

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 2020 FISCAL YEAR IN AN AMOUNT NOT TO EXCEED \$137,000.00, 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 2020 fiscal year in an amount not to exceed \$137,000.00, 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.

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the **12th** day of **NOVEMBER 2019**.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Brenda N. McDonald, City Attorney

EXHIBIT A



MASTER AGREEMENT FOR PROFESSIONAL SERVICES Addison Airport On-Call Services Town of Addison, Texas Project No. 20A11100

THIS MASTER AGREEMENT FOR PROFESSIONAL SERVICES is made by and between the **Town of Addison of Addison, Texas** hereinafter referred to as "Client," and **GARVER, LLC**, hereinafter referred to as "GARVER".

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.

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

The Client 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 Client as set forth below. Execution of the agreement by GARVER and the Client constitutes the Client's written authorization to GARVER to proceed on the date last written below with the services described herein.

SECTION 1 - EMPLOYMENT OF GARVER

The Client 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 Client 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 Client agrees to pay GARVER compensation as stated in the sections to follow.

SECTION 2 - SCOPE OF SERVICES

GARVER will perform professional services as requested by the Client. The terms of each work assignment or project will be defined and agreed upon by the Client and GARVER and represented in the form of a written Work Order.

SECTION 3 - PAYMENT

For the work described in each Work Order, except as otherwise agreed to in writing by the Client and GARVER, the Client agrees to pay GARVER in accordance with the terms written in the applicable Work Order.

Notwithstanding any other provision of this Agreement, the total amount to be paid to Garver under this Agreement shall not exceed **\$137,000.00**.

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

Master Agreement for Professional Services 1 of 8
ADS On-Call Services

Garver Project No. 20A11100



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 Client.

As directed by the Client, 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 Client.

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 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, 2020.

SECTION 4 - CLIENT'S RESPONSIBILITIES

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

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 Client 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 Client. Such documents or data will be returned upon completion of the work or at the request of the Client.
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 Client 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 Client 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. Client 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 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 retains ownership of the printed hard copy drawings and specifications and the electronic media. The Client 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 Client 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 Client'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 Client 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 Client's possession or released to others by the Client 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 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 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.

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

Garver shall name Client as an additional insured on Garver's General Liability policy.

5.5 Records

GARVER will retain all pertinent records for a period of two years beyond completion of the project. Client 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 Client for damages, liabilities, or costs (including reasonable attorneys' fees recoverable under applicable law) to the extent the damages and costs are found to be 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 Client agrees to indemnify GARVER for damages, liabilities, or costs (including reasonable attorneys' fees recoverable under applicable law) to the extent the damages and costs are found to be caused by the negligent acts, errors, or omissions of the Client, its agents, or any other party for whom the Client is legally liable, in the performance of their professional services under this contract.

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



Client agrees that any claim or suit for damages made or filed against GARVER by Client 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 Client for damages under any circumstances.

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. The Client 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.

In addition, the Client 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 Client 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 CLIENT AND GARVER, THE RISKS HAVE BEEN ALLOCATED SUCH THAT THE CLIENT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO LIMIT THE LIABILITY OF GARVER AND ITS SUBCONSULTANTS TO THE CLIENT 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 THIS 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 CLIENT 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 CLIENT HEREBY RELEASES GARVER, AND GARVER RELEASES CLIENT, 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, Client 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

The Client and GARVER agree that any and all discussions resulting from this clause are confidential. As they may apply to the presiding rules of evidence, negotiations pursuant to this clause shall not imply admission of responsibility or guilt for the aggravating action, but shall be regarded as compromise, resolution attempts, and settlement negotiations.

The Client and GARVER agree to, through good faith efforts, first attempt to resolve all conflicts that arise out of or related to this Agreement, through direct discussions involving senior and/or executive management representatives from their respective organizations. It is a requirement of this clause for this condition be attempted prior to the use of other dispute resolution processes. If the respective representatives are unable to develop a compromise resolving the dispute, such that it is satisfactory to both parties within thirty (30) calendar days after a party delivers a written notice of such dispute, then further mediation processes shall begin, as described herein.

If direct discussions fail to resolve the dispute, the Client and Garver further agree to pursue non-binding mediation unless the parties mutually agree otherwise.

The Client and GARVER further agree to use their reasonable best efforts 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 and 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.

5.10 Litigation Assistance

This Agreement does not include costs of GARVER for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the Client, unless Litigation Assistance has been expressly included as part of the work defined in Section 2 - Scope of Services. In the event the Client requests such services of GARVER, this Agreement shall be amended in writing by both the Client and GARVER or a separate written agreement will be negotiated between the parties.

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 Client 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 Client 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 Client 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 Client 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 Hourly Rate Schedule
 - 8.1.2 Appendix B – Sample Work Order

Acceptance of this proposed Agreement is indicated by an authorized agent of the Client signing in the space provided below. Please return one signed original of this Agreement to GARVER for our records.

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IN WITNESS WHEREOF, Client and GARVER have executed this Agreement effective as of the date last written below.

Town of Addison

GARVER, LLC

By: _____
Signature

By: Frank McIlwain
Signature

Name: _____
Printed Name

Name: Frank McIlwain
Printed Name

Title: _____

Title: Vice President

Date: _____

Date: November 1, 2019

Attest: _____

Attest: Michelle McCall



APPENDIX A
Addison Airport On-Call Services
2020 Garver Hourly Rate Schedule

Classification	Rates
Engineers / Architects	
E-1.....	\$ 141.00
E-2.....	\$ 167.00
E-3.....	\$ 196.00
E-4.....	\$ 231.00
E-5.....	\$ 284.00
E-6.....	\$ 351.00
E-7.....	\$ 395.00
Planners / Environmental Specialist	
P-1.....	\$ 171.00
P-2.....	\$ 202.00
P-3.....	\$ 230.00
P-4.....	\$ 245.00
P-5.....	\$ 295.00
P-6.....	\$ 350.00
P-7.....	\$ 390.00
Designers	
D-1.....	\$ 127.00
D-2.....	\$ 144.00
D-3.....	\$ 171.00
D-4.....	\$ 200.00
Technicians	
T-1.....	\$ 109.00
T-2.....	\$ 148.00
T-3.....	\$ 160.00
Surveyors	
S-1.....	\$ 68.00
S-2.....	\$ 81.00
S-3.....	\$ 112.00
S-4.....	\$ 153.00
S-5.....	\$ 202.00
S-6.....	\$ 236.00
2-Man Crew (Survey).....	\$ 244.00
3-Man Crew (Survey).....	\$ 312.00
2-Man Crew (GPS Survey).....	\$ 264.00
3-Man Crew (GPS Survey).....	\$ 332.00
Construction Observation	
C-1.....	\$ 120.00
C-2.....	\$ 151.00
C-3.....	\$ 182.00
C-4.....	\$ 236.00
Management/Administration	
M-1.....	\$ 403.00
X-1.....	\$ 82.00
X-2.....	\$ 104.00
X-3.....	\$ 167.00
X-4.....	\$ 197.00
X-5.....	\$ 207.00
X-6.....	\$ 246.00
X-7.....	\$ 279.00

Agreement for Professional Services
ADS On-Call Services

Garver Project No. 20A11100



APPENDIX B

WORK ORDER NO. [?]
Town of Addison
Town of Addison, Texas
Project No. 20A11100

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.

Work Order No. [?]
Addison Airport On-Call Services

1 of 3

Garver Project No. 20A11100



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.

Work Order No. [?]
Addison Airport On-Call Services

2 of 3

Garver Project No. 20A11100



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: _____
Signature

Name: _____
Printed Name

Name: _____
Printed Name

Title: _____

Title: _____

Date: _____

Date: _____

Attest: _____

Attest: _____

Work Order No. [?]
Addison Airport On-Call Services

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Garver Project No. 20A11100