

*CONFIDENTIAL*

**AGREEMENT  
BETWEEN OWNER AND PROJECT ARCHITECT**

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 Architect:**

Garver, LLC  
285 SE Inner Loop, Suite 110  
Georgetown, TX 78626

for the following **Project:**

Design, Bidding, and Construction Administration Support Services for Airport Maintenance Facility

**Project Delivery Method:** Competitive Sealed Proposal

The Owner and the Project Architect agree as follows:

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

The Project Architect 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 Architect's Basic Services include all disciplines identified below, 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) Architectural Services
- b) Landscape Architectural Services
- c) Civil Engineering Services
- d) Structural Engineering Design services in support of a Pre-Engineered Metal Building (PEMB)
- e) Mechanical Engineering Services
- f) Electrical Engineering Services
- g) Plumbing Engineering Services
- h) Audio Visual/Data & Telecommunications Support Engineering (coordination with Owner vendor) – Project Architect to provide pathways only (conduit and pull string) with access points provided by Owner.
- i) Security Planning Services (coordination with Owner vendor) – Project Architect to provide pathways only (conduit and pull string) with access points provided by Owner.

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 Architect's responsibility to review and understand the requirements of the Programming Document and to perform his professional services in accordance with the industry standard of care set forth in Tex. Local Government Code § 271.904(d) and this Agreement.

1.1.3 The Fixed Fee for this Project is specified in Article 4. The Project Architect is responsible for managing the design of the Project so that its construction does not exceed the Budget. Notwithstanding anything to the contrary herein, if Owner determines that Owner- or third party-caused delays or interferences, as well as Acts of God, delayed the Project Architect's services, Project Architect shall be entitled to an equitable adjustment in schedule in an amount, and only to the extent, that Project Architect demonstrates that any such delays were a direct result of Owner's or a third party's actions. "Acts of God" shall include forces substantially beyond either party's control, including but not limited to, unexpected and uncontrollable natural events (including tornadoes, hurricanes, earthquakes), fire, insurrection, war, pandemic or epidemic that forecloses ability to work, acts of God, or the public enemy. Any Owner- or third party-caused delay shall only result in eligibility for an increase in schedule; in no event, unless with prior written approval by Owner, shall the Budget be increased for such delay.

1.1.4 The Project Architect shall manage the design of the Project in accordance with the industry standard of care set forth in Tex. Local Government Code § 271.904(d) to achieve the Programming Document objectives of scope and cost through completion and acceptance of Construction Documents phase. The Project Architect 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 Architect shall submit the names of all consultants, persons, or firms, which the Project Architect proposes to use in the execution of its services. The Project Architect 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 Architect of any consultant for the Project to which Owner has a reasonable objection. Architect, however, shall not be required to contract with any consultant to which it has a reasonable objection.

1.1.6 The Project Architect 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 Architect, 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 Architect to revise the Project scope or quality to comply with the Budget. If Owner determines in its reasonable judgment that such revision is due to an act, error, or omission of Project Architect, including (but not limited to) failure to account for costs of materials and labor current at the time of submission of 100% Construction Document Design, Project Architect shall perform the revision 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 Architect shall mutually agree on changes to the project scope or the Budget. Notwithstanding anything to the contrary herein, since Project Architect has no control over: (i) the cost of labor, materials, equipment, or services furnished by others; (ii) the contractor or its subcontractor(s)' methods of determining prices; (iii) competitive bidding; (iv) market conditions; or (v) similar material factors, Project Architect's, Cost Estimate, opinions of project costs or construction costs are to be made on the basis of Project Architect's experience and qualifications and represent Project Architect's reasonable judgment as an experienced and qualified professional engineering firm, familiar with the construction industry; but Project Architect cannot and does not guarantee that proposals, bids, or actual project or construction costs will not vary from estimates prepared by Project Architect. Opinions of probable cost shall be based upon 2022 construction prices.

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

1.1.9 Project Architect 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 Architect on the form and the Project Architect 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 Architect 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 Architect'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 Architect's additional services subsequently incurred for such unlisted changes shall be borne or reimbursed by Project Architect.

1.1.10 Project Architect agrees and acknowledges that Owner is entering into this Agreement in reliance on Project Architect's represented professional abilities with respect to performing Project Architect's services, duties, and obligations under this Agreement. Project Architect agrees to use Project Architect's professional efforts, skill, judgment, and abilities in performing Project Architect's services in conformance with the industry standard of care set forth in Tex. Local Government Code § 271.904(d). Project Architect agrees to use its efforts to perform its services (i) in accordance with the with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, 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 Architect that will limit or prevent performance by Project Architect of its services. Project Architect hereby agrees to correct, as a part of the existing authorized fees hereunder and at no additional cost to Owner, any of its Services, and the services of its consultants, that do not meet the standard of care.

1.1.11 Project Architect is entitled to reasonably rely upon the accuracy and suitability of any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to Project Architect (by Owner or any other party) that Project Architect uses for the Project. Project Architect shall identify to the Owner in writing any such documents or data which, in Project Architect's professional opinion, are unsuitable, improper, or inaccurate in connection with the purposes for which such documents or data are furnished.

1.1.12 Project Architect's services shall be performed in accordance with the industry standard of care set forth in Tex. Local Government Code § 271.904(d). Neither acceptance nor approval of Project Architect's services by the Owner shall relieve Project Architect of any of its professional duties or release it from any liability, it being understood that Owner is, at all times, relying upon Project Architect for its skill and knowledge in performing Project Architect's services. Owner shall have the right to reject any of Project Architect'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 Architect or its consultants. Upon notice of any such errors or omissions, Project Architect shall promptly provide any and all services necessary to correct or remedy them as a part of the existing authorized fees hereunder, meaning at no additional cost to the Owner. Project Architect'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 Architect shall not proceed to any phase of design not expressly authorized by the Owner, except at the Project Architect's own financial risk.

1.1.14 Project Architect agrees to furnish reasonable business administration and superintendence as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect to design the Project in a manner consistent with the Owner's interests.

1.1.15 Project Architect shall allocate adequate time, personnel and resources as necessary to perform its services. Project Architect'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 Architect. The Senior Principal(s) shall act on behalf of Project Architect with respect to all phases of Project Architect's Services and shall be available as required for the benefit of the Project and Owner.

1.1.16 Project Architect 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 Architect's design for the Project and the construction of the Project. The Project Architect 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 Architect to perform its services in accordance with Tex. Local Government Code § 271.904(d) 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 Architect, 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 Architect 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 Architect 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 Architect, 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 Architect 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 Architect 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 Architect. 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 Architect shall include the expiration date of the insurance. Project Architect 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 \$1,000,000 per claim, \$2,000,000 aggregate, with tail coverage of five (5) years. Failure to provide tail coverage constitutes a breach of this agreement. Such insurance shall cover all professional services rendered by or on behalf of the Project Architect 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 Architect 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 Architect 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.

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

- 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 Architect 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, consistent with Project Architect's indemnification obligations under this Agreement. 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 Architect 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

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

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

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

## **1.2 Programming Services Phase (To be Combined with Schematic Design Phase)**

1.2.1 Project Architect shall complete a Programming Phase, which includes external and internal stakeholder input and buy-in for the entirety of the project. Stakeholders include, butare 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 Architect and his entire consultant team, including Civil Engineer, shall prepare a comprehensive Programming Document for theproject. The anticipated program table of contents are summarized in an attached Exhibit D.

1.2.3 Project Architect 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 Architect 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 Architect 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 Architect 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 (To Be Combined with Programming Phase)**

1.3.1 Based on the mutually agreed upon Programming Document, Budget and the Project Schedule, the Project Architect 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 Architect shall review alternative approaches to design and construction for the Project and the Schematic Design Documents as they are being prepared at intervals appropriate tothe progress of the Project with the Owner at the Project location.

Project Architect shall provide all services necessary to perform the services of this Phase (preparation of Schematic Design Documents).

1.3.2 Project Architect 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 Architect 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 Architect 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 Architect 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 Architect 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 Architect shall prepare, for approval by the Owner, Design Development Documents. The Project Architect 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 Architect 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 Architect 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 Architect 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 Architect 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.

1.4.6 The Project Architect shall prepare preliminary recommended furniture layouts for all spaces where it is deemed important to substantiate the fulfillment of program space requirements, or to coordinate with specific architectural, mechanical and electrical elements.

#### **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 Architect 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, not including Owner-approved changes and Acts of God, as otherwise specified in this Agreement. The Project Architect will be responsible for managing the design to stay within such Budget. The Project Architect 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 Architect 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 Architect 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. In no event is Project Architect acting as a "municipal advisor" as set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission. Consequently, Project Architect's services expressly do not include providing advice pertaining to insurance, legal, finance, surety-bonding, or similar services.

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

1.5.5 The Project Architect 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 Architect, at the Project Architect'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 Architect 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 Architect shall pay for the reproduction of all plans, specifications and other documents for use by the Project Architect 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. However, addenda documents issued after the bid documents are reproduced, except for changes generated by Owner, shall be supplied at the Project Architect's expense.

1.5.8 The Project Architect 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 Architect 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 Architect 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 Architect 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 Architect shall assist the Owner upon Owner's request during the Owner's bidding process by: resolving questions about Bid and RFP Documents received through the Owners bidding process; 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 a single contract for construction. Project Architect 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 Architect's services, including during the Warranty period have been satisfactorily performed, whichever occurs later.

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

- a) The Project Architect 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 Architect shall manage, sign, and coordinate execution of all Change Orders.
- b) The Project Architect shall chair all monthly meetings scheduled by the Owner or Project Architect and shall promptly provide summary notes to all parties. Project Architect or engineer shall attend up to three (3) pre-installation or coordination meetings, which may be virtual upon the City's determination, as required for critical milestones of project.
- c) The Project Architect shall assist the Owner in making arrangements for a Pre-Construction Conference and shall assist in preparation of a Pre-Construction Conference agenda for the Pre-Construction Conference and shall distribute copies to all parties..

1.7.3 The Project Architect 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 Architect 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 Architect shall review periodic updates of all schedules with Owner and Contractor to evaluate appropriateness.

1.7.4 The Project Architect 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 Architect 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. A representative from each major discipline under the direction of the Project Architect shall visit the site at least twice during construction activities related to the respective 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 Architect and its consultants shall submit written reports of their site visits and meetings. The Project Architect 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 Architect shall keep the Owner informed of the progress and quality of the Work, and shall endeavor to observe and report defects and deficiencies in the Work of the Contractor. Project Architect shall notify Owner and the Contractor in writing of any portions of the work which Project Architect has observed as not being in conformity with the Construction Documents and make recommendations as to correction of the deficiencies or defects. Project Architect 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 observation, the Project Architect 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 Architect and its consultants shall provide written reports of all site visits to the Owner and Contractor.

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

1.7.7 Notwithstanding anything in this Agreement to the contrary, the Project Architect 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 Architect shall at all times have access to the Work wherever it is in preparation or progress.

1.7.9 The Project Architect 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 Architect to the Owner, based on the Project Architect'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 Architect'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 Architect 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 Architect 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 Architect 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 Architect 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 Architect'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 Architect shall review interior designs and/or furniture selections proposed by the Owner and advise the Owner on their aesthetic compatibility with the Project Architect's design.

1.7.14 The Project Architect 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 Architect's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the Project Architect 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 Architect 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 Architect 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 Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Project Architect's review shall not constitute approval of any construction means or methods.

1.7.16 Project Architect shall clarify 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 Architect 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 Architect 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 Architect 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 Architect 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 Architect 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 Architect and its consultants shall prepare a list of items which Project Architect 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 Architect shall review, for conformance with the Contract Documents, Contractor's submission of guarantees and warranties.

1.7.22 The Project Architect 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 Architect 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 Architect shall certify final payment to the Contractor when the requirements of the Contract between Owner and Contractor have been met.

1.7.24 Project Architect 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 Architect shall review a milestone schedule provided by the successful bidder (contractor) 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 Architect shall be available after final payment to advise the Owner regarding Warranty items and to Warranty work during the Warranty period. Project Architect 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 Architect 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 Architect has determined that such service are Additional Services, and which shall set forth the maximum amount of fees and reimbursable expenses for which Project Architect is prepared to perform such Additional Services, together with a proposed schedule for the performances of such Additional Service. Project Architect 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 Architect 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 Architect to complete its responsibilities hereunder free of material errors and omissions. Project Architect 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 Architect shall perform all of Project Architect's services described herein as expeditiously as is consistent with (1) Project Architect's professional efforts, skill and care in accordance with the industry standard of care set forth in Tex. Local Government Code § 271.904(d), (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 Architect shall at all times provide sufficient personnel to accomplish Project Architect's services within the time limits set forth in the schedules described herein.

1.9.2 Project Architect 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 Architecture 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 Architect 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 Architect with a full description of the requirements of the Project.

2.2      The Owner shall furnish any available surveys, geotechnical reports or other special investigations of the Project site as requested by the Architect and as reasonably necessary for the completion of Architect's Services. The Owner shall furnish structural, mechanical, chemical and other laboratory tests as reasonably required.

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

2.5      The Owner designates City of Georgetown Public Works 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 Architect's Services and include actual and reasonable expenses incurred by the Architect, its employees and sub-consultants solely and directly in connection with obtaining permits, including any plan review fees for any permit, including accessibility, city permits, TCEQ, and any other regulatory costs during the design and bidding portion of the project.

3.2      Architect shall submit receipts for all reimbursable expenses along with any reimbursement request.

## **Article 4      Basis of Compensation**

The Owner shall compensate the Project Architect for the services provided in accordance with Article 4. Payments to the Project Architect, 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 Architect

shall be paid a fixed fee not to exceed amount of **\$96,500.00** 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.

<b>Milestone Phase</b>	<b>Amount (%)</b>
Schematic Design	10%
Design Development	15%
Construction Documents	45%
Bidding/Negotiation Services	8%
Construction Administration	22%

#### **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 Architect, the fee for the additional Basic Services required will be a negotiated lump sum based on a fee estimate prepared by the Architect. No additional services will be performed prior to receiving approval from the City.

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

For reimbursable expenses, as described in Article 3, the Project Architect's reimbursement shall be calculated as an amount not to exceed 1.10 times the amounts actually expended by the Project Architect, the Project Architect'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 Architect that are not Basic Services or additional Basic Services due to changes in Project scope, the Project Architect's fee shall be calculated as follows.

4.5.3 The fees for Additional Services will be negotiated by the Owner and the Project Architect 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 Architect, the fees for Additional Services shall be calculated on an hourly basis.

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

5.1 Project Architect shall present monthly Applications for Payment to the Owner detailing the Project Architect's Services and approved Additional Services performed in the previous month.

5.2 Owner shall promptly review the Application for Payment and notify Project

Architect whether the Application for Payment is approved or disapproved, in whole or in part. Owner shall promptly pay Project Architect 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. Project Architect 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 Project Architect such sums as are necessary to protect Owner against any loss or damage which result from negligence by Project Architect or failure of Project Architect to perform its obligations under this Agreement.

## **Article 6 Project Architect Accounting Records**

6.1 Records of Project Architect costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative upon prior advanced notice 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. Notwithstanding anything to the contrary herein, Project Architect's proprietary, financial information unrelated to this Project and/or Agreement is not subject to audit.

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

7.1 The Owner shall have the title to and ownership of all documents delivered by Architect 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. Architect shall deliver all documents to the Owner at completion of the Project, termination of Services, or upon Owner's request. Architect may retain copies of its work product. Use of Architect's work product for modification, extension, or expansion of this Project or on any other project, unless under the direction of Architect, shall be without liability to Architect and Architect's subconsultants.

7.2 The Architect 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 the other party'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 Architect.

**8.3 Compensation.** In the event of termination not the fault of the Architect, the Architect shall be entitled to compensation for all services satisfactorily performed to the termination date, together with approved Reimbursable Expenses then due, provided Architect delivers to Owner

statements, accounts, reports and other materials as required for payment along with all reports, documents and other materials prepared by Architect prior to termination.

#### **Article 9           Successors and Assigns**

The Owner and the Project Architect, 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 Architect, and Project Architect's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party without prior written approval from Owner. 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 Architect 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 Architect.

#### **Article 11          Indemnity**

**11.1    General Obligation to Indemnify and Defend. TO THE FULLEST EXTENT PERMITTED BY LAW, PROJECT ARCHITECT AGREES TO INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS ELECTED OFFICIALS, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, AND REPRESENTATIVES AND VOLUNTEERS OF AND FROM THIRD-PARTY TORT DAMAGES, BODILY INJURIES (INCLUDING DEATH), CLAIMS, TANGIBLE 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 ARCHITECTS, 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 THE NEGLIGENT ACT OR OMISSION OR INTENTIONAL TORT OF PROJECT ARCHITECT OR PROJECT ARCHITECT'S OFFICERS, DIRECTORS, PARTNERS, AGENTS, EMPLOYEES, OR CONSULTANTS. PROJECT ARCHITECT 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 PROJECT ARCHITECT AGREES TO INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS ELECTED OFFICIALS, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES AND VOLUNTEERS OF AND FROM THIRD-PARTY**

**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 ARCHITECTS, 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 ARCHITECT OR ARCHITECT'S OFFICERS, DIRECTORS, PARTNERS, AGENTS, EMPLOYEES, OR CONSULTANTS, EXCEPTING TO THE EXTENT THE INTELLECTUAL PROPERTY INFRINGEMENT STEMS FROM INFORMATION AND/OR TECHNOLOGY SPECIFIED, PROVIDED, OR VERIFIED BY OWNER. PROJECT ARCHITECT SHALL, AT ITS OWN EXPENSE, DEFEND SUITS OR PROCEEDINGS INSTITUTED AGAINST OWNER, AND PAY AWARDS OF DAMAGES ASSESSED WHICH RESULT FROM ANY SUCH CLAIM, SUITOR 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 IN RELATION TO SECTION 11.2.1 ABOVE, PROJECT ARCHITECT SHALL MAKE EVERY REASONABLE EFFORT TO SECURE THE SUSPENSION OF ANY SUCH RESTRAINING ORDER OR TEMPORARY INJUNCTION. IF THE SERVICES ARE HELD TO CONSTITUTE AN INFRINGEMENT, AND PERMANENTLY ENJOINED, PROJECT ARCHITECT SHALL MAKE EVERY REASONABLE EFFORT TO SECURE FOR OWNER A LICENSE AT PROJECT ARCHITECT'S EXPENSE AUTHORIZING THE CONTINUED USE OF THE ALLEGED INFRINGING PORTION OF THE SERVICES. IF PROJECT ARCHITECT IS UNABLE TO SECURE SUCH LICENSE WITHIN A REASONABLE TIME, PROJECT ARCHITECT 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, PROJECT ARCHITECT SHALL REIMBURSE OWNER FOR ANY COSTS INCURRED AS A RESULT OF THE UNAVAILABILITY OF THE INFRINGING ITEM OR ITS NON-INFRINGEMENT REPLACEMENT.**

**11.3** Project Architect'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 Project Architect, 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 Project Architect shall relieve Architect of its obligations under this Agreement except to the extent that Project Architect 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, Project Architect shall assume control of the defense and/or resolution of the claim.

**11.5** Project Architect assumes full responsibility for the Services to be performed and, to the extent permitted by Texas Insurance Code Section 151.102, 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 Architect, 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 Architect 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 Architect acknowledges that it is engaged as an independent Contractor and that Owner has no responsibility to provide Project Architect or its employees with transportation, insurance or other fringe benefits normally associated with employee status. Project Architect 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 Architect hereby agrees to make Project Architect's own arrangements for any of such benefits as Project Architect may desire and agrees that Project Architect 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 Architect in the performance of services for Owner, which is not generally known to the public and which is clearly marked as "Confidential" or "Proprietary", shall be confidential. Project Architect shall not, beginning on the date of first association or communication between Owner and Project Architect 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 Architect'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 Architect shall not make any press releases, public statements, or advertisement referring

to the Project or the engagement of Project Architect 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 Architect shall obtain assurances similar to those contained in this Subparagraph from persons, vendors and consultants retained by Project Architect. Project Architect acknowledges and agrees that a breach by Project Architect of the provisions hereof will cause Owner irreparable injury and damage. Project Architect, 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. Confidential information shall not include information which: i) is independently developed by either party without the use of any confidential information disclosed hereunder; and ii) was or becomes available to either party or its representatives on a non-confidential basis, provided that the source of the information is not bound by a confidentiality agreement or otherwise prohibited from transmitting such information by a contractual, legal, or fiduciary duty.

**12.7 Appointment.** Owner hereby expressly reserves the right from time to time to designate by notice to Project Architect a representative to act partially or wholly for Owner in connection with the performance of Owner's obligations hereunder. Project Architect 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 Project Architect 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 Project Architect fail to resolve a dispute through negotiation, then Owner and Project Architect 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 Project Architect 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 Project Architect in a court of competent jurisdiction. The prevailing party shall be entitled to recover its attorneys' fees, costs, and expenses, including arbitrator fees and costs and AAA fees and costs. Each party irrevocably waives, to the fullest extent permitted by applicable laws, any and all right to trial by jury.

12.8.4 Upon Owner's request, Project Architect 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 Architect:  
Derek Mayo, PE PMP  
285 SE Inner Loop, Suite 110  
Georgetown, TX 78626

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 Architect 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 Architect has been duly authorized to act for and bind Project Architect.

**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 Architect.

12.12.1 If the Owner and the Internal Revenue Service (IRS) determine that the Project Architect is eligible to receive the 179D deduction allocation as a "Designer" for the purposes of Section 179D of the Code or that Project Architect could otherwise profit financially from the monetization of the benefit (separately and collectively, the "Rebate"), Project Architect 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 Architect. At its sole discretion, the Owner shall determine whether to receive its portion of the Rebate in cash, discounted Project Architect fees or both. To the extent it is determined that this deduction and Rebate are applicable to Project Architect's services, Owner agrees to notify Project Architect in writing of such applicability and to compensate Project Architect, at the rates set forth in Exhibit C, for the time and effort expended to submit any paper work or other necessary procedures in order to comply with this Section 12.12.1.

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 Architect 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 Architect 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 Architect.

**12.14 Mutual Waiver.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, AND TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT IN THE CASE OF INDEMNITY, FRAUD, OR GROSS NEGLIGENCE, NEITHER OWNER, PROJECT ARCHITECT, NOR THEIR RESPECTIVE PERSONNEL SHALL BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES, OR DAMAGES ARISING FROM OR IN CONNECTION WITH LOSS OF USE, LOSS OF REVENUE OR PROFIT (ACTUAL OR ANTICIPATED), LOSS BY REASON OF SHUTDOWN OR NON-OPERATION, INCREASED COST OF CONSTRUCTION, COST OF CAPITAL, COST OF REPLACEMENT POWER OR CUSTOMER CLAIMS, AND OWNER HEREBY RELEASES PROJECT ARCHITECT, AND PROJECT ARCHITECT RELEASES OWNER, FROM ANY SUCH LIABILITY. THE FOREGOING WAIVER SHALL NOT INCLUDE CLAIMS CAUSED BY GROSS NEGLIGENCE OR FRAUD.

**[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 Airport**

Georgetown Municipal Airport serves general and corporate aviation, providing full-service amenities, aviation fuel, avionics sales, service, and aircraft maintenance. The 5,004-foot runway provides a gateway to the Texas Hill Country. The Airport began operations on November 11, 1945.

##### **1.3 Location**

The Airport Terminal at 500 Terminal Drive is the main point of interest for most visitors. This new Airport Maintenance Facility will be constructed in an undeveloped area located at 401 Wright Brothers Drive.

#### **2.0 Project Elements**

##### **2.1 Airport Maintenance Facility**

The City of Georgetown is planning the design and construction of a new Airport Maintenance Facility approximately 80' x 60' with an additional 20' covered storage on a City owned property. Successful completion of this project will provide the City of Georgetown with adequate space for existing staff; improved operational efficiency; improved security for staff; efficient operational and maintenance expenses (through the incorporation of energy efficient / sustainable design elements); adequate parking for staff; improved service; flexibility; and direction to accommodate future growth.

## **2.2 Design Scope**

2.2.1 The successful Project Architect 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 must give consideration to abutting the existing residential area.

2.2.3 Development of access to the new facility off of Wright Brothers Drive;

2.2.4 Involve stakeholder and possibly community input;

2.2.5 Provide design of a facility to allow for a conducive work environment for Airport Maintenance staff. 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;

2.2.6 Anticipate and prepare for the requirements of future development;

2.2.7 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;

2.2.8 Design a facility that utilizes the latest in energy efficient materials and equipment;

2.2.9 Comply with all design standards established in the City's Unified Development

Code;

2.2.10 Develop budget estimates for the facility construction; and

## **2.3 Owner Provided Services**

2.3.1 Phase I Environmental Site Assessment

2.3.2 Property Surveys, Boundary Surveys, easement development, zoning verification and research, and any other real property related services.

2.3.3 Geotechnical Reports

2.3.4 Geological Assessment

2.3.5 Material Testing

2.3.6 Purchase and design of Audio-Visual equipment and installation .

Information will be provided to Architect for inclusion in the drawing set. Conduit and infrastructure (ie. Junction and gang boxes) will be included in the drawings for installation by General Contractor.

2.3.7 Purchase of Data Cabling (design is included in Basic Services)

2.3.8 Purchase and design of Security equipment and installation

2.3.9 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 Architect 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	_____
<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	_____
Submit for Owner Review, 100% Documents	_____
Joint Review for Owner	_____
DevelopmentOwner Approves DD	_____
Documents	_____
<i>Pre Application Conference with City Planning Department</i>	
Submit Pre-Application Request	_____
Meeting with City Planning	_____
<i>Construction Documents Phase</i>	
Authorize AE to Start	_____
A/E Submit 50% CD's for Owner Review	_____
Joint Review for Owner Comments	_____
<del>A/E Submit 95% CD's for Review</del>	_____
<del>Joint Review for Owner Comments</del>	_____
A/E Submit 100% CD's for Review	_____
A/E Submit to City Plan & Bldg	_____
Review	_____
Submit To TCEQ for WPAP	_____
Joint Review for Owner Comments	_____
Owner Approves 100% Construction Documents	_____
Owner advertises for Competitive Sealed Proposals	_____
<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

Josh Crawford, PE (Principal and QC  
Manager)

Derek Mayo, PE, PMP (Senior Project Manager / Project Team  
Manager)

Greg Archer, AIA, LEED AP BD+C (Lead  
Architect)

Architect shall complete this information and must state the hourly  
rateIdentify all staff:

<u>Personnel Title/Position</u>	<u>Hourly Billing Rate</u>
Senior Project Manager	\$259.00
Architect 4	\$229.00
Architect 2	\$185.00
Engineer 3	\$220.00
Engineer 1	\$157.00
Administrative Staff	\$92.00

## **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 requirements 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.*

*CONFIDENTIAL*

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