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January 10, 2025

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

Re: Professional Services Proposal and Contract for
GRK Commercial Office Building – Owners Representative Services

Dear Mr. Wilson,

We appreciate the opportunity to serve the Killeen Regional Airport with the Commercial Office Building. 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: GRK Commercial Office Building Contract – Owners Representative Services



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 Commercial Office Building (Owners Representative) (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 – State of Texas Requirements

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: _____
Printed Name

Name: Mitchell McAnally
Printed Name

Title: _____

Title: Vice President

Date: _____

Date: January 10, 2025

Attest: _____

Attest: _____



EXHIBIT A (SCOPE OF SERVICES)

Generally, the Scope of Services includes the following professional services for the Commercial Office Building project at Killeen Regional Airport (GRK). The project will consist primarily of site development and construction of a commercial office building with a surrounding parking lot and new utilities and infrastructure for the building.

- Owner's Representative Services

1. OWNER'S REPRESENTATIVE SERVICES

- 1.1. Garver will serve as the Owner's representative for the project and furnish consultation and advice to the Owner during the performance of this service. Garver will virtually attend meetings (Scoping, Design Review, and Construction Progress) as necessary to assist the Owner in keeping with Owner's best interests.
- 1.2. It is understood that the Design-Build team will provide a schedule including design and construction phases. If any phases are anticipated to go beyond schedule, additional services will be required.
- 1.3. Garver will coordinate with the Design-Build firm as necessary to act in the Owner's best interests as requested.
- 1.4. Garver will review Design-Build teams progress and progress payment requests.
- 1.5. Garver will assist Owner in preparing Required Contract Provisions. Garver will also provide consultation to coordinate general funding requirements.
- 1.6. Garver will review Design-Build team's plans and specifications for general conformance.
- 1.7. Garver will complete a punchlist walkthrough and review with the Owner once the project is substantially complete.
- 1.8. Garver will assist and coordinate with the Owner during the closeout period of the project.

2. PROJECT DELIVERABLES

- 2.1. The following deliverables will be submitted to the parties identified below. Unless otherwise noted below, all deliverables shall be electronic.
 - Reviews of design document deliverables from the Design-Build team
 - Electronic Only
 - Monthly Design-Build Contractor Pay Request Reviews with Concurrence Signature
 - Electronic Only

3. ADDITIONAL SERVICES

- 3.1. 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.



- Any design engineering services, surveying, geotechnical, structural, mechanical, electrical, or other professional services.
- Owner's representative services beyond the Design-Build team's original contracted schedule.
- Deliverables beyond those listed herein.
- Any professional services beyond those listed herein.
- TCEQ permit submission or coordination.
- Construction Administration Services, On-Site Construction Observation, and Construction Materials Testing beyond those listed herein.
- Environmental Handling and Documentation, including wetlands identification or mitigation plans or other work related to environmentally or historically (culturally) significant items.
- Permitting
- Drainage analysis
- Coordination with FEMA and preparation/submittal of a CLOMR and/or LOMR.
- Services after construction, such as warranty follow-up, operations support, and Part 139 inspection support.

4. SCHEDULE

- 4.1. 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
Owner's Representative Services	\$125,000.00	Hourly & Expenses
TOTAL FEE	\$125,000.00	

The hourly not-to-exceed amount to be paid under this Agreement is \$125,000. For informational purposes, a breakdown of Garver's estimated costs is included in this [Exhibit B](#).

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 services, reproduction, and travel.

Exhibit B

Killeen Regional Airport (GRK) Commercial Office Building - Owner's Representative Services

FEE SUMMARY

Title I Service	Fee Type	Estimated Fees
Owner's Representative Services	Hourly + Expenses	\$ 125,000.00
Subtotal for Title I		\$ 125,000.00



**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 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