

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A MASTER AGREEMENT FOR PROFESSIONAL SERVICES WITH GARVER, LLC FOR ADDISON AIRPORT ON-CALL SERVICES FOR THE 2019 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 for Addison Airport On-Call Services for the 2019 fiscal year, attached hereto as **Exhibit A**, is hereby approved. 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 27th day of November, 2018.

Joe Chow, Mayor

ATTEST:

By:_____
Irma Parker, City Secretary

APPROVED AS TO FORM:

By:_____
Brenda N. McDonald, City Attorney

EXHIBIT A



**MASTER AGREEMENT FOR PROFESSIONAL SERVICES
Addison Airport On-Call Services
Town of Addison, Texas
Project No. 19081100**

THIS MASTER AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made as of the Effective Date (as set forth above the signatures by the parties to this Agreement) by and between the **Town of Addison, Texas**, hereinafter sometimes referred to as "Client," and **GARVER, LLC**, an Arkansas limited liability company, hereinafter referred to as "GARVER" (Client and GARVER are sometimes referred to herein together as the "parties" and individually as a "party").

The Client desires to hire Garver to provide professional engineering and planning services related to Addison Airport, and Garver desires to provide such services to the Client.

Now, therefore, the Client and GARVER in consideration of the mutual covenants in this Agreement, do hereby agree as set forth in this Agreement. GARVER shall not begin work on or provide any Services or any other work or services under or in connection with this Agreement until Client, from time to time, directs GARVER in writing to proceed.

SECTION 1 - SERVICES OF GARVER

The Client agrees to engage GARVER, and GARVER agrees to provide to and perform for Client, professional Services (as defined in Section 2 of this Agreement) in connection with the proposed improvements as stated in this Agreement. These Services will conform to the requirements and standards of the Client, and conform to and be conducted in a manner consistent with the standards of practice ordinarily used by, and that level of care and skill ordinarily exercised by, reputable members of the engineering (GARVER's) profession currently practicing in Dallas County, Texas and under similar conditions. GARVER's Services consist of that work and services performed by GARVER and its owners, directors, officers, employees, agents, contractors, subcontractors, representatives, and consultants. For having rendered such Services, the Client agrees to pay GARVER compensation as stated in and in accordance with the sections to follow.

In connection with this Agreement and the Services to be provided by Garver pursuant to this Agreement:

- A. GARVER represents and warrants that it is authorized by the State of Texas, as may be required by applicable law, rule, or regulation, to practice and provide the Services set forth in this Agreement and that any necessary licenses, permits or other authorization to perform such Services have been acquired as required by such law, rule, or regulation.
- B. GARVER and Client agree and acknowledge that Client is entering into this Agreement in reliance on GARVER's professional abilities with respect to performing the Services described herein.
- C. GARVER shall perform the Services set forth in this Agreement in accordance with all applicable laws, statutes, ordinances, regulations, codes, standards, policies, orders, and rules of any federal, state or local governmental entity or agency having jurisdiction over any matter related to this Agreement and in accordance with the standard of care set forth herein.

GARVER shall perform all Services in a timely and professional manner, utilizing at all times an economical and expeditious manner for performing such Services consistent with the standards set forth



herein and shall cause all subcontracted Services to be similarly undertaken and performed. GARVER shall re-perform and otherwise remedy any Services provided by or for GARVER (including any subcontracted Services) not meeting or satisfying the standard of care set forth herein without additional compensation.

Notwithstanding Client's review, approval or acceptance of any Services, and including any drawings, plans, documents, designs, materials, reports, proposals, records, specifications, deliverables, or any other work product prepared by or for GARVER under or in connection with this Agreement (collectively, "Drawings"), GARVER represents that such Services, including any Drawings: (i) shall be sufficient and adequate for the project and fit for the purposes for which they are intended, and (ii) shall, to the best of GARVER's knowledge, information and belief as an engineer, be free from material error. In accordance with the standard of care set forth herein, GARVER agrees that it shall not recommend unsuitable materials in connection with any of its Services. If the design delivered by GARVER should be defective or have errors, GARVER will assume sole responsibility for any damages, losses, claims, or expenses to the extent caused by the same.

Approval or acceptance by Client of any Services provided by or for GARVER, and including any Drawings, shall not constitute nor be deemed a release of the responsibility and liability of GARVER, its owners, officers, managers, employees, subcontractors, and consultants for the accuracy and competency of the same (and GARVER shall be and remain liable to Client for all damage caused by GARVER's negligent or intentionally wrongful performance, acts or omissions, or willful misconduct, under this Agreement), nor shall such approval or acceptance be deemed to be an assumption of or an indemnification for such responsibility or liability by Client for any defect, error or omission in the same, it being understood that Client at all times is relying on GARVER's skill and knowledge in preparing and providing the Services, including Drawings.

GARVER shall be wholly and solely responsible for the Services provided by any owner, officer, manager, employee, representative, agent, consultant, contractor or subcontractor of GARVER.

SECTION 2 - SCOPE OF SERVICES

Scope of Services to be provided and performed by GARVER under this Agreement are and will be further described in each Work Order (as defined in the following paragraph) (the "Services"), which Appendix is incorporated into and made a part of this Agreement.

GARVER will perform professional Services as requested by the Client from time to time. The terms of each work assignment or project for which Services are to be provided will be defined and agreed upon by the Client and GARVER and represented in the form of a written Work Order ("Work Order," the form of which is attached to this Agreement as Appendix B and incorporated herein). The terms, conditions, and provisions of this Agreement shall be applicable to each Work Order. The Services to be provided by GARVER in a Work Order are sometimes referred to in this Agreement as a "project."

SECTION 3 - PAYMENT

For the work described under SECTION 2 - SCOPE OF SERVICES, the Client will pay GARVER a lump sum and/or on an hourly rate basis, to be defined in each Work Order. Hourly rates for the Services (identified by classification) are set forth in Appendix A to this Agreement and incorporated herein. Those hourly rates are in effect as of the Effective Date and may be increased by GARVER one time during the first year of this Agreement, with written notice of such increase (if any) to be given to Client by no later than May 1, 2019 and such increase (if any) to take effect on June 1, 2019. In subsequent years, the



hourly rates may be increased one time, with notice of an increase (if any) to be given to Client not later than May 1 of the applicable year and such increase (if any) to be effective upon June 1 of the applicable year. Any increase in hourly rates shall not exceed five percent (5%) of the hourly rates then in effect under this Agreement.

If any payment due GARVER under this Agreement that is not in dispute is not received by GARVER within 60 days after the date of Client's receipt of Garver's invoice (together with any materials in support of the invoice), GARVER may elect to suspend Services under this Agreement and any Work Order pertaining to the invoice without penalty or liquidated damages assessed from the Client.

The Client will pay GARVER on a monthly basis, based upon statements (invoices) submitted by GARVER to the Client indicating the Services performed and accomplished for each Work Order during the immediately prior month. Each statement shall be submitted to Client no later than the 10th day of each month, and shall, among other things, (i) describe the Services performed, (ii) identify the personnel of GARVER providing Services, the number of hours (or portion thereof) of Services provided by each such person, and the then current hourly billing rates for each such person, (iii) show the sum of all prior payments under this Agreement and the particular Work Order for which the Services have been provided, (iv) include an itemized statement of reimbursable expenses incurred (if any), and (v) if requested by Client, copies of receipts (or other documentation) to verify the accuracy of the statement. Payments not in dispute that are not received within 60 days after the date of Client's receipt of invoice will be subject to a one percent monthly simple interest charge or such other amount as may be provided by State law. GARVER shall not be entitled to any compensation for any Services not actually performed or for any lost profits as a result of Client's termination of this Agreement or suspension of the Services.

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

1. Actual direct cost for travel, long distance and wireless communications, outside reproduction and presentation material preparation, and mail/courier expenses (however, no travel outside of Dallas County, Texas shall be eligible for payment or reimbursement unless GARVER has, prior to any such travel, submitted to Client the costs and received the Client's written consent for the same).
2. Actual direct cost plus 10 percent for subcontract/subconsultant fees.
3. Charges similar to commercial rates for reports, plan sheets, presentation materials, etc.
4. \$100 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.
6. \$20 per hour for GPS survey equipment use.
7. \$20 per day for traffic counter equipment use.
8. Additional items if applicable

Notwithstanding any other provision of this Agreement, the total amount to be paid to GARVER under this Agreement shall not exceed \$138,000.00. Underruns in any phase may be used to offset overruns in another phase as long as the overall contract amount is not exceeded.

In addition to the fees described above, for geotechnical Services, the Client will pay GARVER an amount submitted by GARVER and approved by Client prior to GARVER incurring any such amount or fees. The fee for Geotechnical Services will be negotiated with a geotechnical consultant selected on a project-by-project basis, as a subconsultant to GARVER. The amount billed will include a 10 percent administrative markup.

In addition to the fees described above, for Property Record Research, the Client will pay GARVER an



amount submitted by GARVER and approved by Client in writing prior to GARVER incurring any such amount or fees. The fee for Property Record Research will be negotiated with a property research consultant, as a subconsultant to GARVER. The amount billed will include a 10 percent administrative markup.

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

Notwithstanding any provision of this Agreement to the contrary, Client shall not be obligated to make payment to GARVER hereunder if Client determines:

1. GARVER is in default of any of its obligations under this Agreement, any Work Order, or any other documents in connection with the Services (and payment may be withheld to the extent of any such default);
2. Any part of such payment is attributable to any Services which are not performed in accordance with this Agreement;
3. GARVER has failed to make payment promptly to subcontractors or consultants or other third parties used by GARVER in connection with the Services for which the Client has made payment to GARVER; or
4. In its good faith judgment and after consultation with GARVER, that the portion of the compensation then remaining unpaid will not be sufficient to complete the Services under this Agreement and/or any Work Order, no additional payments will be due GARVER hereunder unless and until GARVER performs a sufficient portion of the Services so that such portion of the compensation remaining unpaid is determined by Client to be sufficient to complete the Services.

Additional Services (Extra Work). For work not described or included in Section 2 – Scope of Services but requested by the Client in writing, the Client will pay GARVER, for time spent on the work, 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 at amounts and in accordance with processes as may be agreed to by GARVER and Client. The rates shown in Appendix A may be increased annually as set forth in this Agreement, with such increase, if any, effective on or about June 1 of the applicable year (and the first such increase, if any, being effective on June 1, 2019).

SECTION 4 - OWNER'S RESPONSIBILITIES

In connection with this Agreement, the Client's responsibilities shall include, but not be limited to, the following:

1. Review and consideration of 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 (Client owned or controlled) and private lands as required for GARVER to perform necessary preliminary surveys and other investigations; but as to private lands, Client will use its reasonable efforts to make such provision and will not be required to expend any funds in doing so.



3. 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 Services as may be in the possession of the Client. Such documents or data will be returned upon completion of the Services or at any other time at the request of the Client.
4. Furnishing GARVER a current boundary survey with easements of record plotted for the project property.
5. Paying all plan review and advertising costs in connection with the project.
6. Client will not hire any of GARVER's employees during performance of this Agreement and for a period of one year beyond completion of this Agreement.
7. Furnishing GARVER a current geotechnical report for the proposed site of construction, if the Client has a current geotechnical report. GARVER will coordinate with the geotechnical consultant, the Client has contracted with, on the Client's behalf for the information that is needed for the project.

SECTION 5 – MISCELLANEOUS

5.1 Instruments of Service

All Drawings shall be, belong to, and remain the sole property of Client for Client's exclusive use or re-use at any time without further compensation and without any restrictions. Without limiting the foregoing or any other provision of this Agreement, Client shall have the right to use the same for the purpose of completing the project for which the Drawings were prepared. Should Client use the same for modifications or extensions of the project for which the Drawings were prepared or on any other project without GARVER's written consent to such use, Client does so at its own risk. Upon completion of the Services, at the time of any earlier termination of this Agreement, or at any time at the request of Client, GARVER shall promptly provide all such Drawings to Client. Provided, however, GARVER shall not be liable for any errors or omissions contained in any Drawings which are incomplete as a result of a suspension or termination where GARVER is unable, because of such suspension or termination, to complete such Drawings.

GARVER's Drawings consist of the printed hard copy reports, drawings, and specifications issued pursuant to the provision of its Services; whereas electronic media, including CADD files, are tools for their preparation. As a convenience to the Client, GARVER will furnish to the Client 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 Client's software or hardware, and GARVER's sole responsibility for the electronic media is to furnish a replacement for defective disks within thirty (30) days after delivery to the Client.

GARVER agrees to and does hereby grant and assign to Client all intellectual property rights (whether copyright or otherwise) in and to all Drawings in which GARVER may have a copyright or other intellectual property interest, and to all Drawings as to which GARVER may assert any rights or establish any claim under patent, copyright, or other intellectual property laws. **WITHOUT LIMITING ANY OTHER PROVISION OF THIS AGREEMENT, GARVER REPRESENTS THAT CLIENT'S USE OF SUCH DRAWINGS WILL NOT INFRINGE UPON ANY THIRD PARTIES' RIGHTS AND GARVER WILL INDEMNIFY AND PROTECT CLIENT**



FROM ANY INFRINGEMENT CLAIMS ARISING FROM CLIENT'S USE OF ANY DRAWINGS.

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 methods of determining prices by a contractor that performs construction work pursuant to any Drawings, or over competitive bidding or market conditions, GARVER's estimates of 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 in Dallas County, Texas; but GARVER cannot and does not guarantee that proposals, bids or actual total construction project or construction costs will not vary from estimates prepared by GARVER.

The Client 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 Client, GARVER will not be required to re-design the project without additional compensation.

5.3 Underground Utilities

GARVER will not, unless defined within a Work Order, provide research regarding utilities and survey utilities located and marked by their owners. Additionally, since many utility companies typically will not locate and mark their underground facilities prior to notice of excavation, if such facilities are not located and marked by a utility company, GARVER is not responsible for knowing whether underground utilities are present or knowing the exact location of utilities for design and cost estimating purposes.

GARVER will subcontract with a company specializing in locating underground utilities (subject to Client's consent) and will pass the direct cost plus 10 percent from the locating company to the Client. GARVER will survey the locations marked by the locating company and the utility owners. GARVER will not be responsible for the completeness or accuracy of the markings made by locating company or utility owners, nor will GARVER be liable for costs incurred by the Client due to incomplete or inaccurate utility markings.

5.4 Insurance

At all times in connection with this Agreement, GARVER shall purchase, provide and maintain in a company or companies lawfully authorized to do business in Texas such insurance coverages as set forth below:

A. Worker's Compensation insurance at statutory limits, including Employers Liability coverage a minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.

B. Commercial Automobile Liability at minimum combined single limits of \$500,000.00 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.

C. Commercial General Liability insurance at minimum combined single limits of \$1,000,000.00 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$1,000,000 products/completed operations aggregate) and contractual liability (covering, but not limited to, the indemnity obligations set forth in this Agreement).



D. Professional Liability coverage at minimum limits of \$2,000,000.00 covering claims resulting from acts, errors and omissions in the performance of professional services. This coverage must be maintained for at least four (4) years after any project for which professional services are provided is finally completed. If coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of this Agreement (or earlier) must be maintained during the full term of this Agreement and during the four year period thereafter described herein.

With reference to the foregoing insurance, GARVER shall specifically endorse applicable insurance policies as follows:

- A. The Town of Addison, Texas shall be named as an additional insured with respect to General Liability, Automobile Liability, and Worker's Compensation.
- B. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison.
- C. A waiver of subrogation in favor of the Town of Addison, Texas shall be contained in the Workers Compensation and all liability policies.
- D. All insurance policies shall be endorsed to require the insurer to notify the Town of Addison Texas at least 30 days prior to any material change in the insurance coverage.
- E. All insurance policies shall be endorsed to the effect that the Town of Addison, Texas will receive at least 30 days notice prior to cancellation or non-renewal of the insurance (but excluding cancellation for non-payment of premium, but in such event Garver shall notify the Town of Addison in writing at least 30 days prior to cancellation of insurance for non-payment of premium).
- F. All insurance policies, which name the Town of Addison, Texas as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
- G. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- H. Insurance must be purchased from insurers that are financially acceptable to the Town of Addison.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance, satisfactory to Client, shall be prepared and executed by the insurance company or its authorized agent, delivered to Client simultaneously with the execution of this Agreement (and updated as needed), and shall contain provisions representing and warranting the following:

- A. List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein.
- B. Shall specifically set forth the notice-of-cancellation and termination provisions to the Town of Addison, Texas.

Prior to the Client's execution of this Agreement, GARVER shall furnish the Client with complete copies



of all insurance policies, and applicable endorsements, certified to be true and correct by the insurance carrier. Client reserves the right to review the insurance requirements contained herein and to adjust coverages and limits when deemed necessary and prudent by Client.

5.5 Records

GARVER will retain all pertinent records relating to this Agreement for a period of four (4) years beyond completion of its provision of Services and the completion of construction by a contractor that performs construction work pursuant to any Drawings (and this obligation shall survive the expiration or termination of this Agreement). GARVER shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement. Client and Client's representatives may have access to such records during normal business hours at a location within Dallas or Collin County, Texas, including to audit or inspect the same.

The FAA, Client, Comptroller General of the United States or any of their duly authorized representatives shall have access to any books, documents, papers and records of GARVER which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts, and transcription.

After completion of each work assignment for Services, and prior to final payment therefor, GARVER shall deliver to the Client all original documentation and Drawings prepared under this Agreement, and one (1) set of the record drawing Construction Plans updated to reflect changes. One (1) set of the record drawing Construction Plans will also be delivered to the FAA Airport Region Office. In the event the Client does not have proper storage facilities for the protection of the original Drawings, the Client may request GARVER to retain the Drawings with the provision that they will be made available upon written request.

5.6 GARVER'S INDEMNITY OBLIGATION

IN CONSIDERATION OF THE GRANTING OF THIS AGREEMENT AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, GARVER AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS CLIENT AND CLIENT'S ELECTED AND APPOINTED OFFICIALS, ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AND VOLUNTEERS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (COLLECTIVELY, "CLIENT PERSONS") AND EACH BEING A "CLIENT PERSON"), FROM AND AGAINST ANY AND ALL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR, RELATED TO, OR ARISING OUT OF INJURIES (INCLUDING BUT NOT LIMITED TO DEATH), LOSSES, EXPENSES, LIABILITY, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, SUITS, HARM, AND COSTS (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS OF DEFENSE), OF ANY KIND OR NATURE WHATSOEVER, MADE UPON OR INCURRED BY CLIENT OR BY ANY OTHER CLIENT PERSONS, WHETHER DIRECTLY OR INDIRECTLY, (COLLECTIVELY, "CLAIMS"), THAT ARE CAUSED BY OR RESULT FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY GARVER OR BY GARVER'S EMPLOYEE, OR GARVER'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH GARVER EXERCISES CONTROL (GARVER'S EMPLOYEE, AGENT, CONSULTANT UNDER CONTRACT, OR SUCH OTHER ENTITY BEING, COLLECTIVELY, "GARVER PERSONS").

SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS OBLIGATION SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OR INTENTIONAL TORT OF A CLIENT PERSON. HOWEVER, WHEN CLAIMS ARISE OUT OF THE CO-NEGLIGENCE OR OTHER CO-LIABILITY OF CLIENT OR OTHER CLIENT PERSON AND GARVER OR ANY GARVER PERSONS, GARVER'S LIABILITY UNDER THIS SECTION SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE CLAIMS (EXCLUDING ATTORNEYS' FEES AND COSTS INCURRED IN DEFENSE OF CLAIMS) EQUAL TO CLIENT PERSON OR PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE OR OTHER LIABILITY THAT CAUSED THE LOSS ATTRIBUTABLE TO SUCH NEGLIGENCE. LIKEWISE, IN SUCH INSTANCE, GARVER'S LIABILITY, IF ANY, FOR CLIENT PERSON'S DEFENSE COSTS AND ATTORNEYS' FEES SHALL BE REDUCED BY THAT PORTION



OF THE DEFENSE COSTS AND ATTORNEYS' FEES EQUAL TO CLIENT PERSON OR PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE OR OTHER LIABILITY THAT CAUSED THE LOSS ATTRIBUTABLE TO SUCH NEGLIGENCE.

GARVER SHALL PROMPTLY ADVISE CLIENT IN WRITING OF ANY CLAIM OR DEMAND AGAINST CLIENT OR ANY OTHER CLIENT PERSON, **GARVER**, OR **GARVER** PERSON RELATED TO OR ARISING OUT OF **GARVER**'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND. CLIENT PERSONS SHALL HAVE THE RIGHT, AT CLIENT PERSONS' OPTION AND AT OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING **GARVER** OF ANY OF ITS OBLIGATIONS HEREUNDER.

THE PROVISIONS IN THE FOREGOING DEFENSE, INDEMNITY AND HOLD HARMLESS ARE SEVERABLE, AND IF ANY PORTION, SENTENCE, PHRASE, CLAUSE OR WORD INCLUDED THEREIN SHALL FOR ANY REASON BE HELD BY A COURT OF COMPETENT JURISDICTION TO BE INVALID, ILLEGAL, VOID, OR UNENFORCEABLE IN ANY RESPECT (INCLUDING, WITHOUT LIMITATION, FOR VIOLATING SECTION 271.904(A), TEX. LOC. GOV. CODE, OR SECTION 130.002(B), TEX. CIV. PRAC. & REM. CODE), SUCH INVALIDITY, ILLEGALITY, VOIDNESS, OR UNENFORCEABILITY SHALL NOT AFFECT ANY OTHER PROVISION THEREOF, AND THIS DEFENSE, INDEMNITY AND HOLD HARMLESS PROVISION SHALL BE CONSIDERED AS IF SUCH INVALID, ILLEGAL, VOID, OR UNENFORCEABLE PROVISION HAD NEVER BEEN CONTAINED IN THIS AGREEMENT.

THE OBLIGATIONS SET FORTH IN THIS SECTION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

5.7 Design without Construction Phase Services

Unless otherwise stipulated in Work Orders, it is understood and agreed that **GARVER**'s Scope of Services under this Agreement does not include project observation or review of the Contractor's performance or any other construction phase services, and that such services will be provided by the Client. If **GARVER** is not retained by Client to provide any of such construction phase services, then as between **GARVER** and Client, the Client assumes all responsibility for interpretation of the Construction Contract Documents and for construction observation and supervision and waives any claims against **GARVER** for such interpretation and for such construction observation and supervision.

If the Client requests in writing that **GARVER** provide any specific construction phase services and if **GARVER** agrees in writing to provide such services, then such services shall be addressed in a separate agreement between the parties or as an amendment to this Agreement and shall be considered as Additional Services.

5.8 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. If **GARVER**, in providing the Services, encounters any hazardous materials or suspected hazardous materials, **GARVER** will promptly notify Client of the same and discontinue its Services in the affected area in order to permit testing and evaluation.

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 Client and **GARVER** agree that all disputes between them arising out of or relating to this Agreement may, by agreement of the parties, be submitted to non-binding mediation.

SECTION 6 - GOVERNING LAW; VENUE; TERMINATION; SUSPENSION

6.1 This is a Texas contract and shall be governed by and construed in accordance with the



laws of the State of Texas, without reference to choice of laws rules of any jurisdiction. Venue for any action, lawsuit, or proceeding under or in connection with this Agreement shall lie exclusively in a court of appropriate jurisdiction in Dallas County, Texas, and each of the parties submits to the exclusive jurisdiction of such courts for purposes of any action, lawsuit, or proceeding.

6.2 This Agreement may be terminated by either party (the "non-breaching party") in the event the other party (the "breaching party") fails to perform in accordance with the terms hereof through no fault of the non-breaching party and (i) such failure remains uncured for a period of seven (7) days after written notice thereof (which notice shall specifically identify the failure) is received by the breaching party, or (ii) if the failure cannot with diligence be cured within the said seven (7) day period, if within such seven (7) day period the breaching party provides the non-breaching party written notice of the curative measures which it proposes to undertake which are acceptable to the non-breaching party, and proceeds promptly to initiate such measures to cure such failure, and thereafter prosecutes the curing of such failure with diligence and continuity, the time within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of such failure with diligence and continuity, but in any event not to exceed 14 days following the occurrence of the failure.

This Agreement may also be terminated or suspended for the convenience of (that is, for any reason or for no reason whatsoever) the Client upon Client's delivery of written notice of termination to GARVER.

Upon termination by either party or upon suspension by Client of this Agreement, GARVER shall be paid for the Services performed to the date of termination and that are not in dispute as provided in and in accordance with SECTION 3 - PAYMENT; however, GARVER may be required to furnish an accounting of all costs. Upon the termination or suspension of this Agreement, GARVER shall cause to be promptly delivered to Client a copy of all of Drawings (whether completed or partially completed) prepared by or for GARVER in connection with this Agreement. Upon termination or suspension of this Agreement, if Client has compensated GARVER for any Services not yet performed, GARVER shall promptly return such compensation to Client (and such obligation shall survive termination of this Agreement).

SECTION 7 - SUCCESSORS AND ASSIGNS; ASSIGNMENT

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

Neither the Client nor GARVER shall, and neither has authority to, assign, sell, subcontract, transfer, or otherwise convey in any manner or form whatsoever (including by operation of law, by merger, or otherwise) all or part of their respective rights, duties or obligations under this Agreement without the prior written consent of the other party. Nothing herein shall be construed as creating any personal liability on the part of any officer, official, employee, or agent of Client.

SECTION 7A - MISCELLANEOUS

7A.1 Notwithstanding anything to the contrary in this Agreement, GARVER shall not be deemed to be an agent of Client for any purpose but shall in all events be an independent contractor exercising control over its work and the manner in which it is performed. This Agreement does not and shall not be construed to make GARVER a partner, agent, or joint venturer of Client for any purpose, and Client shall not be deemed an agent for GARVER, and neither GARVER nor Client shall have the right or authority to assume, create, or enlarge any obligations or commitment on behalf of the other and shall not represent itself as having the authority to bind the other in any manner, except as provided for herein. Nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture, a joint enterprise, or to allow Client to exercise discretion or control over the



professional manner in which the GARVER performs the services which are the subject matter of this Agreement; provided always however that the services to be provided by GARVER shall be provided in a manner consistent with all applicable standards and regulations governing such services. The method and manner in which GARVER's Services hereunder shall be performed shall be determined by GARVER in its sole discretion. The employees, agents, and representatives of, and the methods, equipment and facilities used by, the GARVER shall at all times be under the GARVER's exclusive direction and control.

7A.2 Neither party is liable to the other for any damages for delay in performance caused by acts of God, strikes, lockouts, accidents, fire, casualty, labor trouble, failure of power, governmental authority, riots, insurrections, war, acts or threatened of terrorism, or other events or reasons of a like nature which are beyond the control of the party obligated to perform and not avoidable by the diligence of that party ("Event of Force Majeure"); in such event, the party obligated to perform give the other party prompt notice of such delay and the performance of this Agreement shall be excused for the period of such delay.

7A.3 GARVER shall not divulge or release any information concerning its Services, the project or this Agreement to the public without Client's prior written consent.

7A.4 GARVER covenants and represents that GARVER will have no financial interest, direct or indirect, in the purchase or sale of any product, materials or equipment that will be recommended or required for the construction of the project.

7A.5 For purposes of this Agreement, notices and all other communications provided for herein shall be in writing, addressed as provided hereinafter to the party to whom the notice or request is given, and shall be either (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return receipt requested, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight. Notice shall be deemed given when received if delivered personally or if sent by Federal Express or other nationally recognized carrier; or seventy-two (72) hours after deposit if sent by certified mail.

Addresses for notices and communications are as follows:

To Client:

Town of Addison, Texas
5300 Belt Line Road
Dallas, Texas 75254

Attn: City Manager

To GARVER:

Garver, LLC
3010 Gaylord Parkway, Suite 190
Frisco, Texas 75034

Attn: Frank McIlwain, PE

From time to time either party may designate another address within the 48 contiguous states of the United States of America for all purposes of this Agreement by giving the other party not less than ten (10) days advance notice of such change of address in accordance with the provisions hereof.

7A.6 GARVER will make, without additional cost or expense to Client, such revisions of any Services as may be required to meet the needs of Client and the project as set forth in each Work Order, but after a definite plan or other Services of GARVER have been approved or accepted by Client, if a decision is subsequently made by Client which requires a modification of such plan or other Services, GARVER shall be compensated for such modifications as extra in accordance with the rates set forth in Appendix A.



7A.7 The terms and provisions of this Agreement are severable, and if any term or provision is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, the parties agree to seek to negotiate the insertion of a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible, with the intent that such added provision is legal, valid and enforceable.

7A.8 The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise. Any rights and remedies either party may have with respect to the other arising out of this Agreement shall survive the cancellation, expiration or termination of this Agreement.

Failure of either party hereto, at any time, to enforce a provision of this Agreement shall in no way or event constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term or provision of this Agreement shall be deemed waived or any breached excused unless the waiver or excusing of the breach shall be in writing and signed by the party claimed to have waived or excused. Further, any consent to or waiver of a breach shall not constitute consent to or waiver of or excuse of any other different or subsequent breach.

7A.9 This Agreement and each of its provisions are solely for the benefit of the parties hereto and do not and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

7A.10 The Recitals to this Agreement are incorporated into this Agreement and made a part hereof for all purposes.

7A.11 Notwithstanding any other provision of this Agreement, nothing in this Agreement shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the Client, its officials, officers, employees, representatives, and agents are or may be entitled, including, without limitation, any waiver of immunity to suit.

7A.12 This Agreement constitutes the entire and integrated agreement between the parties with respect to the Project and GARVER's Services described herein, supersedes all prior agreements, negotiations, and/or representations, either written or oral, and may be amended or modified only by written instrument signed by both Client and GARVER.

7A.13 Section and paragraph headings are for convenience only and shall not be used in interpretation of this Agreement. The use of any gender in this Agreement shall be applicable to all genders, and the use of singular number shall include the plural and conversely. For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded; and "day" or "days" means calendar days unless the context clearly indicates otherwise.

7A.14 The undersigned officers and/or agents of the parties hereto are the properly authorized officials or representatives and have the necessary authority to execute this Agreement on behalf of each of the respective parties, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

7A.15 Pursuant to Texas Government Code Chapter 2270, GARVER's execution of this Agreement



shall serve as verification that GARVER does not presently boycott Israel and will not boycott Israel during the term of this Agreement.

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 Hourly Rate Schedule

8.1.2 Appendix B – Sample Work Order

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.

IN WITNESS WHEREOF, Client and GARVER have executed this Agreement effective as of the date the last of the parties executes this Agreement as set forth below ("Effective Date").

TOWN OF ADDISON, TEXAS

GARVER, LLC

By: _____
Signature

By: 
Signature

Name: _____
Printed Name

Name: Frank McIlwain
Printed Name

Title: _____

Title: Vice President

Date: _____

Date: November 14th, 2018

Attest: _____

Attest: 



APPENDIX A
ADS On-Call
2019 Garver Hourly Rate Schedule

Classification	Rates
Engineers / Architects	
E-1.....	\$ 135.00
E-2.....	\$ 160.00
E-3.....	\$ 188.00
E-4.....	\$ 222.00
E-5.....	\$ 273.00
E-6.....	\$ 337.00
E-7.....	\$ 387.00
Planners / Environmental Specialist	
P-1.....	\$ 164.00
P-2.....	\$ 194.00
P-3.....	\$ 221.00
Designers	
D-1.....	\$ 122.00
D-2.....	\$ 138.00
D-3.....	\$ 164.00
D-4.....	\$ 192.00
Technicians	
T-1.....	\$ 104.00
T-2.....	\$ 142.00
T-3.....	\$ 153.00
Surveyors	
S-1.....	\$ 65.00
S-2.....	\$ 77.00
S-3.....	\$ 107.00
S-4.....	\$ 147.00
S-5.....	\$ 194.00
S-6.....	\$ 226.00
2-Man Crew (Survey).....	\$ 247.00
3-Man Crew (Survey).....	\$ 299.00
2-Man Crew (GPS Survey).....	\$ 292.00
3-Man Crew (GPS Survey).....	\$ 343.00
Construction Observation	
C-1.....	\$ 115.00
C-2.....	\$ 145.00
C-3.....	\$ 175.00
C-4.....	\$ 226.00
Management/Administration	
M-1.....	\$ 387.00
X-1.....	\$ 78.00
X-2.....	\$ 100.00
X-3.....	\$ 160.00
X-4.....	\$ 189.00
X-5.....	\$ 199.00
X-6.....	\$ 236.00



APPENDIX B

WORK ORDER NO. [?]
Town of Addison
Town of Addison, Texas
Project No. 19081100

This WORK ORDER is made by and between the **Town of Addison, Texas** hereinafter referred to as "Client," and **GARVER, LLC**, hereinafter referred to as "GARVER", in accordance with the provisions of the MASTER AGREEMENT FOR PROFESSIONAL SERVICES executed on [?/?/?/????].

Under this Work Order, the Client intends to make the following improvements for **[Insert Project Title]**:

[Insert text here.]

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

SECTION 1 - SCOPE OF SERVICES

[Insert text here.]

SECTION 2 – PAYMENT

For the work described under SECTION 1 - SCOPE OF SERVICES, the Client will pay GARVER on an hourly rate basis. The Client represents that funding sources are in place with the available funds necessary to pay GARVER.

The table below presents a summary of the fee amounts and fee types for this contract.

WORK DESCRIPTION	FEE AMOUNT	FEE TYPE
Preliminary Work/Study		HOURLY RATE
Surveys		HOURLY RATE
Preliminary Design		HOURLY RATE
Final Design		HOURLY RATE
Bidding Services		HOURLY RATE
Construction Phase Services		HOURLY RATE
Services After Construction – Warranty Follow-Up; Start-Up; etc.		HOURLY RATE
Etc.		
TOTAL FEE		

The Client will pay GARVER, for time spent on the project, at the rates established in the Master Services Agreement 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 total amount paid to GARVER under this work order is estimated to be [Insert Fee]. The actual total fee may exceed this estimate.



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

1. Actual direct cost for travel, long distance and wireless communications, outside reproduction and presentation material preparation, and mail/courier expenses (however, no travel outside of Dallas County, Texas shall be eligible for payment or reimbursement unless GARVER has, prior to any such travel, submitted to Client the costs and received the Client's written consent for the same).
2. Actual direct cost plus 10 percent for subcontract/subconsultant fees.
3. Commercial rates or similar in-house production for reports, plan sheets, presentation materials, etc.
4. \$100 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.
6. \$20 per hour for GPS survey equipment use.
7. \$20 per day for traffic counter equipment use.

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

SECTION 3 – APPENDICES AND EXHIBITS

- 3.1 The following Appendices and/or Exhibits are attached to and made a part of this Agreement:
 - 3.1.1 Appendix A - Project Location Map
- 3.2 The Master agreement For Professional Services between the Client and Garver, executed on _____ is incorporated as if fully set forth herein and the parties affirm and restate the provisions contained therein.

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.



Approval and acceptance of this Work Order, including attachments listed in SECTION 3 – APPENDICES AND EXHIBITS, shall incorporate this document as part of the Agreement. Garver is authorized to begin performance upon receipt of a copy of this Work Order signed by the Client. The effective date of this Work Order shall be the last date written below.

TOWN OF ADDISON, TEXAS

GARVER, LLC

By: _____
Signature

By: Frank McIlwain
Signature

Name: _____
Printed Name

Name: Frank McIlwain
Printed Name

Title: _____

Title: Vice President

Date: _____

Date: November 14th, 2018

Attest: _____

Attest: [Signature]