

**TOWN OF ADDISON, TEXAS**

**RESOLUTION NO. R15-010**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A MASTER AGREEMENT FOR PROFESSIONAL SERVICES WITH GARVER, LLC IN AN AMOUNT NOT TO EXCEED \$100,000.00 FOR THE 2015 FISCAL YEAR, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:**

**Section 1.** The Master Agreement for Professional Services between the Town of Addison, Texas and Garver, LLC, attached hereto as **Exhibit A**, is hereby approved in an amount not to exceed \$100,000.00 for the 2015 fiscal year. The City Manager is hereby authorized to execute the agreement and utilize the services contemplated therein by approving work orders under the agreement.

**Section 2.** This Resolution shall take effect from and after its date of adoption.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 28th day of April, 2015.

\_\_\_\_\_  
Todd Meier, Mayor

ATTEST:

By: \_\_\_\_\_  
Chelsea Gonzalez, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Brenda N. McDonald, City Attorney

## **EXHIBIT A**



**AGREEMENT FOR PROFESSIONAL SERVICES  
Addison Airport  
Addison, Texas  
Project No. 14081104**

THIS AGREEMENT FOR PROFESSIONAL SERVICES is made by and between **Addison Airport of Addison, Texas** hereinafter referred to as "Owner," and **GARVER, LLC**, hereinafter referred to as "GARVER".

The Owner intends to make the following improvements:

Professional engineering and planning services related to Addison Airport.

GARVER will provide professional services related to these improvements as described herein.

The Owner and GARVER in consideration of the mutual covenants in this contract agree in respect of the performance of professional services by GARVER and the payment for those services by the Owner as set forth below. Execution of the agreement by GARVER and the Owner constitutes the Owner's written authorization to GARVER to proceed on the date last written below with the services described herein. This agreement supersedes all prior written or oral understandings associated with services to be rendered, including any teaming agreements.

### **SECTION 1 - EMPLOYMENT OF GARVER**

The Owner agrees to engage GARVER, and GARVER agrees to perform professional services in connection with the proposed improvements as stated in the sections to follow. These services will conform to the requirements and standards of the Owner and conform to the standards of practice ordinarily used by members of GARVER's profession practicing under similar conditions. For having rendered such services, the Owner agrees to pay GARVER compensation as stated in the sections to follow.

### **SECTION 2 - SCOPE OF SERVICES**

We understand our scope of services will be determined on an as needed basis and include performing professional services when requested in writing by the Owner and agreed to by GARVER. More specifically, we propose to accomplish, but not limited to, the following tasks:

1. Capital Improvement Program (CIP) development and associated documents.
2. Perform field surveys to collect horizontal and vertical elevations and other information needed in design and preparation of plans for projects.
3. Perform geotechnical services for projects.
4. Perform pavement designs utilizing FAA pavement design software FAARFIELD.
5. Perform airport development planning.
6. Review airport development documents prepared by others.
7. Attend stakeholder meetings.
8. Prepare and submit FAA Form 7460-1 for proposed on-airport construction projects
9. Prepare and submit SWPPP documents for projects.
10. Perform design services to assemble plans, specifications, and front end bid documents for projects agreed upon by the Owner and GARVER.

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11. Provide construction and closeout phase services.

### **SECTION 3 - PAYMENT**

For the work described under SECTION 2 - SCOPE OF SERVICES, the Owner will pay GARVER on an hourly rate basis. The Owner represents that funding sources are in place with the available funds necessary to pay GARVER.

If any payment due GARVER under this agreement is not received within 60 days from date of invoice, GARVER may elect to suspend services under this agreement without penalty or liquidated damages assessed from the Owner.

The Owner will pay GARVER, for time spent on the project, at the rates shown in Appendix A for each classification of GARVER's personnel (may include contract staff classified at GARVER's discretion) plus reimbursable expenses including but not limited to printing, courier service, reproduction, and travel. For informational purposes, a breakdown of GARVER's current hourly rates for each employee classification is included in Appendix A. The rates shown in Appendix A will be increased annually with the first increase effective on or about June 1, 2015.

Expenses other than salary costs that are directly attributable to performance of our professional services will be billed as follows:

1. Direct cost for travel, long distance and wireless communications, outside reproduction and presentation material preparation, and mail/courier expenses.
2. Direct cost plus 15 percent for subcontract/subconsultant fees.
3. Charges similar to commercial rates for reports, plan sheets, presentation materials, etc.
4. \$50 per month for each month computer design/modeling software is utilized.
5. The amount allowed by the federal government for mileage with an additional \$0.05 for survey trucks/vans.

The Owner will pay GARVER on a monthly basis, based upon statements submitted by GARVER to the Owner for the scope of services described in this agreement. Payments not received within 60 days of invoice date will be subject to a one percent monthly simple interest charge.

As directed by the Owner, some billable work may have been performed by GARVER prior to execution of this agreement. Payment for this work will be made in accordance with the fee arrangement established herein, as approved by the Owner.

Additional Services (Extra Work). For work not described or included in Section 2 – Scope of Services but requested by the Owner in writing, the Owner will pay GARVER, for time spent on the project, at the rates shown in Appendix A for each classification of GARVER's personnel (may include contract staff classified at GARVER's discretion) plus reimbursable expenses including but not limited to printing, courier service, reproduction, and travel. The rates shown in Appendix A will be increased annually with the first increase effective on or about June 1, 2015.

### **SECTION 4 - OWNER'S RESPONSIBILITIES**

In connection with the project, the Owner's responsibilities shall include, but not be limited to, the following:

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1. Giving thorough consideration to all documents presented by GARVER and informing GARVER of all decisions within a reasonable time so as not to delay the work of GARVER.
2. Making provision for the employees of GARVER to enter public and private lands as required for GARVER to perform necessary preliminary surveys and other investigations.
3. Obtaining the necessary lands, easements and right-of-way for the construction of the work. All costs associated with securing the necessary land interests, including property acquisition and/or easement document preparation, surveys, appraisals, and abstract work, shall be borne by the Owner outside of this contract, except as otherwise described in Section 2 – Scope of Services.
4. Furnishing GARVER such plans and records of construction and operation of existing facilities, available aerial photography, reports, surveys, or copies of the same, related to or bearing on the proposed work as may be in the possession of the Owner. Such documents or data will be returned upon completion of the work or at the request of the Owner.
5. Furnishing GARVER a current boundary survey with easements of record plotted for the project property.
6. Paying all plan review and advertising costs in connection with the project.
7. Providing legal, accounting, and insurance counseling services necessary for the project and such auditing services as the Owner may require.
8. Furnishing permits, permit fees, and approvals from all governmental authorities having jurisdiction over the project and others as may be necessary for completion of the project.
9. Giving prompt written notice to GARVER whenever the Owner observes or otherwise becomes aware of any defect in the project or other events which may substantially alter GARVER's performance under this Agreement.
10. Owner will not hire any of GARVER's employees during performance of this contract and for a period of one year beyond completion of this contract.
11. Furnishing GARVER a current geotechnical report for the proposed site of construction. GARVER will coordinate with the geotechnical consultant, the Owner has contracted with, on the Owner's behalf for the information that is needed for this project.

### **SECTION 5 – MISCELLANEOUS**

#### **5.1 Instruments of Service**

GARVER's instruments of service provided by this agreement consist of the printed hard copy reports, drawings, and specifications issued for the Assignment or Project; whereas electronic media, including CADD files, are tools for their preparation. As a convenience to the Owner, GARVER will furnish to the Owner both printed hard copies and electronic media. In the event of a conflict in their content, however, the printed hard copies shall take precedence over the electronic media.

GARVER's electronic media are furnished without guarantee of compatibility with the Owner's software or hardware, and GARVER's sole responsibility for the electronic media is to furnish a

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replacement for defective disks within thirty (30) days after delivery to the Owner.

GARVER retains ownership of the printed hard copy drawings and specifications and the electronic media. The Owner is granted a license for their use, but only in the operation and maintenance of the Project or Assignment for which they were provided. Use of these materials for modification, extension, or expansion of this Project or on any other project, unless under the direction of GARVER, shall be without liability to GARVER and GARVER's consultants. The Owner shall indemnify, defend, save harmless GARVER, GARVER's consultants, and the officers and employees of any of them from and against any and all claims, liabilities, damages, losses, and costs, including but not limited to costs of defense, arising out of the Owner's use of these materials for modification, extension, or expansion of this Project or on any other project not under the direction of GARVER.

Because data stored in electronic media form can be altered, either intentionally or unintentionally, by transcription, machine error, environmental factors, or by operators, it is agreed that the Owner shall indemnify, defend, save harmless GARVER, GARVER's consultants, and the officers and employees of any of them from and against any and all claims, liabilities, damages, losses, and costs, including but not limited to costs of defense, arising out of changes or modifications to the data in electronic media form in the Owner's possession or released to others by the Owner and for any use of the electronic media and printed hard copy drawings and specifications outside the license granted by this provision.

### **5.2 Opinions of Cost**

Since GARVER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, GARVER's Estimates of Project Costs and Construction Costs provided for herein are to be made on the basis of GARVER's experience and qualifications and represent GARVER's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but GARVER cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from estimates prepared by GARVER.

The Owner understands that the construction cost estimates developed by GARVER do not establish a limit for the construction contract amount. If the actual amount of the low construction bid exceeds the construction budget established by the Owner, GARVER will not be required to re-design the project without additional compensation.

**5.3 Underground Utilities** GARVER will not provide research regarding utilities and survey utilities located and marked by their owners as provided for in this agreement. Additionally, since many utility companies typically will not locate and mark their underground facilities prior to notice of excavation, GARVER is not responsible for knowing whether underground utilities are present or knowing the exact location of utilities for design and cost estimating purposes. Additionally, GARVER is not responsible for damage to underground utilities, unmarked or improperly marked, caused by geotechnical, potholing, construction, or other subconsultants working under a subcontract to this agreement.

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### **5.4 Insurance**

GARVER currently has in force, and agrees to maintain in force for the life of this Contract, the following minimum schedule of insurance:

Worker's Compensation	Statutory Limit
Automobile Liability (Combined Property Damage and Bodily Injury)	\$500,000.00
General Liability (Combined Property Damage and Bodily Injury)	\$1,000,000.00
Professional Liability	\$2,000,000.00

### **5.5 Records**

GARVER will retain all pertinent records for a period of two years beyond completion of the project. Owner may have access to such records during normal business hours.

### **5.6 Indemnity Provision**

Subject to the limitation on liability set forth in Section 5.8, GARVER agrees to indemnify the Owner for damages, liabilities, or costs (including reasonable attorneys' fees) to the extent the damages and costs are caused by the negligent acts, errors, or omissions of GARVER, its subconsultants, or any other party for whom GARVER is legally liable, in the performance of their professional services under this contract.

The Owner agrees to indemnify GARVER for damages, liabilities, or costs (including reasonable attorneys' fees) to the extent the damages and costs are caused by the negligent acts, errors, or omissions of the Owner, its agents, or any other party for whom the Owner is legally liable, in the performance of their professional services under this contract.

In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of GARVER and the Owner, they shall be borne by each party in proportion to its own negligence.

Owner agrees that any claim or suit for damages made or filed against GARVER by Owner will be made or filed solely against GARVER or its successors or assigns and that no member or employee of GARVER shall be personally liable to Owner for damages under any circumstances.

### **5.7 Design without Construction Phase Services**

In the event GARVER's Scope of Services under this agreement is not amended to include project observation or review of the Contractor's performance or any other construction phase services, the Owner assumes all responsibility for interpretation of the Construction Contract Documents and for construction observation and supervision and waives any claims against GARVER that may be in any way connected thereto.

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In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold GARVER harmless from any loss, claim or cost, including reasonable attorneys' fees and costs of defense, arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Construction Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of GARVER.

If the Owner requests in writing that GARVER provide any specific construction phase services and if GARVER agrees in writing to provide such services, then they shall be compensated for the work as Additional Services.

### **5.8 Limitation of Liability**

In recognition of the relative risks and benefits of the project to both the Owner and GARVER, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of GARVER and its subconsultants to the Owner and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims for expenses from any cause or causes, so that the total aggregate liability of GARVER and its subconsultants to all those named shall not exceed GARVER's total fee for services rendered on that particular project. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contractor warranty, and indemnity obligations.

Notwithstanding any other provision to the contrary in this Agreement or a Work Authorization and to the fullest extent permitted by law, neither Owner nor Garver shall be liable, whether based on contract, tort, negligence, strict liability, warranty, indemnity, error and omission, or any other cause whatsoever, for any consequential, special, incidental, indirect, punitive, or exemplary damages, or damages arising from or in connection with loss of power, 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 Garver, and Garver releases Owner, from any such liability.

#### *5.8.1 Hazardous Materials*

Nothing in this agreement shall be construed or interpreted as requiring GARVER to assume any role in the identification, evaluation, treatment, storage, disposal, or transportation of any hazardous substance or waste. Notwithstanding any other provision to the contrary in this Agreement or a Work Authorization and to the fullest extent permitted by law, Owner shall indemnify, defend and save GARVER and its affiliates, subconsultants, agents, suppliers, and any and all employees, officers, directors of any of the foregoing, if any, from and against any and all losses which arise out of the performance of the Services and relating to the regulation and/or protection of the environment, including, without limitation, losses incurred in connection with characterization, handling, transportation, storage, removal, remediation, disturbance, or disposal of hazardous material, whether above or below ground.

### **5.9 Mediation**

In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the Owner and GARVER agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise.

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The Owner and GARVER further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

### **SECTION 6 - CONTROL OF SERVICES**

This is a Texas Contract and in the event of a dispute concerning a question of fact in connection with the provisions of this contract which cannot be disposed of by mutual agreement between the Owner and GARVER, the matter shall be resolved in accordance with the Laws of the State of Texas.

This Agreement may be terminated by either party by seven (7) days written notice in the event of substantial failure to perform in accordance with the terms hereof by the one (1) party through no fault to the other party or for the convenience of the Owner upon delivery of written notice to GARVER. If this Agreement is so terminated, GARVER shall be paid for the time and materials expended to accomplish the services performed to date, as provided in SECTION 3 - PAYMENT; however, GARVER may be required to furnish an accounting of all costs.

### **SECTION 7 - SUCCESSORS AND ASSIGNS**

The Owner and GARVER each bind themselves and their successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; neither the Owner nor GARVER shall assign, sublet, or transfer their interest in this agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

### **SECTION 8 – APPENDICES AND EXHIBITS**

- 8.1 The following Appendices and/or Exhibits are attached to and made a part of this Agreement:  
8.1.1 Appendix A – Garver Rate Schedule

This Agreement may be executed in two (2) or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.



# EXHIBIT A



APPENDIX A  
ADS On-Call  
Garver Hourly Rate Schedule - June, 2014

Classification	Rates
<b>Engineers / Architects</b>	
E-1.....	\$ 102.00
E-2.....	\$ 122.00
E-3.....	\$ 143.00
E-4.....	\$ 170.00
E-5.....	\$ 210.00
E-6.....	\$ 260.00
M-1.....	\$ 318.00
<b>Planners / Environmental Specialist</b>	
P-1.....	\$ 125.00
P-2.....	\$ 149.00
<b>Designers</b>	
D-1.....	\$ 93.00
D-2.....	\$ 105.00
D-3.....	\$ 125.00
D-4.....	\$ 147.00
<b>Technicians</b>	
T-1.....	\$ 79.00
T-2.....	\$ 108.00
T-3.....	\$ 117.00
<b>Surveyors</b>	
S-1.....	\$ 49.00
S-2.....	\$ 58.00
S-3.....	\$ 81.00
S-4.....	\$ 112.00
S-5.....	\$ 149.00
S-6.....	\$ 173.00
2-Man Crew (Survey).....	\$ 189.00
3-Man Crew (Survey).....	\$ 231.00
2-Man Crew (GPS Survey).....	\$ 224.00
3-Man Crew (GPS Survey).....	\$ 265.00
<b>Construction Observation</b>	
C-1.....	\$ 87.00
C-2.....	\$ 110.00
C-3.....	\$ 134.00
C-4.....	\$ 173.00
<b>Management/Administration</b>	
M-1.....	\$ 318.00
X-1.....	\$ 59.00
X-2.....	\$ 76.00
X-3.....	\$ 122.00
X-4.....	\$ 144.00

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