposed design.
- 2.3 Owner Provided Services
- 2.3.1 Phase I Environmental Site Assessment
  - 2.3.2 Surveys
  - 2.3.3 Geotechnical Reports
  - 2.3.4 Material Testing
  - 2.3.5 Purchase of Audio-Visual equipment and installation (design is included in Basic Services)
  - 2.3.6 Purchase of Data Cabling (design is included in Basic Services)
  - 2.3.7 Purchase of Security equipment and installation (design is included in Basic Services)
  - 2.3.8 Purchase of Furniture, Fixtures and Equipment

## EXHIBIT B PROJECT MILESTONE SCHEDULE

The activities shown in bold below must have the associated dates identified and included with this agreement and represent services to be performed by the Project Engineer pursuant to this Agreement. Supplemental activities shown on the schedule below, which dates are not yet defined, shall be determined at the completion of the Program Phase or at such time when both parties mutually agree that the project is sufficiently developed and documented.

Activity:	Date Completed:
Owner Approves Facility Program Phase	_____
Selection of the Contractor (or CM)	_____
<i>Schematic Design Phase</i>	
Authorize A/E Start	_____
Submit for Owner Review	_____
Joint Review for Owner Comments	_____
Owner Approves Schematic Design	_____
<i>Design Development Phase</i>	
Authorize A/E Start	_____
FPCC Meeting Project Submission Deadline	_____
Submit for Owner Review, AE 95%	_____
Joint Review for Owner Comments	_____
FPCC Meeting Approval	_____
Approve TPC & Design Development	_____
Owner Approves DD Documents	_____
<i>Permit Approval Phase</i>	
Submit Construction Application	_____
Approve Construction Application	_____
Owner Approves Guaranteed Maximum Price Phase (for CM Projects)	_____
<i>Construction Documents Phase</i>	
Authorize AE to Start	_____
A/E Submit 50% CD's for Owner Review	_____
Joint Review for Owner Comments	_____
A/E Submit 95% CD's for Review	_____
Joint Review for Owner Comments	_____
A/E Submit 100% CD's for Review	_____
Joint Review for Owner Comments	_____
Owner Approves 100% Construction Documents	_____
Owner advertises for Competitive Sealed Proposals (if applicable)	_____
<i>Construction Phase Activities</i>	
NTP for Construction	_____
Project Substantial Completion	_____

**EXHIBIT C**  
**PERSONNEL TITLES AND HOURLY RATES**

NAMES OF SENIOR PRINCIPAL AND PROJECT TEAM MANAGER

John E. Rothe, P.E., CFM, Principal  
Richard N. Berry, P.E., Sr. Project Manager  
David A. Garcia, EIT

Engineer shall complete this information and must state the hourly rate  
Identify all staff:

<u>Personnel Title/Position</u>	<u>Hourly Rate</u>	<u>Multiplier</u>	<u>Hourly Billing Rate</u>
Principal	\$210.00		
Senior Project Manager	\$190.00		
Project Engineer	\$140.00		
Engineer Intern II	\$105.00		
Engineer Intern I	\$85.00		
Administrative Staff	\$75.00		

## **EXHIBIT D**

### **PROGRAM DOCUMENT TABLE OF CONTENTS**

The format below represents or proposed Table of Contents for this Building Program.

**1. Sign Offs and Acknowledgements**

*This section contains the required signatures for approval of the program. It also acknowledges the people involved with the project.*

**2. Executive Summary**

*This chapter is a brief overview of the entire project including a summary of location, spatial requirements, non-building related requirements, cost and schedule.*

**3. Project Goals & Objectives**

*This chapter describes why the project is necessary and affirms that it is in keeping with the stated direction of the City of Georgetown Master Plan, Design Guidelines and other applicable standards.*

**4. Space & Adjacency Requirements**

*This chapter deals with the space requirements and functional relationships for all areas within the project. An itemized Program of Spaces Spreadsheet will be included in this section.*

**5. Supporting Requirements**

*This chapter deals with project requirement that affect the design of the building other than those listed in Chapter 7. Consultant Narratives for each discipline will be included in this section.*

**6. Site Studies**

*This chapter is an analysis of the proposed site for the project.*

**7. Existing Facilities Studies (if needed)**

*This chapter deals with the renovation of existing facilities and contains available existing drawing information and building studies and/or surveys.*

**8. Design Parameters**

*This chapter lists the standards and constraints that will control the project, including applicable codes, ordinance, and regulations. A brief Code Summary for the project will be included.*

**9. Preliminary Cost Summary**

*This chapter outlines the preliminary cost for the project.*

**10. Project Schedule**

*This chapter describes the factors that affect the project schedule and presents a preliminary project schedule.*

**11. Project Implementation**

*This chapter deals with the project execution.*

**12. Project Delivery Method**

*This chapter provides a brief explanation of the method for project delivery, and why it was chosen for this project.*

**EXHIBIT E**  
**CERTIFICATE OF INSURANCE**