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July 11, 2024

Mike Wilson  
Killeen Regional Airport (GRK)  
8101 S Clear Creek Road  
Killeen, TX 76549

Re: Professional Services Proposal and Contract for  
ILE New GA Terminal Building – Construction Phase Services and Project Closeout

Dear Mr. Wilson,

We appreciate the opportunity to serve the Skylark Field Airport with the ILE New GA Terminal Building construction project. We have developed a proposed contract including the scope of services and fee.

Please call me if you have any questions.

Sincerely,

GARVER

Jacob Green, P.E.  
Project Manager

Attachments: ILE New GA Terminal Building Contract - CPS



**THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”)** is made as of the Effective Date by and between the **City of Killeen** (hereinafter referred to as “**Owner**”), and **Garver, LLC** (hereinafter referred to as “**Garver**” or “**Engineer**”). Owner and Garver may individually be referred to herein after as a “**Party**” and/or “**Parties**” respectively.

## RECITALS

**WHEREAS**, Owner intends to construct a new terminal building along with landside and airside improvements at the Skylark Field Airport (ILE) (the “**Project**”).

**WHEREAS**, Garver will provide professional Services related to the Project as further described herein.

**NOW THEREFORE**, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

### 1. DEFINITIONS GARVER

In addition to other defined terms used throughout this Agreement, when used herein, the following capitalized terms have the meaning specified in this Section

“**Effective Date**” means the date last set forth in the signature lines below.

“**Damages**” means any and all damages, liabilities, or costs (including reasonable attorneys’ fees recoverable under applicable law).

“**Hazardous Materials**” means any substance that, under applicable law, is considered to be hazardous or toxic or is or may be required to be remediated, including: (i) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, (ii) any chemicals, materials or substances which are now or hereafter become defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” or any words of similar import pursuant to applicable law; or (iii) any other chemical, material, substance or waste, exposure to which is now or hereafter prohibited, limited or regulated by any governmental instrumentality, or which may be the subject of liability for damages, costs or remediation.

“**Personnel**” means affiliates, directors, officers, partners, members, employees, and agents.

### 2. SCOPE OF SERVICES

2.1. Services. Owner hereby engages Garver to perform the scope of service described in Exhibit A attached hereto (“**Services**”). Execution of this Agreement by Owner constitutes Owner’s written authorization to proceed with the Services. In consideration for such Services, Owner agrees to pay Garver in accordance with Section 3 below.

### 3. PAYMENT

3.1. Fee.



For the Services described under Section 2.1, Owner will pay Garver in accordance with this Section 3 and Exhibit B. Owner represents that funding sources are in place with the available funds necessary to pay Garver in accordance with the terms of this Agreement.

3.2. Invoicing Statements. Garver shall invoice Owner on a monthly basis. Such invoice shall include supporting documentation reasonably necessary for Owner to know with reasonable certainty the proportion of Services accomplished.

3.3. Payment.

3.3.1. Due Date. Owner shall pay Garver all undisputed amounts within thirty (30) days after receipt of an invoice. Owner shall provide notice in writing of any portion of an invoice that is disputed in good faith within fifteen (15) days of receipt of an invoice. Garver shall promptly work to resolve any and all items identified by Owner relating to the disputed invoice. All disputed portions shall be paid promptly upon resolution of the underlying dispute.

3.3.2. If any undisputed payment due Garver under this Agreement is not received within forty-five (45) days from the date of an invoice, Garver may elect to suspend Services under this Agreement without penalty.

3.3.3. Payments due and owing that are not received within thirty (30) days of an invoice date will be subject to interest at the lesser of a one percent (1%) monthly interest charge (compounded) or the highest interest rate permitted by applicable law.

#### **4. AMENDMENTS**

4.1. Amendments. Garver shall be entitled to an equitable adjustment in the cost and/or schedule for circumstances outside the reasonable control of Garver, including modifications in the scope of Services, applicable law, codes, or standards after the Effective Date ("Amendment"). As soon as reasonably possible, Garver shall forward a formal Amendment to Owner with backup supporting the Amendment. All Amendments should include, to the extent know and available under the circumstances, documentation sufficient to enable Owner to determine: (i) the factors necessitating the possibility of a change; (ii) the impact which the change is likely to have on the cost to perform the Services; and (iii) the impact which the change is likely to have on the schedule. All Amendments shall be effective only after being signed by the designated representatives of both Parties. Garver shall have no obligation to perform any additional services created by such Amendment until a mutually agreeable Amendment is executed by both Parties.

#### **5. OWNER'S RESPONSIBILITIES**

5.1. In connection with the Project, Owner's responsibilities shall include the following:

5.1.1. Those responsibilities set forth in Exhibit A.

5.1.2. Owner shall be responsible for all requirements and instructions that it furnishes to Garver pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Garver pursuant to this Agreement. Garver may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement,



subject to any express limitations or reservations applicable to the furnished items as further set forth in Exhibit A.

5.1.3. Owner shall give prompt written notice to Garver whenever Owner observes or otherwise becomes aware of the presence at the Project site of any Hazardous Materials or any relevant, material defect, or nonconformance in: (i) the Services; (ii) the performance by any contractor providing or otherwise performing construction services related to the Project; or (iii) Owner's performance of its responsibilities under this Agreement.

5.1.4. Owner agrees to allow the contractor to include "Garver, LLC" as an additional insured under the contractor's indemnity obligations included in the construction contract documents.

5.1.5. Owner will not directly solicit any of Garver's Personnel during performance of this Agreement.

## **6. GENERAL REQUIREMENTS**

### **6.1. Standards of Performance.**

6.1.1. Industry Practice. Garver shall perform any and all Services required herein in accordance with generally accepted practices and standards employed by the applicable United States professional services industries as of the Effective Date practicing under similar conditions and locale. Such generally accepted practices and standards are not intended to be limited to the optimum practices, methods, techniques, or standards to the exclusion of all others, but rather to a spectrum of reasonable and prudent practices employed by the United States professional services industry.

6.1.2. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Garver's services. Garver shall promptly correct deficiencies in technical accuracy without the need for an Amendment unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

6.1.3. On-site Services. Garver and its representatives shall comply with Owner's and its separate contractor's Project-specific safety programs, which have been provided to Garver in writing in advance of any site visits.

6.1.4. Relied Upon Information: Garver may use or rely upon design elements and information ordinarily or customarily furnished by others including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

6.1.5. Aside from Garver's direct subconsultants, Garver shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Garver have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any such contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to that contractor's services. Garver shall not be responsible for the acts or omissions of any contractor for whom it does not have a direct contract. Garver neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the construction contract documents applicable to the contractor's work, even when Garver is performing construction phase services.



6.1.6. In no event is Garver acting as a “municipal advisor” as set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission. Consequently, Garver’s Services expressly do not include providing advice pertaining to insurance, legal, finance, surety-bonding, or similar services.

## 6.2. Instruments of Service.

6.2.1. Deliverables. All reports, specifications, record drawings, models, data, and all other information provided by Garver or its subconsultants, which is required to be delivered to Owner under Exhibit A (the “**Deliverables**”), shall become the property of Owner subject to the terms and conditions stated herein.

6.2.2. Electronic Media. Owner hereby agrees that all electronic media, including CADD files (“**Electronic Media**”), are tools used solely for the preparation of the Deliverables. Upon Owner’s written request, Garver will furnish to Owner copies of Electronic Media to the extent included as part of the Services. In the event of an inconsistency or conflict in the content between the Deliverables and the Electronic Media, however, the Deliverables shall take precedence in all respects. Electronic Media is furnished without guarantee of compatibility with the Owner’s software or hardware. Because Electronic Media can be altered, either intentionally or unintentionally, by transcription, machine error, environmental factors, or by operators, it is agreed that, to the extent permitted by applicable law, Owner shall indemnify and hold Garver, Garver’s subconsultants, and their Personnel harmless 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 Electronic Media form in Owner’s possession or released to others by Owner. Garver’s sole responsibility and liability for Electronic Media is to furnish a replacement for any non-functioning Electronic Media for reasons solely attributable to Garver within thirty (30) days after delivery to Owner.

6.2.3. Property Rights. All intellectual property rights of a Party, including copyright, patent, and reuse (“**Intellectual Property**”), shall remain the Intellectual Property of that Party. Garver shall obtain all necessary Intellectual Property from any necessary third parties in order to execute the Services. Any Intellectual Property of Garver or any third party embedded in the Deliverables shall remain so imbedded and may not be separated therefrom.

6.2.4. License. Upon Owner fulfilling its payment obligations under this Agreement, Garver hereby grants Owner a license to use the Intellectual Property, but only in the operation and maintenance of the Project for which it was provided. Use of such Intellectual Property 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 subconsultants. To the extent permitted by applicable law, Owner shall indemnify and hold Garver, Garver’s subconsultants, and their Personnel harmless from and against any and all claims, liabilities, damages, losses, and costs, including but not limited to costs of defense arising out of Owner’s use of the Intellectual Property contrary to the rights permitted herein.

## 6.3. Opinions of Cost.



- 6.3.1. Since Garver has no control over: (i) the cost of labor, materials, equipment, or services furnished by others; (ii) the contractor or its subcontractor(s)' methods of determining prices; (iii) competitive bidding; (iv) market conditions; or (v) similar material factors, Garver's opinions of Project costs or construction costs provided pursuant to Exhibit A, if any, are to be made on the basis of Garver's experience and qualifications and represent Garver's reasonable judgment as an experienced and qualified professional engineering firm, familiar with the construction industry; but Garver cannot and does not guarantee that proposals, bids, or actual Project or construction costs will not vary from estimates prepared by Garver.
- 6.3.2. Owner understands that the construction cost estimates developed by Garver do not establish a limit for the construction contract amount. If the actual amount of the low construction bid or resulting construction contract exceeds the construction budget established by Owner, Garver will not be required to re-design the Services without additional compensation. In the event Owner requires greater assurances as to probable construction cost, then Owner agrees to obtain an independent cost estimate.
- 6.4. Underground Utilities. Except to the extent expressly included as part of the Services, Garver will not provide research regarding utilities or survey utilities located and marked by their owners. Furthermore, 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 such utilities for design and cost estimating purposes. In no event is Garver responsible for damage to underground utilities, unmarked or improperly marked, caused by geotechnical conditions, potholing, construction, or other contractors or subcontractors working under a subcontract to this Agreement.
- 6.5. Design without Construction Phase Services.
- 6.5.1. If the Owner requests in writing that Garver provide any specific construction phase services or assistance with resolving disputes or other subcontractor related issues, and if Garver agrees to provide such services, then Garver shall be compensated for the services as an Amendment in accordance with Sections 4 and 10.2.
- 6.5.2. Garver shall be responsible only for those construction phase Services expressly set forth in Exhibit A, if any. With the exception of such expressly required Services, Garver shall have no responsibility or liability for any additional construction phase services, including review and approval of payment applications, design, shop drawing review, or other obligations during construction. Owner assumes all responsibility for interpretation of the construction contract documents and for construction observation and supervision and waives any claims against Garver that may be in any way connected thereto.
- 6.5.3. Owner agrees, to the fullest extent permitted by law, to indemnify and hold Garver, Garver's subconsultants, and their Personnel harmless from any loss, claim, or cost, including reasonable attorneys' fees and costs of defense, arising or resulting from the performance of such construction phase 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 to the extent such claims arise from the negligence of Garver in performance of the Services.





- 6.6. 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 Materials. Notwithstanding any other provision to the contrary in this Agreement and to the fullest extent permitted by law, Owner shall indemnify and hold Garver and Garver's subconsultants, and their Personnel harmless 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.
- 6.7. Confidentiality. Owner and Garver shall consider: all information provided by the other Party that is marked as "Confidential Information" or "Proprietary Information" or identified as confidential pursuant to this Section 6.7 in writing promptly after being disclosed verbally to be Confidential Information. Except as legally required, Confidential Information shall not be discussed with or transmitted to any third parties, except on a "need to know basis" with equal or greater confidentiality protection or written consent of the disclosing Party. Confidential Information shall not include 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. Nothing herein shall be interpreted as prohibiting Garver from disclosing general information regarding the Project for future marketing purposes. Notwithstanding anything to the contrary, City is a governmental entity subject to Texas Public Information Act and shall abide by said Act and opinions of the Attorney General interpreting the same.

## 7. INSURANCE

### 7.1. Insurance.

- 7.1.1. Garver shall procure and maintain insurance as set forth in Exhibit C until completion of the Service. Garver shall name Owner as an additional insured on Garver's General Liability policy to the extent of Garver's indemnity obligations provided in Section 9 of this Agreement.
- 7.1.2. Garver shall furnish Owner a certificate of insurance evidencing the insurance coverages required in Exhibit C.

## 8. DOCUMENTS

- 8.1. Audit. Garver shall maintain all required records for the later of three (3) years after completion of the Services or Owner makes final payment and all other pending matters are closed. FAA, Owner, 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 audit, examination, excerpts, and transcription. In no event shall Owner be entitled to audit the makeup of lump sum or other fixed prices (e.g., agreed upon unit or hour rates).



8.2. Delivery. After completion of the Project, and prior to final payment, Garver shall deliver to the Owner all original documentation 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 Owner does not have proper storage facilities for the protection of the original drawings, the Owner may request Garver to retain the drawings with the provision that they will be made available upon written request.

## 9. INDEMNIFICATION / WAIVERS

### 9.1. Indemnification.

9.1.1. Garver Indemnity. Subject to the limitations of liability set forth in Section 9.2, Garver agrees to indemnify and hold Owner, and Owner's Personnel harmless from Damages due to bodily injury (including death) or third-party tangible property damage to the extent such Damages are caused by the negligent acts, errors, or omissions of Garver or any other party for whom Garver is legally liable, in the performance of the Services under this Agreement.

9.1.2. Owner Indemnity. Subject to the limitations of liability set forth in Section 9.2, to the extent allowed by law, Owner agrees to indemnify and hold Garver and Garver's subconsultants and their Personnel harmless from Damages due to bodily injury (including death) or third-party tangible property damage to the extent caused by the negligent acts, errors, or omissions of Owner or any other party for whom Owner is legally liable, in the performance of Owner's obligations under this Agreement.

9.1.3. In the event claims or Damages are found to be caused by the joint or concurrent negligence of Garver and the Owner, they shall be borne by each Party in proportion to its own negligence.

### 9.2. Waivers. Notwithstanding any other provision to the contrary, the Parties agree as follows:

9.2.1. THE PARTIES AGREE THAT ANY CLAIM OR SUIT FOR DAMAGES MADE OR FILED AGAINST THE OTHER PARTY WILL BE MADE OR FILED SOLELY AGAINST GARVER OR OWNER RESPECTIVELY, OR THEIR SUCCESSORS OR ASSIGNS, AND THAT NO PERSONNEL SHALL BE PERSONALLY LIABLE FOR DAMAGES UNLESS THE INDIVIDUAL IS DETERMINED TO BE ACTING OUTSIDE THE SCOPE OF EMPLOYMENT.

9.2.2. MUTUAL WAIVER. TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER OWNER, GARVER, NOR THEIR RESPECTIVE PERSONNEL SHALL BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES, OR DAMAGES ARISING FROM OR IN CONNECTION WITH LOSS OF USE, LOSS OF REVENUE OR PROFIT (ACTUAL OR ANTICIPATED), LOSS BY REASON OF SHUTDOWN OR NON-OPERATION, INCREASED COST OF CONSTRUCTION, COST OF CAPITAL, COST OF REPLACEMENT POWER OR CUSTOMER CLAIMS, AND OWNER HEREBY RELEASES GARVER, AND GARVER RELEASES OWNER, FROM ANY SUCH LIABILITY.

9.2.3. LIMITATION. IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO BOTH THE OWNER AND GARVER, OWNER HEREBY AGREES THAT





GARVER'S AND ITS PERSONNEL'S TOTAL LIABILITY UNDER THE AGREEMENT SHALL BE LIMITED TO PROCEEDS RECEIVED FROM INSURANCE PROVIDED UNDER EXHIBIT C OF THIS AGREEMENT.

9.2.4. NO OTHER WARRANTIES. NO OTHER WARRANTIES OR CAUSES OF ACTION OF ANY KIND, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE) SHALL APPLY. OWNER'S EXCLUSIVE REMEDIES AND GARVER'S ONLY OBLIGATIONS ARISING OUT OF OR IN CONNECTION WITH DEFECTIVE SERVICES (PATENT, LATENT OR OTHERWISE), WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, SHALL BE THOSE STATED IN THE AGREEMENT.

9.2.5. THE LIMITATIONS SET FORTH IN SECTION 9.2 APPLY REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, OR NEGLIGENCE INCLUDING GROSS NEGLIGENCE, STRICT LIABILITY, WARRANTY, INDEMNITY, ERROR AND OMISSION, OR ANY OTHER CAUSE WHATSOEVER.

## 10. DISPUTE RESOLUTION

10.1. Any controversy or claim ("**Dispute**") arising out of or relating to this Agreement or the breach thereof shall be resolved in accordance with the following:

10.1.1. Any Dispute that cannot be resolved by the project managers of Owner and Garver may, at the request of either Party, be referred to the senior management of each Party. If the senior management of the Parties cannot resolve the Dispute within thirty (30) days after such request for referral, then either Party may request mediation. If both Parties agree to mediation, it shall be scheduled at a mutually agreeable time and place with a mediator agreed to by the Parties. Should mediation fail, should either Party refuse to participate in mediation, or should the scheduling of mediation be impractical, either Party may file for arbitration in lieu of litigation.

10.1.2. If both Parties agree to arbitration, said arbitration of the Dispute shall be administered by the American Arbitration Association ("AAA") in accordance with its Construction Industry Arbitration Rules. The arbitration shall be conducted by a single arbitrator, agreed to by the Parties. In no event may a demand for arbitration be made if the institution of legal or equitable proceedings based on such dispute is barred by the applicable statute of limitations.

10.1.3. The site of the arbitration shall be Bell County, Texas. Each Party hereby consents to the jurisdiction of the federal and state courts within whose district the site of arbitration is located for purposes of enforcement of this arbitration provision, for provisional relief in aid of arbitration, and for enforcement of any award issued by the arbitrator.

10.1.4. To avoid multiple proceedings and the possibility of inconsistent results, either Party may seek to join third parties with an interest in the outcome of the arbitration or to consolidate arbitration under this Agreement with another arbitration. Within thirty (30) days of receiving written notice of such a joinder or consolidation, the other Party may object. In the event of such an objection, the arbitrator shall decide whether the third party may be joined and/or whether the arbitrations may be consolidated. The arbitrator shall consider whether any entity will suffer prejudice as a result of or denial of the



proposed joinder or consolidation, whether the Parties may achieve complete relief in the absence of the proposed joinder or consolidation, and any other factors which the arbitrators conclude should factor on the decision.

10.1.5. The arbitrator shall have no authority to award punitive damages. Any award, order or judgment pursuant to the arbitration is final and may be entered and enforced in any court of competent jurisdiction.

10.1.6. The prevailing Party shall be entitled to recover its attorneys' fees, costs, and expenses, including arbitrator fees and costs and AAA fees and costs.

10.1.7. The foregoing arbitration provisions shall be final and binding, construed and enforced in accordance with the Federal Arbitration Act, notwithstanding the provisions of this Agreement specifying the application of other law. Pending resolution of any Dispute, unless the Agreement is otherwise terminated, Garver shall continue to perform the Services under this Agreement that are not the subject of the Dispute, and Owner shall continue to make all payments required under this Agreement that are not the subject of the Dispute.

10.2. 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 Owner, unless litigation assistance has been expressly included as part of Services. In the event Owner requests such services of Garver, this Agreement shall be amended in writing by both Owner and Garver to account for the additional services and resulting cost in accordance with Section 4.

## 11. TERMINATION

11.1. Termination for Convenience. Owner shall have the right at its sole discretion to terminate this Agreement for convenience at any time upon giving Garver ten (10) days' written notice. In the event of a termination for convenience, Garver shall bring any ongoing Services to an orderly cessation. Owner shall compensate Garver in accordance with Exhibit B for: (i) all Services performed and reasonable costs incurred by Garver on or before Garver's receipt of the termination notice, including all outstanding and unpaid invoices, (ii) all costs reasonably incurred to bring such Services to an orderly cessation.

11.2. Termination for Cause. This Agreement may be terminated by either Party in the event of failure by the other Party to perform any material obligation in accordance with the terms hereof. Prior to termination of this Agreement for cause, the terminating Party shall provide at least seven (7) business days written notice and a reasonable opportunity to cure to the non-performing Party. In all events of termination for cause due to an event of default by the Owner, Owner shall pay Garver for all Services properly performed prior to such termination in accordance with the terms, conditions and rates set forth in this Agreement.

11.3. Termination in the Event of Bankruptcy. Either Party may terminate this Agreement immediately upon notice to the other Party, and without incurring any liability, if the non-terminating Party has: (i) been adjudicated bankrupt; (ii) filed a voluntary petition in bankruptcy or had an involuntary petition filed against it in bankruptcy; (iii) made an assignment for the benefit of creditors; (iv) had a trustee or receiver appointed for it; (v) becomes insolvent; or (vi) any part of its property is put under receivership.



## 12. MISCELLANEOUS

- 12.1. Governing Law. This Agreement is governed by the laws of the State of Texas, without regard to its choice of law provisions.
- 12.2. Successors and Assigns. Owner and Garver each bind themselves and their successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; neither Owner nor Garver shall assign, sublet, or transfer their interest in this Agreement without the written consent of the other, which shall not be unreasonably withheld or delayed.
- 12.3. Independent Contractor. Garver is and at all times shall be deemed an independent contractor in the performance of the Services under this Agreement.
- 12.4. No Third-Party Beneficiaries. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than Owner and Garver. This Agreement does not contemplate any third-party beneficiaries.
- 12.5. Entire Agreement. This Agreement constitutes the entire agreement between Owner and Garver and supersedes all prior written or oral understandings and shall be interpreted as having been drafted by both Parties. This Agreement may be amended, supplemented, or modified only in writing by and executed by both Parties.
- 12.6. Severance. The illegality, unenforceability, or occurrence of any other event rendering a portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision of this Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.
- 12.7. Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together constitute one Agreement. Delivery of an executed counterpart of this Agreement by fax or transmitted electronically in legible form, shall be equally effective as delivery of a manually executed counterpart of this Agreement.

## 13. EXHIBITS

- 13.1. The following Exhibits are attached to and made a part of this Agreement:

- Exhibit A – Scope of Services
- Exhibit B – Compensation Schedule
- Exhibit C – Insurance
- Exhibit D – Mandatory Federal Contract Provisions for Professional Services Contracts
- Exhibit E – State of Texas Requirements
- Exhibit F – Certification of Engineer

Owner and Garver, by signing this Agreement, acknowledges that they have independently assured themselves and confirms that they individually have examined all Exhibits, and agrees that all of the aforesaid Exhibits shall be considered a part of this Agreement and agrees to be bound to the terms, provisions, and other requirements thereof, unless specifically excluded.



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

**IN WITNESS WHEREOF**, Owner and Garver have executed this Agreement effective as of the date last written below.

**City of Killeen, TX**

**Garver, LLC**

By: \_\_\_\_\_  
*Signature*

By: Mitchell McAnally  
*Signature*

Name: Kent Cagle  
*Printed Name*

Name: Mitchell McAnally  
*Printed Name*

Title: City Manager

Title: Vice President

Date: \_\_\_\_\_

Date: July 11, 2024

Attest: \_\_\_\_\_

Attest: Cindy Pres



## EXHIBIT A (SCOPE OF SERVICES)

Generally, the Scope of Services includes the following professional services for the construction of a new GA terminal building and associated improvements at Skylark Field Airport (ILE). Construction will consist primarily of construction of a new GA terminal building, full depth reclamation of existing apron pavement, a new asphalt parking lot, utility installation, and placement of markings.

- Construction Administration Services
- On-Site Resident Project Representative Services
- Materials Testing Services
- Project Closeout Services

### 1. CONSTRUCTION ADMINISTRATION SERVICES

1.1. During the construction phase of work, Garver will accomplish the tasks below.

#### 1.2. Submittals

1.2.1. Garver will evaluate and respond to construction material submittals and shop drawings. Corrections or comments made by Garver on the shop drawings during this review will not relieve Contractor from compliance with requirements of the drawings and specifications. The check will be for review of general conformance with the design concept of the project and general compliance with the information given in the contract documents. The Contractor will be responsible for confirming and correlating all quantities and dimensions, selecting fabrication processes and techniques of construction, coordinating his work with that of all other trades, and performing his work in a safe and satisfactory manner. Garver's review shall not constitute approval of safety precautions or constitute approval of construction means, methods, techniques, sequences, procedures, or assembly of various components. When certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, either directly or implied for a complete and workable system, Garver shall be entitled to rely upon such submittal or implied certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

#### 1.3. Notice to Proceed & Preconstruction Meeting

1.3.1. Garver will issue a Notice to Proceed letter to the Contractor and attend preconstruction meeting. Garver will provide meeting minutes for submission to all parties at the conclusion of the meeting.

#### 1.4. Progress Meetings

1.4.1. As a minimum, Garver will have a representative that will attend progress meetings with the Owner and Contractor. It is expected that 4 meetings will be during the Procurement Period and 26 bi-weekly meetings will be held via teleconference call during the construction, with Garver attending 14 of the meetings on-site and in person. To the extent possible, progress meetings and visits to the site of the work should be scheduled to coincide with each new phase of construction, scheduled FAA inspections, and other times when Garver's presence is desirable. Garver's project engineer or their qualified representative will be available at all times work is in progress for telephone contact by the RPR. Garver's project engineer shall direct, supervise, advise, and counsel the



Resident Project Representative and construction observation personnel in the accomplishment of Garver's duties. Garver will prepare for and attend any utility pre-construction meetings as required.

#### 1.5. Owner Coordination

1.5.1. Garver will consult with and advise the Owner during the construction period. Garver will submit, when requested by the Owner, written reports to the Owner on the progress of the construction including any problem areas that have developed or are anticipated to develop. In addition, Garver shall supply to Owner such periodic reports and information as may be required by the FAA, including FAA Form 5370-1, Construction Progress and Inspection Report, or equivalent form to the Owner on a weekly basis.

#### 1.6. RFIs

1.6.1. Garver will issue instructions to the Contractor on behalf of the Owner and issue necessary clarifications (respond to RFIs) regarding the construction contract documents.

#### 1.7. Progress Payments

1.7.1. Garver will prepare Contractor's progress payment requests based on the actual quantities of contract items completed and accepted and will make a recommendation to the Owner regarding payment. Garver's recommendation for payment shall not be a representation that Garver has made exhaustive or continuous inspections to (1) check the quality or exact quantities of the Work; (2) to review billings from Subcontractors and material suppliers to substantiate the Contractor's right to payment; or (3) to ascertain how the Contractor has used money previously paid to the Contractor.

#### 1.8. Payroll Reviews

1.8.1. Garver will assist the Owner in the observation of the Contractor's operations for proper classification of workers, review of the Contractor's payroll as necessary to determine compliance with Davis Bacon requirements, and conduct contractor employee interviews to determine compliance with Davis Bacon requirements. Garver will keep the Contractor's payroll records on file demonstrating compliance with the Davis Bacon requirements. In addition, Garver will monitor the contractor's posting of the required EEO notice and provide general oversight of any obvious instance of a segregated workplace. Garver will submit Contractor's certified payroll records to Owner at the completion of the project.

#### 1.9. Record Drawings

1.9.1. Garver will maintain a set of working drawings and provide information for preparation of record drawings of the completed project. This information will be incorporated into final record drawings completed as part of Closeout Services and final record drawings will be provided to the Owner after project completion.

#### 1.10. Change Orders

1.10.1. When authorized by the Owner, Garver will prepare change orders or supplemental agreements for changes in the work from that originally provided for in the construction contract documents. If redesign or substantial engineering or surveying is required in the





preparation of these change order documents, the Owner will pay Garver an additional fee to be agreed upon by the Owner and Garver.

1.11. Final Inspection

1.11.1. Garver will participate in a pre-final walkthrough with the Owner. Garver will also participate in a final project inspection with the Owner and Contractor, prepare a punch list, review final project closeout documents, and submit the final pay request.

**2. ON-SITE RESIDENT PROJECT REPRESENTATIVE SERVICES**

2.1. Garver will provide part-time Resident Project Representative (RPR) services for the 360-calendar-day construction contract performance time for substantial completion and an additional 30-calendar-day for final project completion. The proposed fee is based on approximately 7 hours per week during the construction contract performance time for the RPR, plus an additional 20 hours for pre- and post-construction activities. If the construction time extends beyond the time established in this agreement or if the Owner wishes to increase the time or frequency of the observation, the Owner will pay Garver an additional fee agreed to by the Owner and Garver. All RPR personnel shall have the appropriate experience and qualifications.

2.2. During the construction period, Garver's RPR will provide or accomplish the following:

- Consult with and advise the Owner during the construction period. Garver will submit, when requested by the Owner, written reports to the Owner on the progress of the construction including any problem areas that have developed or are anticipated to develop. In addition, Garver shall supply to the Owner such periodic reports and information as may be required by the FAA
- As necessary, conduct safety meetings with the Contractor.
- Coordinate with the firm providing construction materials quality assurance testing. Coordinate with this firm to ensure that all material tests required for construction are scheduled and accomplished in a manner that will not delay the Contractor unnecessarily and will meet specification requirements as to location and frequency.
- Perform intermediate inspections in advance of the final inspection.
- Maintain a file of quantities incorporated into the work, test reports, certifications, shop drawings and submittals, and other appropriate information.
- In accordance with FAA AC 150/5370-12A, maintain a project diary which will contain information pertinent to each site visit.
- Monitor the contractor's conformance to the approved construction safety and phasing plan.

2.3. In performing construction observation services, Garver will endeavor to protect the Owner against defects and deficiencies in the work of the Contractor(s); but Garver does not guarantee the performance of the Contractor(s), nor is Garver responsible for the actual supervision of construction operations. Garver does not guarantee the performance of the contracts by the Contractors nor assume any duty to supervise safety procedures followed by any Contractor or subcontractor or their respective employees or by any other person at the job site. However, if at any time during construction Garver observes that the Contractor's work does not comply with the construction contract documents, Garver will notify the Contractor of such non-compliance and instruct him to correct the deficiency and/or stop work, as appropriate for the situation. Garver will also record the observance, the discussion, and the actions taken. If the Contractor continues without satisfactory corrective action, Garver will



notify the Owner immediately, so that appropriate action under the Owner's contract with the Contractor can be taken.

### **3. MATERIALS TESTING SERVICES**

- 3.1. Through a Subconsultant, Garver shall provide the quality assurance testing for the project as required by the Plans and Specifications in accordance with FAA and the Owner's requirements.

### **4. PROJECT CLOSEOUT SERVICES**

- 4.1. At the conclusion of construction, Garver will assist the Owner with project closeout by providing a final project report which will include all necessary documents required for FAA grant closeout. Closeout documentation will be provided within 45 days of the final payment to the Contractor. Garver will also update the airport's ALD to show the completed project as "existing" and coordinate the submission of the updated ALD through OE/AAA.

### **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.
  - Reviewed submittals to the Contractor.
  - Record Plans and Specifications to the Owner and FAA.
    - 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.
  - Deliverables beyond those listed herein.
  - Pavement 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). The construction contract documents will require the Contractor to prepare, maintain, and submit a SWPPP to TCDEQ.
  - 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.
  - Survey Services of any nature.
  - Design Services beyond those identified herein.
  - Easement Development services.
  - Airspacing Services (e.g. upload of Construction Safety and Phasing Plan to FAA OE/AAA).
  - Airfield Drainage Study Services
  - Bidding Services



- Geotechnical Services
- Drainage Design
- DBE Compliance Services
- Land Acquisition Services
- Airport Planning Services

**7. SCHEDULE**

- 7.1. Garver shall begin work under this Agreement upon execution of this Agreement and shall complete the work within a mutually agreeable schedule with the Owner.



**EXHIBIT B  
(COMPENSATION SCHEDULE)**

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

| WORK DESCRIPTION                        | FEE AMOUNT          | FEE TYPE             |
|---|---------------------|----------------------|
| Construction Administration             | \$307,000.00        | LUMP SUM             |
| On-Site Resident Project Representative | \$98,250.00         | HOURLY PLUS EXPENSES |
| Construction Material Testing           | \$50,000            | LUMP SUM             |
| Project Closeout Services               | \$27,250.00         | LUMP SUM             |
| <b>TOTAL FEE</b>                        | <b>\$482,500.00</b> |                      |

The lump sum amount to be paid under this Agreement is not to exceed **\$384,250.00**. The amount to be paid hourly plus expenses under this Agreement is not to exceed **\$98,250.00**. For informational purposes, a breakdown of Garver's estimated costs is included in this Exhibit B with approximate current hourly rates for each employee classification.

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

Additional Services (Extra Work). For services not described or included in Exhibit A, but requested by the Owner in writing or otherwise permitted in this Agreement, the Owner will pay Garver as expressly set forth in the applicable Amendment, or in the event the Amendment is silent, for the additional time spent on the Project, at the agreed upon rates 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.

## Exhibit B

### City of Killeen Aviation Department ILE New GA Terminal Building

#### FEE SUMMARY

| <b>Title II Service</b>              | <b>Fee Type</b>   | <b>Estimated Fees</b> |
|--------------------------------------|-------------------|-----------------------|
| Construction Administration          | Lump Sum          | \$ 307,000.00         |
| On-Site Resident Project             | Hourly + Expenses | \$ 98,250.00          |
| Material Testing Services            | Lump Sum          | \$ 50,000.00          |
| Grant Closeout Services              | Lump Sum          | \$ 27,250.00          |
| <b>Subtotal for Title II Service</b> |                   | <b>\$ 482,500.00</b>  |

Fee Type

## Exhibit B

### City of Killeen Aviation Department ILE New GA Terminal Building

|                                     |     |     |
|-------------------------------------|-----|-----|
| Pre-Construction Estimated Duration | 60  | CDs |
| Substantial Completion              | 360 | CDs |
| Final Completion                    | 30  | CDs |

### Construction Administration

|   |    |       |
|---|----|-------|
| Total Anticipated Services Performed Post Bidding | 65 | Weeks |
|---|----|-------|

| WORK TASK DESCRIPTION   | E-5      | E-4        | E-3        | E-2        | E-1        | AM-1       |
|---|----------|------------|------------|------------|------------|------------|
|   | hr       | hr         | hr         | hr         | hr         | hr         |
| <b>1. Civil Engineering</b>   |          |            |            |            |            |            |
| Project Administration  |          | 10         |            | 20         |            | 80         |
| Coordination with Subconsultants  |          | 5          |            | 5          |            |            |
| Coordination with RPR   |          | 10         |            | 60         |            |            |
| Coordination with Airport   |          | 10         |            | 50         |            |            |
| Pre-Construction/Procurement Bi-Weekly Meetings                                   |          | 4          |            | 4          |            |            |
| Prepare for and Attendance to Pre-Construction Meeting (Includes Travel Time)     |          | 4          |            | 4          |            |            |
| Utility Coordination  |          | 4          |            | 12         |            |            |
| Prepare for Bi-Weekly Construction Coordination Meetings; Distribution of Minutes |          |            |            | 10         | 40         |            |
| Bi-Weekly Construction Coordination Meetings                                      |          | 8          |            | 20         | 20         |            |
| Regular Site Visits   |          | 15         |            | 60         | 60         |            |
| Monthly Weather Request Reviews   |          |            |            | 8          | 16         |            |
| Contractor/RPR Inquiries  |          | 4          |            | 60         | 40         |            |
| Review Contractor Pay Requests  |          |            |            | 6          | 6          | 24         |
| Shop Drawings/Material Submittals   |          |            |            | 20         | 40         |            |
| Preparation for and Attendance to Pre-Pave Meeting with Meeting Minutes           |          | 8          |            | 16         | 16         |            |
| Record Drawings   |          | 4          |            | 4          | 8          |            |
| Prepare Change Orders   |          | 6          |            | 16         | 24         |            |
| Completion Inspection and Punchlist   |          | 8          |            | 8          | 8          |            |
| Preparation for and Attendance to Final Project Inspection and Punchlist          |          | 8          |            | 8          | 8          |            |
| Warranty Follow Up and Site Visit   |          | 8          |            | 8          | 8          |            |
|   |          |            |            |            |            |            |
|   |          |            |            |            |            |            |
| <b>Subtotal - Civil Engineering</b>   | <b>0</b> | <b>116</b> | <b>0</b>   | <b>399</b> | <b>294</b> | <b>104</b> |
| <b>2. Electrical Engineering</b>  |          |            |            |            |            |            |
| Coordination with RPR/Project Manager   |          |            | 20         |            |            |            |
| Bi-Weekly Construction Coordination Meetings (Teleconference As needed)           |          |            | 10         |            |            |            |
| Shop Drawings/Material Submittals   |          |            | 20         |            | 30         |            |
| Contractor/RPR Inquiries  |          |            | 30         |            |            |            |
| Record Drawings   |          |            | 4          |            | 8          |            |
| Site Visits / On-Site Meeting   |          |            | 12         |            |            |            |
| Completion Inspection and Punchlist   |          |            | 12         |            |            |            |
| Utility Coordination  |          |            | 20         |            |            |            |
|   |          |            |            |            |            |            |
|   |          |            |            |            |            |            |
| <b>Subtotal - Electrical Engineering</b>  | <b>0</b> | <b>0</b>   | <b>128</b> | <b>0</b>   | <b>38</b>  | <b>0</b>   |











**EXHIBIT C  
(INSURANCE)**

Pursuant to Section 7.1 of the Agreement, Garver shall maintain the following schedule of insurance until completion of the Services:

|   |                 |
|---|-----------------|
| Worker's Compensation                                     | Statutory Limit |
| Automobile Liability                                      |                 |
| Combined Single Limit (Bodily Injury and Property Damage) | \$500,000       |
| General Liability   |                 |
| Each Occurrence   | \$1,000,000     |
| Aggregate   | \$2,000,000     |
| Professional Liability                                    |                 |
| Each Claim Made   | \$1,000,000     |
| Annual Aggregate  | \$2,000,000     |
| Excess of Umbrella Liability                              |                 |
| Per Occurrence  | \$1,000,000     |
| General Aggregate   | \$1,000,000     |



## EXHIBIT D

### MANDATORY FEDERAL CONTRACT PROVISIONS FOR PROFESSIONAL SERVICES CONTRACTS

#### 1. ACCESS TO RECORDS AND REPORTS

The Engineer must maintain an acceptable cost accounting system. The Engineer agrees to provide the sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives, access to any books, documents, papers, and records of the Engineer which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Engineer agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

#### 2. CIVIL RIGHTS - GENERAL

In all its activities within the scope of its airport program, the Engineer agrees to comply with pertinent statutes, Executive Orders and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, creed, color, national origin (including limited English proficiency), sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

This provision binds the Engineer and subconsultants from the solicitation period through the completion of the contract.

#### 3. CIVIL RIGHTS – TITLE VI ASSURANCE

During the performance of this contract, the Engineer, for itself, its assignees, and successors in interest (hereinafter referred to as the “Engineer”) agrees as follows:

- I. Compliance with Regulations: The Engineer (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- II. Non-discrimination: The Engineer, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The Engineer will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- III. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Engineer for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subconsultant or supplier will be notified by the Engineer of the Engineer’s



obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

- IV. Information and Reports: The Engineer will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Engineer is in the exclusive possession of another who fails or refuses to furnish the information, the Engineer will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- V. Sanctions for Noncompliance: In the event of an Engineer's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
- a. Withholding payments to the Engineer under the contract until the Engineer complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- VI. Incorporation of Provisions: The Engineer will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Engineer will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Engineer becomes involved in, or is threatened with litigation by a subconsultant, or supplier because of such direction, the Engineer may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Engineer may request the United States to enter into the litigation to protect the interests of the United States.

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);





- The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

#### 4. DEBARMENT AND SUSPENSION

By submitting a bid/proposal under this solicitation, the Engineer certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

#### 5. EQUAL EMPLOYMENT OPPORTUNITY (E.E.O.)

I. During the performance of this contract, the Engineer agrees as follows:

- (1) The Engineer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex,



sexual orientation, gender identify or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The Engineer will, in all solicitations or advertisements for employees placed by or on behalf of the Engineer, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Engineer will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Engineer's legal duty to furnish information.
- (4) The Engineer will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the said labor union or workers' representatives of the Engineer's commitments under this section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Engineer will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Engineer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Engineer's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Engineer may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The Engineer will include the portion of the sentence immediately preceding paragraph (1)



and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subconsultant or vendor. The Engineer will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event an Engineer becomes involved in, or is threatened with, litigation with a subconsultant or vendor as a result of such direction by the administering agency the Engineer may request the United States to enter into such litigation to protect the interests of the United States.

## II. Standard Federal Equal Employment Opportunity Contract Specifications

### (1) As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. "Minority" includes:
  - i. Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);
  - ii. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
  - iii. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
  - iv. American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Whenever the Engineer, or any subconsultant at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

(3) If the Engineer is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an



association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Engineers shall be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Engineer or subconsultant participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Engineers or subconsultants toward a goal in an approved Plan does not excuse any covered Engineer's or subconsultant's failure to take good faith efforts to achieve the Plan goals and timetables.

- (4) The Engineer shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Engineer should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Engineers performing construction work in a geographical area where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Engineer is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
- (5) Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Engineer has a collective bargaining agreement to refer either minorities or women shall excuse the Engineer's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.
- (6) In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees shall be employed by the Engineer during the training period, and the Engineer shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U.S. Department of Labor.
- (7) The Engineer shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Engineer's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Engineer shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Engineer's employees are assigned to work. The Engineer, where possible, will assign two or more women to each construction project. The Engineer shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Engineer's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to



community organizations when the Engineer or its unions have employment opportunities available, and maintain a record of the organizations' responses.

- c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Engineer by the union or, if referred, not employed by the Engineer, this shall be documented in the file with the reason therefore along with whatever additional actions the Engineer may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Engineer has a collective bargaining agreement has not referred to the Engineer a minority person or female sent by the Engineer, or when the Engineer has other information that the union referral process has impeded the Engineer's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Engineer's employment needs, especially those programs funded or approved by the Department of Labor. The Engineer shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Engineer's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Engineer in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Engineer's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Engineer's EEO policy with other Engineers and subconsultants with whom the Engineer does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the Engineer's



recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Engineer shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Engineer's workforce.
  - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Engineer's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are non-segregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Engineers and suppliers, including circulation of solicitations to minority and female Engineer associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Engineer's EEO policies and affirmative action obligations.
- (8) Engineers are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of an Engineer association, joint Engineer union, Engineer community, or other similar groups of which the Engineer is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Engineer actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Engineer's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Engineer. The obligation to comply, however, is the Engineer's and failure of such a group to fulfill an obligation shall not be a defense for the Engineer's noncompliance.
- (9) A single goal for minorities and a separate single goal for women have been established. The Engineer, however, is required to provide equal employment opportunity and to take





affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, if the particular group is employed in a substantially disparate manner (for example, even though the Engineer has achieved its goals for women generally, the Engineer may be in violation of the Executive Order if a specific minority group of women is underutilized.)

- (10) The Engineer shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (11) The Engineer shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- (12) The Engineer shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Engineer who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- (13) The Engineer, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Engineer fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- (14) The Engineer shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Engineers shall not be required to maintain separate records.
- (15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

#### 6. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.



The Engineer has full responsibility to monitor compliance to the referenced statute or regulation. The Engineer must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division

## 7. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Engineer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Engineer retains full responsibility to monitor its compliance and their subconsultant's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Engineer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

## 8. TERMINATION OF CONTRACT

- I. Termination for Convenience. The Owner may, by written notice to the Engineer, terminate this Agreement for its convenience and without cause or default on the part of Engineer. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Engineer must immediately discontinue all services affected.

Upon termination of the Agreement, the Engineer must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Engineer for satisfactory work completed up through the date the Engineer receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Engineer harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

- II. Termination for Default. Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

- a) Termination by Owner: The Owner may terminate this Agreement in whole or in part, for the failure of the Engineer to:



1. Perform the services within the time specified in this contract or by Owner approved extension;
2. Make adequate progress so as to endanger satisfactory performance of the Project;
3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Engineer must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Engineer must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Engineer for satisfactory work completed up through the date the Engineer receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Engineer harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

- b) Termination by Engineer: The Engineer may terminate this Agreement in whole or in part, if the Owner:

1. Defaults on its obligations under this Agreement;
2. Fails to make payment to the Engineer in accordance with the terms of this Agreement;
3. Suspends the Project for more than 180 days due to reasons beyond the control of the Engineer.

Upon receipt of a notice of termination from the Engineer, Owner agrees to cooperate with Engineer for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Engineer cannot reach mutual agreement on the termination settlement, the Engineer may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

In the event of termination due to Owner breach, the Engineer is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Engineer through the effective date of termination action. Owner agrees to hold Engineer harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

## 9. TRADE RESTRICTION CERTIFICATION

By submission of an offer, the Engineer certifies that with respect to this solicitation and any resultant



contract, the Engineer –

- (1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR.);
- (2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- (3) has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, § 1001.

The Engineer must provide immediate written notice to the Owner if the Engineer learns that its certification or that of a subconsultant was erroneous when submitted or has become erroneous by reason of changed circumstances. The Engineer must require subconsultants provide immediate written notice to the Engineer if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR § 30.17, no contract shall be awarded to an Engineer or subconsultant:

- (1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR. or
- (2) whose subconsultants are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list or
- (3) who incorporates in the public works project any product of a foreign country on such USTR list;

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of an Engineer is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Engineer agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Engineer may rely on the certification of a prospective subconsultant that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Engineer has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Engineer or subconsultant knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of



the contract or subcontract for default at no cost to the Owner or the FAA.

#### 10. VETERAN'S PREFERENCE

In the employment of labor (excluding executive, administrative, and supervisory positions), the Engineer and all sub-tier Engineers must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. § 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

#### 11. TAX DELINQUENCY AND FELONY CONVICTIONS

The Engineer agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

- 1) The Engineer represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 2) The Engineer represents that it is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

**Felony conviction:** Felony conviction means a conviction within the preceding twenty-four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

**Tax Delinquency:** A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

#### 12. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Engineer and Subconsultants agree to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)].

#### 13. DOMESTIC PREFERENCES FOR PROCUREMENTS

The Bidder or Offeror certifies by signing and submitting this bid or proposal that, to the greatest extent practicable, the Bidder or Offeror has provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products) in compliance with 2 CFR § 200.322.



## EXHIBIT E

### STATE OF TEXAS REQUIREMENTS

#### **I. PROHIBITION ON CONTRACTS WITH FOREIGN TERRORIST ORGANIZATIONS**

Consultant's Acknowledgement of Prohibition on Contracts with Foreign Terrorist Organizations Effective September 1, 2017, Consultant acknowledges, in accordance with Chapter 2252 of the Texas Government Code, that (a) Consultant does not engage in business with Iran, Sudan, or any foreign terrorist organizations and (b) Consultant is not listed by the Texas Comptroller as a terrorist organization as defined by Chapter 2252 of the Texas Government Code. Consultant further acknowledges that this provision is hereby incorporated by reference, as if written word for word, into any subsequent contract entered into between the City and Consultant for (1) professional or consulting services subject to the Professional Services Act – Chapter 2254 of the Texas Government Code, (2) general construction, (3) an improvement, (4) a service, (5) a public works project, or (6) for a purchase of supplies, materials or equipment.

#### **II. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**

Consultant's Acknowledgement of Prohibition on Contracts with Companies Boycotting Israel Effective September 1, 2017 and as amended May 7, 2019, Consultant acknowledges, in accordance with Chapter 2271 of the Texas Government Code, that Consultant does not boycott Israel and will not boycott Israel during the term of any contract with the City of Killeen to provide goods and services to the City. Consultant further acknowledges that this provision is hereby incorporated by reference, as if written word for word, into any subsequent contract entered into between the City and Consultant for goods and services.

#### **III. PROHIBITION ON CONTRACTS WITH CERTAIN FOREIGN-OWNED COMPANIES IN CONNECTION WITH CRITICAL INFRASTRUCTURE**

Consultant's Acknowledgement of Prohibition on Contracts with Certain Foreign-Owned Companies in Connection with Critical Infrastructure Effective June 18, 2021, Consultant acknowledges, in accordance with Chapter 2274 of the Texas Government Code, that Consultant does not and will not engage in contracts with certain foreign-owned companies in connection with critical infrastructure during the term of any contract with the City of Killeen to provide goods and services to the City. Consultant further acknowledges that this provision is hereby incorporated by reference, as if written word for word, into any subsequent contract entered into between the City and Consultant for goods and services.

#### **IV. PROHIBITION ON CONTRACTS WITH COMPANIES THAT DISCRIMINATE AGAINST FIREARM AND AMMUNITION INDUSTRIES**

The Consultant must verify that it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. Verification is not required



from a sole source provider or when the city does not receive any bids from a company able to provide the required verification. Discriminate, firearm entity and firearm trade association are defined in Government Code Chapter 2274

**V. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING CERTAIN ENERGY COMPANIES**

The Consultant verifies that it does not have a practice, policy, guidance or directive that discriminates against certain energy companies as defined in Chapter 809 of the Texas Government Code. The Consultant verifies that it:

- a) Does not boycott energy companies; and
- b) Will not boycott energy companies during the term of the contract





**EXHIBIT F**

AIRPORT IMPROVEMENT AID PROJECT: TBD  
STATE: TEXAS

**CERTIFICATION OF ENGINEER**

I hereby certify that I am Mitchell McAnally, PE and duly authorized representative of the firm of GARVER, LLC, whose address is 285 SE Inner Loop, Georgetown, TX 78626 and that neither I nor the above firm I here represent has:

(a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me of the above consultant) to solicit or secure this contract.

(b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract; or

(c) Paid or agreed to pay to any firm, organization, or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind, for, or in connection with, procuring or carrying out the contract; except as here expressly stated (if any).

I acknowledge that this certificate is to be furnished to the Federal Aviation Administration of the United States Department of Transportation, in connection with this contract involving participation of Airport Improvement Program (AIP) funds and is subject to applicable State and Federal laws, both criminal and civil.

GARVER, LLC

By: *Mitchell McAnally*

Date: July 11, 2024