

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT WITH GARVER, LLC FOR THE FUEL FARM EXPANSION PROJECT IN AN AMOUNT NOT TO EXCEED \$198,800.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council desires to authorize an agreement with Garver, LLC for the Fuel Farm Expansion Project in conformance with the City’s requirements.

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

SECTION 1. The City Council hereby approves the agreement between the Town of Addison and Garver, LLC for the Fuel Farm Expansion Project and in an amount not-to-exceed of \$198,800.00, a copy of which is attached to this Resolution as **Exhibit A**. The City Manager is hereby authorized to execute 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 8th day of **NOVEMBER 2022**.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

Irma Parker, City Secretary

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT Fuel Farm Expansion and Design Project

This Professional Services Agreement ("Agreement") is made by and between the Town of Addison, Texas ("City"), and Garver, LLC ("Professional") (each a "party" and collectively the "parties"), acting by and through their respective authorized representatives.

RECITALS

WHEREAS, City desires to engage Professional to perform certain work and services, hereinafter referred to only as "services", as further specified in the Scope of Services defined in Section 1 of this Agreement; and

WHEREAS, Professional has expressed a willingness to perform said services in conformance with this Agreement.

NOW, THEREFORE, for and in consideration of the covenants and promises made one to the other herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. Scope of Services

Professional agrees to provide professional consulting services for the Fuel Farm Expansions and Design Project in conformance with this Agreement and as more particularly described in the Scope of Services attached hereto as Exhibit "A" and incorporated herein by reference (the "Scope of Services"). Professional shall not be entitled to any claim for extra services, additional services or changes in the services without a written agreement with City prior to the performance of such services.

Section 2. Term of Agreement

The term of this Agreement shall begin on the last date of execution hereof (the "Effective Date") and shall continue until Professional completes the services required herein and the City has accepted the same, unless sooner terminated as provided in this Agreement.

Section 3. Professional's Obligations

(a) Performance of Services. Professional shall furnish and pay for all labor, tools, materials, equipment, supplies, transportation and management necessary to perform the services. To the extent reasonably necessary, Professional may engage the services of any agents, assistants, or other persons that Professional may deem proper to assist in the performance of the services under this Agreement; provided, that Professional shall be responsible for all costs related thereto, except as expressly authorized in writing in advance by City. Notwithstanding, City will obtain and/or furnish right of access on any project site for Professional to perform any required studies, surveys, tests or other necessary investigations in relation to the Scope of Services.

(b) Standard of Care. Professional shall perform the services with the skill and care ordinarily provided by competent professionals practicing in the same or similar locality and under the same or similar circumstances and professional licenses. Professional shall be responsible for the professional quality, technical accuracy, and the coordination of all services, including all Project Documents, designs, drawings, specifications, plans, reports, presentations and all other services furnished by Professional under this

Agreement. Professional shall, without additional compensation, correct or revise any errors or omissions in the services. Professional shall further make, without expense to City, such revisions to the Project Documents as may be required to meet the needs of City and which are within the Professional's Scope of Services.

(c) Additional Services. Should City require additional services not anticipated under this Agreement, Professional shall make reasonable effort to provide such additional services in accordance with the fee schedule set forth in Exhibit B, and within the time schedule prescribed by City; and without decreasing the effectiveness of the performance of services required under this Agreement.

(d) No Waiver of City's Rights. Neither City's review, approval/acceptance of, nor payment for any of the services required under this Agreement, shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Professional shall be and remain liable to City in accordance with applicable law for all damages to City caused by Professional's negligent performance of any of the services furnished under this Agreement.

(e) Independent Professional. It is understood and agreed by and between the parties that Professional, while performing under this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with Professional's actions. All services to be performed by Professional pursuant to this Agreement shall be in the capacity of an independent Professional, and not as an agent or employee of City. Professional shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement. There is no intended third-party beneficiary to this Agreement.

(f) Inspection of Records. Professional grants City and its designees the right to audit, examine or inspect, at City's election, all of Professional's Records relating to the performance of services under this Agreement, during the term of the Agreement and any retention period herein. City's audit, examination or inspection of Professional's Records may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Professional agrees to retain Professional's Records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the contract; then, such retention period shall extend until final resolution of the dispute. "Professional's Records" shall include any and all information, materials and data of every kind and character generated as a result of the services under this Agreement. City agrees that it will exercise its right to audit, examine or inspect Professional's Records only during regular business hours and upon reasonable prior notice. Professional agrees to allow City and its designees access to all of Professional's Records, Professional's facilities and the current or former employees of Professional, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Except as required under applicable law, in no event shall City be entitled to audit the proprietary makeup of lump sum or other fixed prices (e.g., agreed upon unit or hour rates).

(g) Certification of No Conflicts. Professional hereby warrants to the City that Professional has made full disclosure in writing of any existing or potential conflicts of interest related to Professional's services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Professional hereby agrees immediately to make full disclosure to the City in writing.

Section 4. Performance Schedule

(a) Time for Performance. Professional shall perform all services as provided for under this Agreement in a proper, efficient, timely, and professional manner in accordance with City's requirements and in accordance with the work orders that are specified for each project. Time is of material consideration for services performed under this Agreement. In the event Professional's performance of this Agreement is delayed or interfered with by acts of the City or others, Professional may request an equitable adjustment

in the services, including an extension of time for performance or necessary adjustment in pricing for the services affected, in conformance with this Section 4.

(b) Extensions: Written Request Required. No allowance of any extension of time or equitable adjustment to the services, for any cause whatever (including an event of Force Majeure as defined herein below), shall be claimed or made to Professional, unless Professional shall have made written request upon City for the same within two (2) business days after the cause for such extension or adjustment occurred, and unless City and Professional have agreed in writing upon the allowance of the same.

Section 5. Documents

(a) Project Documents. All surveys, studies, proposals, applications, drawings, plans, specifications and other documents, including those in electronic form, prepared by Professional and its consultants, subcontractors, agents, representatives, and/or employees in connection with this Agreement (“Project Documents”) are intended for the use and benefit of City. Professional and its consultants, subcontractors, agents, representatives, and/or employees shall be deemed the authors of their respective part of the Project Documents. Notwithstanding, upon payment by City as required by this Agreement, City shall own, have, keep and retain all rights, title and interest in and to all Project Documents, including all ownership, common law, statutory, and other reserved rights, including copyrights (except copyrights held by the Professional) in and to all Project Documents, whether in draft form or final form, which are produced at City’s request and in furtherance of this Agreement. City releases Professional and its subconsultants against all claims, losses, damages, injuries, and expenses, including reasonable attorneys’ fees arising out of change to, or re-use of deliverables provided under this Agreement for any other project where Professional is not involved in said other project, or modification(s). City shall have full authority to authorize Professional(s), subcontractors, sub-subcontractors, City consultants, and material or equipment suppliers to reproduce applicable portions of the Project Documents to and for use in their execution of the services or for any other purpose. Acceptance and approval of the Project Documents by City shall not constitute nor be deemed a release of the responsibility and liability of Professional, its employees, associates, agents and consultants for the accuracy or competency of their designs, working drawings and specifications, or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by City for any defect in the designs, working drawings and specifications, or other documents prepared by Professional, its employees, Professional, agents, or consultants.

(b) Professional’s Documents. All previously owned intellectual property of Professional, including but not limited to any computer software (object code and source code), tools, systems, equipment or other information used by Professional or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by Professional to provide the services or protect deliverables to City, including without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights inherent therein and appurtenant thereto (“Professional’s Documents”), shall remain the sole and exclusive property of Professional or its suppliers. Notwithstanding, Professional agrees that City shall have the right to access to all such information and City is granted the right to make and retain copies of Professional’s Documents. City acknowledges that any reuse of Professional’s Documents without specific written verification or adaptation by Professional will be at City's sole risk and without liability or legal exposure to Professional.

(c) Confidential Information. Professional agrees it will notify City in writing if it considers specific information to be confidential or proprietary trade secrets and will use its best efforts to clearly mark all such information as “Confidential” and/or “Proprietary – Trade Secret” at the time it is delivered or made accessible to City. City acknowledges that all such designated information is considered by Professional to be confidential and the exclusive property of Professional. Notwithstanding the foregoing, Professional acknowledges that this Agreement, and all services performed hereunder, are subject to the

legal requirements of the Texas Public Information Act and that City will have no obligation to protect or otherwise limit disclosure of any confidential or proprietary information if Professional has not notified City of such designation in conformance with this section. Professional agrees and covenants to protect any and all proprietary rights of City in any materials provided to Professional. Additionally, any materials provided to Professional by City shall not be released to any third party without the consent of City and shall be returned intact to City upon termination or completion of this Agreement or if instructed to do so by City. In the event City delivers to Professional information that it has expressly marked "Confidential" or has notified Professional is confidential or is the proprietary information of a third-party, Professional agrees it shall not disclose to anyone directly or indirectly during the term of this Agreement or at any time thereafter, any such information, nor shall it use any such information for any purpose other than in connection with Professional's performance of the services under this Agreement. This obligation of confidentiality shall not extend to and nothing herein shall limit either party's right to disclose any information provided hereunder which: (i) was or becomes generally available to the public, other than as a result of a disclosure by the receiving party or its personnel; (ii) was or becomes available to the receiving party or its representatives on a non-confidential basis, provided that the source of the information is not bound by a confidentiality agreement or otherwise prohibited from transmitting such information by a contractual, legal, or fiduciary duty; (iii) was independently developed by the receiving party without the use of any confidential information of the disclosing party; or (iv) is required to be disclosed by applicable law or a court order. All confidentiality obligations hereunder shall expire three (3) years after completion of the services. Professional shall further, at its own expense, defend all third-party suits or proceedings instituted against City and pay any award of damages or loss resulting from an injunction, against City, insofar as the same are based on any claim that materials or services provided under this Agreement constitute an infringement of any patent, trade secret, trademark, copyright or other intellectual property rights unless such claim is based on information and/or technology provided or specified by City.

Section 6. Payment

(a) Payment Terms. City agrees to pay Professional for all services authorized by written work order and properly performed by Professional, subject to changes in the Scope of Services or additional services agreed upon in writing. Unless otherwise agreed in writing, all payments to Professional by City shall be based on detailed monthly invoices submitted by Professional for work performed and accepted by City, less any previous payments. Payment will be due within 30 days of the City's receipt and acceptance of an approved invoice. Notwithstanding the foregoing, City reserves the right to delay, without penalty, any disputed payment to Professional when Professional has not made satisfactory progress on the services described in a particularly work order.

(b) Compensation. Professional's compensation shall be conformance with the fee schedule set forth in **Exhibit B**; provided, that the total compensation under this Agreement shall not exceed One Hundred Ninety-Eight Thousand and Eight Hundred Dollars and zero cents (\$198,800.00). In the event of any material breach by Professional of any provision or obligation of this Agreement, or in the event of the assertion by other parties of any claim or lien against City, or City's premises, arising out of Professional's performance of this Agreement, City shall have the right to retain out of any payments due or to become due to Professional an amount sufficient to completely protect City from any and all reasonably anticipated loss, damage or expense therefrom, until the breach, claim or lien has been satisfactorily remedied or adjusted by Professional.

Section 7. Default; Force Majeure

(a) Default; Notice to Cure. A party shall be deemed in default under this Agreement if the party is in breach of a material provision of this Agreement and said breach is not cured within fifteen (15) days written notice of default by the other party. In the event the breaching party has notified the other

party in writing that it is diligently working to cure the breach and has provided reasonable evidence in support of the same, the breaching party shall not be deemed in default until the thirtieth (30th) day following the non-breaching party's notice of default.

(b) Default by Professional. In addition to default under Section 7(a) above, Professional shall be in default under this Agreement if Professional fails to comply or becomes disabled and unable to comply with the provisions of this Agreement related to Professional's performance of the services, including the quality or character of the services or time of performance for any material component of the services. If such default is not corrected within ten (10) days from the date of City's written notice to Professional regarding the same, City may, at its sole discretion without prejudice to any other right or remedy:

(i) Terminate this Agreement and be relieved of the payment of any further consideration to Professional except for all services satisfactorily completed according to the industry standard of care prior to termination. Payment for work satisfactorily completed shall be for actual costs, including reasonable salaries and travel expenses of Professional to and from meetings called by City at which Professional is required to attend, but shall not include any loss of profit of Professional. In the event of such termination, City may proceed to complete the services in any manner deemed proper by City, either by the use of its own forces or by re-subletting to others; or

(ii) City may, without terminating this Agreement or taking over the services, furnish the necessary labor, materials, equipment, supplies and/or assistance necessary to remedy the situation, at the expense of Professional.

(c) Force Majeure. To the extent either party of this Agreement shall be wholly or partially prevented from the performance of any obligation or duty placed on such party by reason of or through work strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, court judgment, or a government restriction, quarantine or mandatory closure order enacted in response to a pandemic or other public health crises, or other specific cause reasonably beyond the parties control and not attributable to its malfeasance, neglect or nonfeasance (each an event of "Force Majeure"), the time for performance of such obligation (other than a payment obligation) may be extended for a period equal to the time lost by reason such event, provided, that the party complies with the provisions of this section. Specifically, the party asserting Force Majeure (i) shall give prompt notice to the other party of the prevention of performance as soon as the asserting party is reasonably aware of such prevention, and (ii) has the burden of demonstrating (1) how and why their performance was so prevented, (2) the period of time during which they were so prevented from performing (which under the facts may be equal to, or shorter or longer than, the duration of the Force Majeure event itself), and (3) that the party used commercially reasonable efforts to mitigate and/or eliminate such prevention and resumed performance under this Agreement as soon as reasonably practicable.

Section 8. Termination; Suspension

(a) Termination Upon Default. Either party may terminate this Agreement upon written notice if the other party is in default of this Agreement, subject to the defaulting party's right to cure in conformance with the terms of this Agreement.

(b) Termination by City. City shall be entitled to terminate this Agreement, with or without cause, by providing thirty (30) days prior written notice to Professional.

(c) Termination Following Request for Modification. Should City require a modification of this Agreement with Professional, and in the event City and Professional fail to agree upon a modification

to this Agreement, City shall have the option of terminating this Agreement and Professional's services hereunder at no additional cost other than the payment to Professional, in accordance with the terms of this Agreement, for the services performed according to the industry standard of care by Professional prior to such termination date.

(d) Suspension. City reserves the right to suspend this Agreement for the convenience of City by issuing a written notice of suspension which shall describe City's reason(s) for the suspension and the expected duration of the suspension. Such expected duration shall, in no way, guarantee what the total number of days of suspension shall occur. Such suspension shall take effect immediately upon Professional's receipt of said notice. Should such suspension extend past the expected duration identified by City in its latest notice of suspension, Professional shall have the right to terminate this Agreement if Professional if (i) Professional provides not less than thirty (30) days prior written notice to City requesting to recommence the services, and (ii) City does not recommence the services within the time requested.

Section 9. Insurance

(a) Required Insurance. Professional shall during the term hereof maintain in full force and effect all policies the following insurance (unless otherwise agreed in writing by the Parties):

- (i) A commercial general liability policy of insurance for bodily injury, death and property damage insuring against all claims, or actions relating to the Professional's performance of services pursuant to this Agreement with a combined single limit of \$1,000,000.00 per occurrence; \$2,000,000 per aggregate for injury to persons (including death), and for property damage;
- (ii) An automobile liability insurance policy covering any vehicles owned and/or operated by Professional, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of \$1,000,000.00 combined single limit and aggregate for bodily injury and property damage;
- (iii) Statutory Worker's Compensation Insurance at the statutory limits and Employers' Liability covering all of Professional's employees involved in the provision of services under this Agreement with policy limit of \$1,000,000.00; and
- (iv) Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limit of \$1,000,000.00 per claim and \$1,000,000.00 in the aggregate.

(b) All insurance and certificate(s) of insurance shall contain the following provisions:

- (i) Name the City, its officers, and employees as additional insureds as to all applicable coverage to the extent of the indemnities agreed between the parties in Section 10 of this Agreement. (not including the Workers Compensation Insurance and Professional Liability);
- (ii) Provide for at least thirty (30) days prior written notice to the City for cancellation or non-renewal of the insurance or reduction in coverage limits/material change; and
- (iii) Provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance (not including the Professional Liability Insurance).

(c) Additional Insurance Requirements. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A-(minus)" by AM Best or other equivalent rating service. A certificate of insurance evidencing the required insurance and all endorsements shall be delivered to City prior to commencement of services.

Section 10. Indemnification; Notice.

CITY SHALL NOT BE LIABLE FOR ANY THIRD-PARTY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER CAUSING ANY BODILY INJURY TO PERSONS OR DAMAGE TO THIRD PARTY TANGIBLE PROPERTY ARISING FROM THE NEGLIGENT SERVICES OF PROFESSIONAL PURSUANT TO THIS AGREEMENT. PROFESSIONAL HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY INDEMNITEES") FOR DAMAGE TO ANY THIRD-PARTY TANGIBLE PROPERTY OR BODILY INJURY TO, OR DEATH OF, ANY PERSON ARISING FROM PROFESSIONAL'S PERFORMANCE OF SERVICES AT ANY TIME THIS AGREEMENT IS IN EFFECT WHERE SAID HARMIS CAUSED BY PROFESSIONAL'S NEGLIGENCE. PROFESSIONAL SHALL NOT BE LIABLE FOR THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY INDEMNITEES. PROFESSIONAL AGREES TO INDEMNIFY AND SAVE HARMLESS THE CITY INDEMNITEES FROM AND AGAINST ANY AND ALL THIRD PARTY TORT LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, REASONABLE ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS BY THIRD PARTIES BY REASON OF BODILY INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF TANGIBLE PROPERTY OF THIRD PARTIES TO THE EXTENT CAUSED BY THE NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF PROFESSIONAL, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF A CITY INDEMNITEE, IN WHOLE OR IN PART, IN WHICH CASE PROFESSIONAL SHALL INDEMNIFY THE CITY INDEMNITEE TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO PROFESSIONAL, ITS OFFICERS, AGENTS, OR EMPLOYEES AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION).

Notices of Claim. Professional shall promptly advise City in writing of any claim or demand against the City, related to or arising out of Professional's obligation under Section 10 of this Agreement and shall see to the investigation and defense of such claims or demand at Professional's sole cost and expense; provided, that City, at its option and at its own expense, may participate in such defense without relieving Professional of any of its obligations hereunder.

THE PROVISIONS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT FOR A PERIOD OF FOUR (4) YEARS.

Section 11. Notice.

All notices required by this Agreement shall be in writing and addressed to the parties at the addresses set forth on the signature page(s) of this Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this section). All notices shall be delivered by (a) personal delivery, (b) certified or registered mail (in each case, return receipt requested, postage prepaid), (c) nationally recognized overnight courier (with all fees pre-paid), or (d) email of a pdf document containing the required notice. Such notice or document shall be deemed to be delivered or given, whether actually received or not, (i) when received if delivered or given in person, (ii) if sent by United States mail, three (3) business days after being deposited in the United States mail as set forth above, (iii) on the next business day after the day the notice or document is provided to a nationally recognized carrier to be delivered as set forth above, or (iv) if sent by email, the next business day. A confirmation of delivery report which reflects the time that the email was delivered to the recipient's last notified email

address is prima facie evidence of its receipt by the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the recipient.

Section 12. Verifications by Professional

Professional's execution of this Agreement shall serve as its formal acknowledgement and written verification that:

(a) if the requirements of Subchapter J, Chapter 552, Government Code, apply to this Agreement and Professional agrees that the Agreement can be terminated if Professional knowingly or intentionally fails to comply with a requirement of that subchapter;

(b) pursuant to Texas Government Code Chapter 2270, that Professional's organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement; and

(c) pursuant to Texas Government Code Chapter 2251, that Professional's organization does not current discriminate against firearm and ammunition industries and will not for the term of the contract. Discriminating means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with the firearm or ammunition industry or with a person or entity doing business in the firearm or ammunition industry, but does not include an action made for ordinary business purposes.

Section 13. Miscellaneous

(a) Professional shall not assign or sublet this Agreement, in whole or in part, without the prior written consent of City. (b) Professional shall comply with all federal, state, county and municipal laws, ordinances, resolutions, regulations, rules, and orders applicable to the services as of the Effective Date under this Agreement. (c) The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in the state district courts of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said courts. The prevailing party shall be entitled to recover its attorneys' fees, costs, and expenses. (d) This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and there are no oral understandings, statements or stipulations bearing upon the meaning or effect of this Agreement which have not been incorporated herein. (e) The exhibits attached hereto, if any, are incorporated herein and made a part hereof for all purposes. (f) Unless expressly provided otherwise herein, this Agreement may only be modified, amended, supplemented or waived by a mutual written agreement of the parties. (g) In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it. (h) Any of the representations and obligations of the parties, as well as any rights and benefits of the parties pertaining to a period of time following the termination of this Agreement shall survive termination. (i) This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties. (j) Each party represents that it has full capacity and authority to grant all rights and assume all obligations granted and assumed under this Agreement. (k) Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the

benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK -
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Effective Date.

For City:

For Professional:

TOWN OF ADDISON, TEXAS

GARVER, LLC

By: _____
Hamid Khaleghipour
Interim City Manager

By: _____
Mitchell McAnally
Senior Project Manager

Date: _____

Date: _____

Notice Address:

Notice Address:

Town of Addison
Attn: Hamid Khaleghipour, Interim City
Manager
P.O. Box 9010
Town of Addison, Texas 75001
E: hkhaleghipour@addisontx.gov

Garver, LLC
Attn: Mitchell McAnally, Sr. Project Manager
14160 N. Dallas Parkway, Suite 850
Dallas, Texas 75254
E: mrmcanally@garverusa.com



**EXHIBIT A
(SCOPE OF SERVICES)**

Generally, the Scope of Services includes the following professional services for improvements to the Fuel Farm Expansion at the Addison Airport. Improvements will consist primarily of expansion of the existing fuel farm with a minimum of three (3) 60,000 gallon Jet-A above ground storage UL-2085 tanks, 12,000 gallon above ground diesel tank and 12,000 gallon above ground mogas tank. The potential sizing and tank configuration is shown in Exhibit B. The evaluation will also include approximately 1,000 SF building with storage, workspace, and a unisex bathroom in the area identified in Exhibit B. In addition to the above mentioned fueling system improvements, a west side self-serve fueling facility consisting of Jet-A, Avgas, and a shelter with restrooms will be evaluated.

- Design Services
 - Preliminary Engineering Report

1. SURVEYING SERVICES

- 1.1. Design Surveys. Design surveys will not be included in these scope of services

2. GEOTECHNICAL SERVICES

- 2.1. Geotechnical services will not be included in these scope of services.

3. DESIGN SERVICES

- 3.1. General: Garver will prepare a preliminary engineering report (PER) related to the proposed improvements. Development of construction documents, bidding services, and construction administration will be performed in a separate agreement.

- 3.2. Owner / Agency Coordination: Garver's project manager and/or design team will coordinate with the Owner as necessary to coordinate design decisions, site visits, document procurement, or other design needs.

3.3. Quality Control

3.3.1. Garver will develop a project specific quality control plan. The quality control plan will include the project background and scope, stakeholder contact information, project team and roles, design criteria, project schedule, and quality control procedures.

3.3.2. Garver will complete a quality control review prior to any design submission to Owner and/or FAA. QC reviews will be completed by a senior construction observer and project manager.

- 3.4. Airspace Analysis: Airspace analysis will not be performed in the preliminary engineering report phase of design.

- 3.5. Construction Safety and Phasing Plan: Development of a construction safety and phasing plan will not be performed in these scope of services.

3.6. Existing Conditions Review

Exhibit A – Scope of Services
Fuel Farm Expansion PER

Garver Project No. 22A11113



3.6.1. Record Document Review: Garver will review record document data from the vicinity of the construction site to evaluate existing conditions. Record document data may include record drawings, record surveys, utility maps, GIS data, and previous design reports.

3.6.2. Site Visits: Garver's civil and electrical engineers will perform up to two (2) site visits to the project site to review existing conditions and evaluate survey and record document data.

3.7. Pavement Design: Pavement design will not be performed in these scope of services.

3.8. Grading and Drainage: Grading and drainage design shall be completed in accordance with FAA AC 150/5300-13 (Airport Design), FAA AC 150-5320-5 (Airport Drainage Design), and applicable local drainage codes.

3.9. Utility Design and Coordination: It is expected that the following utilities will require relocation / modification as part of the project. Garver will coordinate with the Owner and applicable utility owners for utility relocation design. In addition to the utilities listed below, Garver will also evaluate infrastructure for future utility extensions.

Garver will furnish plans to all known utility owners potentially affected by the project at each stage of development. Garver shall conduct coordination meetings among all known affected utility owners to enable them to coordinate efforts for any necessary utility relocations. Garver will include the surveyed locations of the observable and marked utilities in the construction plans. Garver will also include proposed and/or relocated utility information in the construction plans as provided by the utility companies.

3.10. Engineer's Report: Garver will prepare an Engineer's Report to outline the project's design criteria and design considerations. The report will discuss design decisions of all major project parameters. A summary of the sections to be included in the Engineer's Report are shown below:

- Executive Summary
- Project Background
- Existing Conditions
- Fuel Farm Layout Options (3 Max)
- Drainage Design
- Pavement Markings
- Utility Design
- Project Schedule
- Engineer's Opinion of Probable Cost

3.11. Quantities and Engineer's Opinion of Probable Cost: Garver will develop detailed quantities in PDF format for use in construction cost estimating for each design phase. Quantities will be completed by pay item. Upon the completion of quantity development, Garver will review previous cost data and market conditions and complete an Engineer's Opinion of Probable Cost.

3.12. Design Services Submission and Meeting Summary: The following design submittal phases shall be included in the fee summary. A summary of each design phase and the associated review meetings is included below.

3.12.1. Preliminary Engineering Report



3.12.1.1. Garver will develop Preliminary Engineering Report and submit to the Owner for review. It is anticipated that the Owner will review the design submission within four weeks.

3.12.1.2. At the completion of the Owner review period, Garver will meet with the Owner to review the Preliminary Engineering Report and to receive Owner comments and direction.

4. FUEL FARM DESIGN

4.1. CDS Muery will be used as a subconsultant to Garver and will be responsible for evaluating the project requirements regarding the fueling components.

5. PROJECT DELIVERABLES

5.1. The following deliverables will be submitted to the parties identified below. Unless otherwise noted below, all deliverables shall be electronic.

- Preliminary Engineering Report to the Owner.
 - One hard copy to the Owner.
- Other electronic files as requested.

6. ADDITIONAL SERVICES

6.1. The following items are not included under this agreement but will be considered as additional services to be added under Amendment if requested by the Owner.

- Redesign for the Owner's convenience or due to changed conditions after previous alternate direction and/or approval.
- Geotechnical Services
- Surveying Services
- Deliverables beyond those listed herein.
- Drainage Study.
- Pavement and Foundation Design beyond that furnished in the Geotechnical Report.
- Design of any utility relocation.
- Engineering, architectural, or other professional services beyond those listed herein.
- Retaining walls or other significant structural design.
- Preparation of a Storm Water Pollution Prevention Plan (SWPPP).
- Construction documents.
- Bidding Services
- Construction Administration Services, On-Site Construction Observation, and/or Construction Materials Testing.
- Environmental Handling and Documentation, including wetlands identification or mitigation plans or other work related to environmentally or historically (culturally) significant items.
- Coordination with FEMA and preparation/submittal of a CLOMR and/or LOMR.
- Services after construction, such as warranty follow-up, operations support, and Part 139 inspection support.



7. SCHEDULE

7.1. Garver shall begin work under this Agreement after execution of this Agreement to begin within ten (10) days of the Notice to Proceed (NTP) and shall complete the work in accordance with the schedule below:

Design Phase	Calendar Days
Preliminary Engineering Report	8 Weeks from NTP

Exhibit B

Addison Airport Fuel Farm Expansion PER

FEE SUMMARY

<u>Title I Service</u>	<u>Estimated Fees</u>
Conceptual Design	\$ 198,800.00
Subtotal for Title I Service	\$ 198,800.00

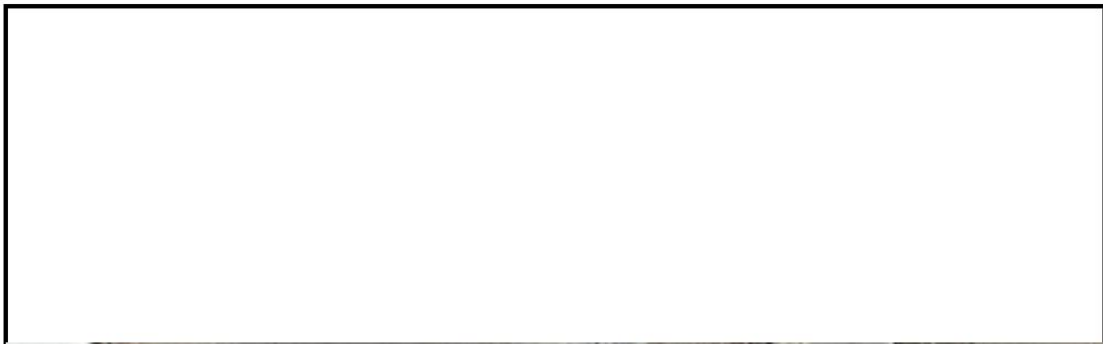
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Exhibit B

**Addison Airport
Fuel Farm Expansion PER**

Conceptual Design

WORK TASK DESCRIPTION	E-5	E-4	E-3	E-1
	hr	hr	hr	hr
1. Civil Engineering				
Base Map Setup				1
Establish Design Criteria and Parameters			1	1
Review As-Built Drawings			1	2
Prepare for External Design Kick-off Meeting			1	1
Conduct/Attend External Design Kick-off Meeting	3	3		
Field Investigation and Inventory of Existing Infrastructure			2	2
Internal Design Kick-off Meeting		1	1	1
Project Management Plan Development			1	
Design and Construction Schedule Development			1	
Develop Conceptual Site Layout Options			12	20
Develop Conceptual Utility Layout for Crew Rest Shelter			4	8
Develop Floor Plan and Elevations for Crew Rest Shelter		8	24	16
Develop Horizontal Alignments				1
Develop Conceptual Drainage Layout			2	8
Develop Conceptual Quantities			2	8
Develop Conceptual Opinions of Probable Construction Costs	1	1	2	1
Develop layouts for West Side self-serve fueling facility	1	2	6	12
Develop Report Narrative	1	12	24	16
Internal Quality Control (QC) Review	8	4	1	
Incorporate QC Review Comments		8	8	16
Prepare for Conceptual Design Review Meeting			1	
Conduct/Attend Conceptual Design Review Meeting (2 people)	3	3		
Prepare and Distribute Conceptual Review Meeting Minutes and Tasks			2	
Coordination with Airport	2	8		
Coordination with Fire Marshal	1	4		
Coordination with TCEQ	1	4		
Coordination with Subconsultants	4	12		
Subtotal - Civil Engineering	25	70	96	114
2. Electrical Engineering				
Review As-Built Drawings			1	
Locate Existing Circuits			1	
Base Map Setup			1	
Establish Design Criteria and Parameters		1	1	
Conduct/Attend External Design Kick-off Meeting		1		
Field Investigation and Inventory of Existing Infrastructure			2	
Internal Design Kick-off Meeting		1	1	
Develop Utility Coordination Letters			2	
Develop Utility Conceptual Layout		1	2	
Coordinate with Utility Design		2		



ADDISON AIRPORT (ADS)
FUEL FARM EXPANSION

EXHIBIT B