



MASTER AGREEMENT FOR PROFESSIONAL SERVICES

Webb County

Laredo, Texas

Project No. 17238050

THIS MASTER AGREEMENT FOR PROFESSIONAL SERVICES is made by and between **Webb County of Laredo, Texas** hereinafter referred to as "Owner," and **GARVER, LLC**, hereinafter referred to as "GARVER".

The Owner intends to procure professional engineering services for planning, analysis, design, and construction services for its existing and future wastewater systems.

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

The Owner and GARVER in consideration of the mutual covenants in this contract agree in respect of the performance of professional services by GARVER and the payment for those services by the Owner as set forth below. The Owner shall issue GARVER a written notice to proceed with a specified date authorizing GARVER to commence the services to be provided to Owner pursuant to this agreement. This agreement supersedes all prior written or oral understandings associated with services to be rendered, including any teaming agreements.

SECTION 1 - EMPLOYMENT OF GARVER

The Owner agrees to engage GARVER, and GARVER agrees to perform professional services in connection with the proposed improvements as stated in the sections to follow. These services will conform to the requirements and standards of the Owner and conform to the standards of practice ordinarily used by members of GARVER's profession practicing under similar conditions. For having rendered such services, the Owner agrees to pay GARVER compensation as stated in the sections to follow.

SECTION 2 - SCOPE OF SERVICES

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



SECTION 3 - PAYMENT

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

If any payment due GARVER under this agreement is not received within 60 days from date of invoice, GARVER may elect to suspend services under this agreement without penalty or liquidated damages assessed from the Owner.

The lump sum amount to be paid under this agreement is identified in each subsequent Work Order. For informational purposes included in Appendix B are current hourly rates for each employee classification.

The Owner will pay GARVER on a monthly basis, based upon statements submitted by GARVER to the Owner indicating the estimated proportion of the work accomplished. Payments not received within 60 days of invoice date will be subject to a one percent monthly simple interest charge.

Additional Services (Extra Work). Any additional/extra work and/or additional services shall require a written and signed change order approved by the Webb County Commissioner's Court and signed by both parties. For work not described or included in Section 2 – Scope of Services but requested by the Owner in writing, the Owner will pay GARVER, for time spent on the project, at the rates shown in Appendix B 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.

SECTION 4 - OWNER'S RESPONSIBILITIES

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

1. Giving thorough consideration to all documents presented by GARVER and informing GARVER of all decisions within a reasonable time so as not to delay the work of GARVER.
2. Making provision for the employees of GARVER to enter public and private lands as required for GARVER to perform necessary preliminary surveys and other investigations.
3. Obtaining the necessary lands, easements and right-of-way for the construction of the work. All costs associated with securing the necessary land interests, including property acquisition and/or easement document preparation, surveys, appraisals, and abstract work, shall be borne by the Owner outside of this contract, except as otherwise described in Section 2 – Scope of Services.
4. Furnishing GARVER such plans and records of construction and operation of existing facilities, available aerial photography, reports, surveys, or copies of the same, related to or bearing on the



proposed work as may be in the possession of the Owner. Such documents or data will be returned upon completion of the work or at the request of the Owner.

5. Furnishing GARVER a current boundary survey with easements of record plotted for the project property.
6. Paying all plan review and advertising costs in connection with the project.
7. Providing legal, accounting, and insurance counseling services necessary for the project and such auditing services as the Owner may require.
8. Furnishing permits, permit fees, and approvals from all governmental authorities having jurisdiction over the project and others as may be necessary for completion of the project.
9. Giving prompt written notice to GARVER whenever the Owner observes or otherwise becomes aware of any defect in the project or other events which may substantially alter GARVER's performance under this Agreement.
10. Owner will not hire any of GARVER's employees during performance of this contract and for a period of one year beyond completion of this contract.
11. Furnishing GARVER a current geotechnical report for the proposed site of construction. GARVER will coordinate with the geotechnical consultant, the Owner has contracted with, on the Owner's behalf for the information that is needed for this project.

SECTION 5 – MISCELLANEOUS

5.1 Instruments of Service

GARVER's instruments of service provided by this agreement consist of the printed hard copy reports, drawings, and specifications issued for the Assignment or Project; whereas electronic media, including CADD files, are tools for their preparation. As a convenience to the Owner, GARVER will furnish to the Owner both printed hard copies and electronic media. In the event of a conflict in their content, however, the printed hard copies shall take precedence over the electronic media.

GARVER and Owner shall agree to a mutually agreeable, acceptable and compatible electronic media software/hardware format prior to the execution of this agreement. Thereafter, GARVER's sole responsibility for the electronic media is to furnish a replacement for defective disks within thirty (30) days after delivery to the Owner.

GARVER retains ownership of the printed hard copy drawings and specifications and the electronic media. The Owner is granted a license for their use, but only in the operation and maintenance of the Project or Assignment for which they were provided. Use of these materials for modification, extension, or expansion of this Project or on any other project, unless under the direction of GARVER, shall be without liability to GARVER and GARVER's consultants.



5.2 Opinions of Cost

Since GARVER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, GARVER's Estimates of Project Costs and Construction Costs provided for herein are to be made on the basis of GARVER's experience and qualifications and represent GARVER's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but GARVER cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from estimates prepared by GARVER.

The 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 exceeds the construction budget established by the Owner, GARVER will not be required to re-design the project without additional compensation.

5.3 Underground Utilities

GARVER will not, unless defined within a Work Order, provide research regarding utilities and survey utilities located and marked by their owners as provided for in this agreement. Additionally, since many utility companies typically will not locate and mark their underground facilities prior to notice of excavation, GARVER is not responsible for knowing whether underground utilities are present or knowing the exact location of utilities for design and cost estimating purposes. Additionally, GARVER is not responsible for damage to underground utilities, unmarked or improperly marked, caused by geotechnical, potholing, construction, or other subconsultants working under a subcontract to this agreement.

Owner shall be solely responsible for locating underground utilities and/or subcontracting with a company specializing in locating underground utilities at its sole cost and expense.

5.4 Insurance

GARVER currently has in force, and agrees to maintain in force for the life of this Contract, the following minimum schedule of insurance:

Worker's Compensation	Statutory Limit
Automobile Liability (Combined Property Damage and Bodily Injury)	\$500,000.00
General Liability (Combined Property Damage and Bodily Injury)	\$1,000,000.00
Professional Liability	\$1,000,000.00



5.5 Records

GARVER will retain all pertinent records for a period of two years beyond completion of the project. Owner may have access to such records during normal business hours.

5.6 Indemnity Provision

Subject to the limitation on liability set forth in Section 5.8, GARVER agrees to indemnify the Owner for damages, liabilities, or costs (including reasonable attorneys' fees) to the extent the damages and costs are caused by the negligent acts, errors, or omissions of GARVER, its subconsultants, or any other party for whom GARVER is legally liable, in the performance of their professional services under this contract.

In the event claims, losses, damages, or expenses are 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.

Owner agrees that any claim or suit for damages made or filed against GARVER by Owner will be made or filed solely against GARVER or its successors or assigns and that no member or employee of GARVER shall be personally liable to Owner for damages under any circumstances.

5.7 Design without Construction Phase Services

In the event GARVER's Scope of Services under this agreement is not amended to include project observation or review of the Contractor's performance or any other construction phase services, the 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.

In addition, GARVER agrees, to indemnify and hold "Owner" harmless from any loss, claim or cost, including reasonable attorneys' fees and costs of defense, arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Construction Contract Documents to reflect changed field or other conditions, for claims arising from the sole negligence or willful misconduct of GARVER.

If the Owner requests in writing that GARVER provide any specific construction phase services and if GARVER agrees in writing to provide such services, then GARVER shall be compensated for the work as Additional Services, pursuant to a written change order approved by the Webb County Commissioner's Court and signed by both parties.



5.8 Limitation of Liability

In recognition of the relative risks and benefits of the project to both the Owner and GARVER, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of GARVER and its subconsultants to the Owner and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims for expenses from any cause or causes, so that the total aggregate liability of GARVER and its subconsultants to all those named shall not exceed GARVER's total fee for services rendered on this project. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contractor warranty, and indemnity obligations.

Notwithstanding any other provision to the contrary in this Agreement or a Work Authorization and to the fullest extent permitted by law, neither Owner nor Garver shall be liable, whether based on contract, tort, negligence, strict liability, warranty, indemnity, error and omission, or any other cause whatsoever, for any consequential, special, incidental, indirect, punitive, or exemplary damages, or damages arising from or in connection with loss of power, loss of use, loss of revenue or profit (actual or anticipated), loss by reason of shutdown or non-operation, increased cost of construction, cost of capital, cost of replacement power or customer claims, and Owner hereby releases Garver, and Garver releases Owner, from any such liability.

5.8.1 Hazardous Materials

Nothing in this agreement shall be construed or interpreted as requiring GARVER to assume any role in the identification, evaluation, treatment, storage, disposal, or transportation of any hazardous substance or waste. Notwithstanding any other provision to the contrary in this Agreement or a Work Authorization and to the fullest extent permitted by law, Owner shall indemnify, defend and save GARVER and its affiliates, subconsultants, agents, suppliers, and any and all employees, officers, directors of any of the foregoing, if any, from and against any and all losses which arise out of the performance of the Services and relating to the regulation and/or protection of the environment, including, without limitation, losses incurred in connection with characterization, handling, transportation, storage, removal, remediation, disturbance, or disposal of hazardous material, whether above or below ground.

5.9 Mediation

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

The Owner and GARVER agree to, through good faith efforts, first attempt to resolve all conflicts that arise out of or related to this Agreement, through direct discussions involving senior and/or executive management representatives from their respective organizations. It is a requirement of this clause for this condition be attempted prior to the use of other dispute resolution processes. If the respective



representatives are unable to develop a compromise resolving the dispute, such that it is satisfactory to both parties within thirty (30) calendar days after a party delivers a written notice of such dispute, then further mediation processes shall begin, as described herein.

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

The Owner and GARVER further agree to use their reasonable best efforts to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants and in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

5.10 Litigation Assistance

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

SECTION 6 - CONTROL OF SERVICES

This is a Texas Contract and in the event of a dispute concerning a question of fact in connection with the provisions of this contract which cannot be disposed of by mutual agreement between the Owner and GARVER, the matter shall be resolved in accordance with the Laws of the State of Texas, and the exclusive venue for any litigation regarding this agreement shall lie in Webb County, Texas.

This Agreement may be terminated by either party by seven (7) days written notice in the event of substantial failure to perform in accordance with the terms hereof by the one (1) party through no fault to the other party or for the convenience of the Owner upon delivery of written notice to GARVER. If this Agreement is so terminated, GARVER shall be paid for the time and materials expended to accomplish the services performed to date, as provided in SECTION 3 - PAYMENT; however, GARVER may be required to furnish an accounting of all costs.

SECTION 7 - SUCCESSORS AND ASSIGNS

The 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 the Owner nor GARVER shall assign, sublet, or transfer their interest in this agreement without the written consent of the other.



Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

SECTION 8 – APPENDICES AND EXHIBITS

8.1 The following Appendices and/or Exhibits are attached to and made a part of this Agreement:

8.1.1 Appendix A – Work Order No. 1

8.1.2 Appendix B – Garver Hourly Rate Schedule

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.

Webb County

GARVER, LLC

By: _____

Signature

By: _____

Signature

Name: _____

Printed Name

Name: Jeffrey Sober

Printed Name

Title: _____

Title: Vice President



Date: _____

Date: January 23, 2018

Attest: _____

Attest:

A handwritten signature in blue ink, appearing to read 'Janet Compton', written over a horizontal line.

ATTESTED:

Margie Ramirez-Ibarra
Webb County Clerk

APPROVED AS TO FORM:

Alexandra Colessides-Solis - Director
Webb County Civil Legal Division

*By law, this office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

Passed and approved by the Webb County Commissioners Court
On _____, 2018; item no. _____.

APPENDIX "C"

Addendum No. 1 to Master Agreement for Professional Services b/w Webb County and Garver, LLC.

The following Addendum No. 1, is hereby being added to include the following two (2) sections which shall be added and incorporated as Appendix "C" to the Master Agreement for Professional Engineering Services Webb County Wastewater Treatment Plant.

Webb County Billing Procedure & Address

All invoices due under this agreement must be submitted to the Webb County Business Office in electronic format and/or delivered to the following address:

Webb County
1110 Washington Street, Ste. 203
Laredo, Texas 78040
Attn: Business Office
E-mail to: apinvoices@webbcountytx.gov

ALL invoices sent for payment to the Webb County Business Office must reference Purchase Order # and Webb County/Garver, LLC. Master Agreement for Professional Engineering Services Webb County Wastewater Treatment Plant.

Notices

All notices called for, or contemplated, hereunder shall be in writing, and shall be deemed to have been duly given, when personally delivered and/or via e-mail, or seventy-two (72) hours after mailed to each party by certified mail, return receipt requested, postage prepaid.

Any notices required to be sent hereunder shall be sent as follows:

TO: GARVER, LLC. ; Attn:
Richard Correa, Senior Project Manager
1906 E. Tyler Ave #D
Harlingen, Texas 78550
(956) 734-2375
E:Mail; rcorrea@garverUSA.com

TO: Jose Angel Lopez III, CTPM
Webb County Purchasing Agent
1110 Washington Street, Ste. 101
Laredo, Texas 78040
(956) 534-4125
E:Mail; joel@webbcountytx.gov

Adrian Montemayor
Webb County Water & Wastewater Utilities Director
513 Martha Dr.
Laredo, Texas 78046
(956) 523-5590
E: Mail; agmontemayor@webbcountytx.gov