



## CITY OF SEGUIN FIRE STATION NO. 4

### FDCS PROFESSIONAL SERVICES AGREEMENT

#### ARTICLE 1 RECITALS AND INTENT

1.1 This Agreement ("Agreement") is made by and between the City of Seguin herein ("CITY") and **Fitzpatrick Design Construction Services Group, LLC** herein ("FDCS"), acting by and through their duly authorized representatives, and is effective on the date stated herein.

1.2 City of Seguin has requested Owner's Representative/Project Management Services related to the construction of the city's Fire Station No. 4 and desires to engage FDCS to provide these services in connection with the work assigned ("Services").

1.3 City of Seguin desires to engage the services of FDCS as an independent contractor, and not as an employee, to perform the assigned services under the terms and conditions provided in this agreement, and FDCS desires to render said services for City of Seguin on the terms and conditions provided in this agreement.

1.4 This agreement and the obligations of the parties are contained in this document along with in any Request for Proposals or Qualifications issued by City of Seguin.

#### ARTICLE 2 CONTRACTUAL RELATIONSHIP

2.1 The CITY agrees to employ FDCS, and FDCS agrees to perform, as an independent contractor, Owner's Representative/Project Management services on an as stated in FDCS Proposal Letter **Exhibit A**.

2.2 This Agreement shall serve as the general agreement for all services. No Services shall be undertaken or performed by FDCS unless and until written notice to proceed has been issued by City of Seguin.

2.3 The Services to be provided under this Agreement are intended to include services within the expertise and experience of FDCS, and include plan review, site observations, and project management services.

#### ARTICLE 3 FDCS'S OBLIGATIONS

3.1 FDCS's obligations may include but are not limited to the following:

3.1.1 FDCS shall provide the CITY the services and incidental materials specified in the attached **Exhibit A**. No Services shall be undertaken or performed by FDCS until a written notice to proceed has been issued by the CITY.

3.1.2 All Services shall be of superior quality and shall be performed in a professional manner in accordance with industry standards and best practice. The minimum standard of care for all related Services performed or furnished by FDCS under this Agreement will be the care and skill ordinarily used by members of FDCS's profession practicing under similar conditions at the same time and in the same locality. FDCS will re-perform any Services not meeting this standard without additional compensation.

3.1.3 FDCS shall, promptly following issuance of notice to proceed, submit a Schedule of Work for the CITY's approval, which shall specify the dates and milestones by which the Services covered by

the contract will be completed. FDCS shall perform the Services in a timely fashion to comply with the CITY's requirements and in accordance with the approved Schedule of Work.

3.1.4 FDCS shall comply with all applicable laws, rules and regulations governing all Services and any projects authorized by this Agreement.

3.2 Opinions of Probable Construction Cost. Any opinions or estimates of probable construction costs to be provided under this Agreement are to be made or reviewed on the basis of FDCS's experience and qualifications and represent FDCS's judgment as an experienced and qualified professional. However, since the FDCS 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, FDCS cannot and does not guarantee that proposals, bids or actual final construction costs will not vary from the opinions or estimates prepared or reviewed by FDCS.

### 3.3 Services During Construction

#### 3.3.1 FDCS's Personnel at Construction Site

a. FDCS shall make visits to the site at intervals appropriate to the various stages of construction, as FDCS deems necessary, in order to observe as an experienced and qualified professional the progress and quality of the various aspects of the work of the construction contractor (the "Contractor").

b. Additionally, if and to the extent included in the assigned Services, FDCS shall provide the services of a Project Representative at the site to assist the CITY and to provide on-site observations of such work. The furnishing of such Project Representative services will not extend FDCS's responsibilities or authority beyond the specific limits set forth in this Agreement. Such visits and observations by FDCS and their Project Representative are not intended to be exhaustive, or to extend to every aspect of the work in progress, or to FDCS in this Agreement, but rather are to be limited to spot checking, selective sampling and similar methods of general observation of the work based on FDCS's exercise of professional judgment as assisted by the Project Representative. Based on information obtained during such visits and such observations, FDCS shall endeavor to determine,

in general, if such work is proceeding in accordance with the construction contract documents ("Contract Documents"), and FDCS shall keep the CITY informed of the progress of the work. FDCS shall report to the CITY any deficiencies in the work of which FDCS has direct knowledge.

3.3.2 Contractor Responsible for Construction Work. FDCS shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor or the safety precautions and programs incident to the work of the Contractor. FDCS shall not guarantee the performance of the Contractor nor be responsible for the acts, errors, omissions or the failure of the Contractor to perform the construction work in accordance with the Contract Documents.

3.3.3 Construction Progress Payments. Recommendations by FDCS to the CITY for periodic construction progress payments to the Contractor will be based on FDCS's knowledge, information and belief from selective observation and sampling that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by FDCS to ascertain that the Contractor has completed the work in exact accordance with the Contract Documents; that the final work will be acceptable in all respects; that FDCS has made an examination to ascertain how or for what purpose the Contractor has used the moneys paid; that title to any of the work materials or equipment has passed to the CITY free and clear of all liens, claims, security interests or encumbrances; or that there are no other matters at issue between THE CITY and Contractor that affect the amount that should be paid.

3.3.4 Contractor Submittals. FDCS shall review Contractor's shop drawings and other submittals. Such review shall be only for conformance with the information given in the Contract Documents and for compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews will not extend to means, methods, techniques, sequences or procedures of construction, or to safety precautions and programs incident thereto.

3.3.5 Record Drawings. FDGS shall monitor the preparation of record drawings by the Contractor. Such record drawings will be based on information furnished by Sub-Contractor to the Contractor showing changes made during construction. FDGS is not responsible for any errors or omissions in the information provided by Contractor that is incorporated into the record drawings.

#### **ARTICLE 4 THE CITY'S RESPONSIBILITIES**

4.1 The CITY shall provide to FDGS all its criteria and requirements for the Project and all available information pertinent to the Project including previous reports. FDGS may reasonably rely upon such information.

4.2 The CITY shall arrange for access to and make all provisions for FDGS to enter upon public and private property as required for FDGS to perform Services under this Agreement.

4.3 The CITY will obtain, arrange, and pay for all advertisements for bids; all permits and licenses required for the Project; and all land, easements, rights-of-way, platting, and access necessary for FDGS's Services under this Agreement or for performance of the Services.

4.4 The CITY will examine FDGS's studies, reports, proposals, and other information submitted by FDGS, consult with others as the CITY deems appropriate, and render timely written approvals and decisions to FDGS.

4.5 The CITY shall give prompt written notice to FDGS whenever the CITY becomes aware of any development that affects the scope or timing of FDGS's Services or of any defect or nonconformance in the Services of the FDGS or work of the Contractor.

#### **ARTICLE 5 FDGS'S COMPENSATION**

5.1 In complete compensation for all the Services, the CITY shall pay FDGS the compensation set forth in this agreement. FDGS's compensation shall not exceed the sum set forth in the task order, which may be prorated on a daily basis in the event of a termination of this Agreement or a work stoppage ordered by the CITY.

5.2 Invoices for Services performed under this agreement will be submitted to the CITY by FDGS monthly. Invoices will be due and payable within thirty (30) days after receipt. When appropriate, invoices shall include any changes or updates to the approved Schedule of Work.

5.3 No statement, term or provision in any invoice, bill or statement submitted to the CITY by FDGS will be construed to waive, amend, or modify any term or provision of this Agreement or any task order.

5.4 The CITY may make changes within the general assigned Services. If such changes affect FDGS's cost of or time required for performance of the Services, an equitable adjustment will be made through a written amendment to this Agreement.

5.5 FDGS shall be reimbursed for all approved expenditures. Reimbursable expenses may include but are not limited to messengers; postage; courier; reproduction of drawings, schedules, specifications, and documents; registrations; permits; and testing.

#### **ARTICLE 6 INDEMNIFICATION**

6.1 With respect to claims brought by third parties against either FDGS or the CITY relating to the property or facilities with respect to which this Agreement pertains, or regarding claims made by FDGS against the CITY, FDGS and the CITY agree as follows:

6.1.1 FDGS WILL INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES AGAINST CLAIMS, DEMANDS OR CAUSES OF ACTION; AND ALL COSTS, LOSSES, LIABILITIES, EXPENSES AND JUDGMENTS INCURRED IN CONNECTION THEREWITH, INCLUDING ATTORNEYS' FEES AND COURT COSTS, BROUGHT BY ANY OF FDGS'S EMPLOYEES OR REPRESENTATIVES, OR BY ANY OTHER THIRD PARTY, BASED UPON, IN CONNECTION WITH, RESULTING FROM, ARISING OUT OF, OR OCCASIONED BY THE ACTS, OMISSIONS OR CONDUCT OF FDGS, ITS OFFICERS, AGENTS, OR EMPLOYEES IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT.

6.1.2 It is a condition precedent to the indemnitor's contractual obligation of indemnification under this Agreement that the CITY provide written notice of a third-party claim, demand, or cause of action as soon as practical, after written notice of such third-party claim,

demand or cause of action is received by the CITY. It is a further condition precedent to the indemnitor's contractual obligation of indemnification under this Agreement that the indemnitor shall thereafter have the right to participate in the investigation, defense and resolution of such third-party claim.

6.1.3 Notwithstanding any provision of this article, the CITY shall in no event be liable or responsible to FDGS or any third party to the extent that the CITY has immunities or defenses, and nothing in this article or this section or this Agreement shall be deemed in any way as a waiver of any defenses or immunities, whether governmental, sovereign, official, qualified, legislative or otherwise, all such defenses and immunities being hereby expressly retained. Nothing in this Agreement shall be deemed in any way to grant or confer any right, title or interest in or to any person not a party to this Agreement.

## **ARTICLE 7 INSURANCE**

7.1 FDGS shall obtain and maintain, throughout the term of the Agreement, insurance of the types and in the minimum amounts set forth below.

7.2 FDGS shall, upon request by the CITY, furnish certificates of insurance to the CITY evidencing compliance with the insurance requirements hereof. Certificates shall indicate name of FDGS, name of insurance company, policy number, term of coverage and limits of coverage. FDGS shall cause its insurance companies to provide the CITY with at least thirty (30) days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation or non-renewal of the insurance coverage required under this Agreement. FDGS shall obtain such insurance from such companies having a Best rating of B+/VII or better, licensed or approved to transact business in the state in which the Services shall be performed, and shall obtain such insurance of the following types and minimum limits:

a. Workers Compensation insurance shall be provided by FDGS for FDGS's employees engaged in the CITY projects in at least the statutory minimums.

b. Commercial General Liability insurance including coverage for Products/Completed Operations, Blanket Contractual, Contractors' Protective Liability, Broad Form Property

Damage, Personal Injury/ Advertising Liability, and Bodily Injury and Property Damage with limits of not less than:

\$2,000,000 general aggregate limit  
2,000,000 each occurrence, combined single limit  
1,000,000 aggregate Products, combined single limit  
1,000,000 aggregate Personal Injury/ Advertising Liability  
50,000 Fire Legal Liability  
50,000 Premises Medical

c. Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.

7.3 The minimum limits may be increased by the CITY based on project-specific needs, or specific coverages may be waived by express provision in task orders. The CITY and their agents and employees shall be added as additional insureds to all coverage required above, except for Workers Compensation and automobile liability insurance. All policies written on behalf of FDGS shall contain a waiver of subrogation in favor of the CITY and their agents and employees.

## **ARTICLE 8 DURATION, EXTENSION AND TERMINATION**

8.1 This agreement shall be for a term of three (3) years. Time is of the essence in the performance of this Agreement.

8.2 This agreement may be terminated by either party for convenience upon thirty (30) days written notice or for cause if either party fails substantially to perform through no fault of the other and does not commence correction of such non-performance within five (5) business days of written notice and diligently complete the correction thereafter. Upon delivery of such notice, FDGS shall, unless the notice states otherwise, immediately discontinue all Services, proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to the Services, and deliver to the CITY all instruments of service produced under this Agreement. Upon termination, the CITY will owe FDGS for all compensation earned under this Agreement to date of termination, without termination expenses.

## **ARTICLE 9 OWNERSHIP OF DOCUMENTS**

9.1 All documents including but not limited to reports, drawings, and specifications, provided, or furnished by FDGS pursuant to this Agreement are instruments of service in respect to the Project, whether or not the Project is completed, and shall be the property of the CITY. The CITY shall have, keep and retain all rights, title and interest in and to all Instruments of Service, including all ownership, common law, statutory, and other reserved rights, including copyrights, in and to all Instruments of Service, whether in draft form or final form, which are produced at its request and in furtherance of this Agreement. FDGS shall endeavor to omit any information in the Instruments of Service which may constitute trade secrets. If any portion of the documents comprising the Instruments of Service have been previously copyrighted or otherwise protected from disclosure or unauthorized use by FDGS which have previously been prepared by FDGS and which are not created for the sole and specific purpose of this Project, such copyright protections or reservations of rights shall be expressly stated thereon.

9.2 When such documents are in electronic form, the CITY shall own copies of data files, specifications, or drawings for the CITY's information in its use of the Services. However, due to the potential that electronic information can be modified by the CITY or other persons, unintentionally or otherwise, FDGS reserves the right to remove all indicia of its ownership and/or involvement from each electronic display or file. For documentation purposes, the original computer files will be retained by FDGS for a period not to exceed five (5) years after completion of the Services. Thereafter, all such files shall be remitted to the CITY.

9.3 In addition, electronic information created and produced by FDGS is considered a part of FDGS's instrument of service and will not be used by the CITY on other Services, for additions to this Service, or for completion of this Service by another design FDGS except by agreement or FDGS's default.

9.4 Any such use or reuse of any instrument of service by the CITY or others without written verification or data adaptation by FDGS for the specific purpose intended will be at the CITY's sole risk and without liability or legal exposure to FDGS.

## **ARTICLE 10 LIMITATIONS ON RIGHTS AND REMEDIES**

10.1 Failure of FDGS or the CITY to perform its obligations under this Agreement (including the obligation to make payments when properly due) shall not subject such party to any liability or place such party in breach of any term or condition of this Agreement to the other party to the extent (and only to the extent) that such failure is due to causes beyond the reasonable control of the affected party or parties including, but not limited to, fire, explosion, flood, drought, hurricane, war, terrorism, riot, sabotage, embargo, a declared national or state (of the affected party) health emergency, labor disputes, supply chain disruptions, compliance with any order or regulation of any government entity acting with color of right, or any other cause beyond the reasonable control of such non-performing party and not caused by the negligence, intentional conduct or misconduct of the non-performing party (such event or cause referred to as "force majeure"). The party affected shall, as promptly as practicable, but no more than five (5) business days from the force majeure, notify the other party, and shall use reasonable efforts to eliminate, cure or overcome the force majeure, keeping the other party informed of its progress, and resume performance of its obligations with all possible speed. If a condition constituting force majeure exists for more than thirty (30) consecutive days, the parties shall meet and discuss in good faith, modifications to the task order or other affected aspects of the Agreement or termination of this Agreement and/or any active and impacted task order.

10.2 If no environmental assessments are included within the scope of work, FDGS shall have no responsibility for the discovery, presence, handling, removal, or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances, except prompt notice to the CITY upon discovery.

## **ARTICLE 11 NO THIRD-PARTY RIGHTS**

11.1 Nothing contained in this Agreement shall create a contractual relationship with or duties, obligations or causes of action in favor of any third party against either the CITY or FDGS.

11.2 The Services to be performed by FDGS under this Agreement are solely for the benefit of the CITY. This Agreement shall not be construed as creating any contractual relationship of any kind between FDGS and any third party. It is the intent of the parties that there are no third-party beneficiaries to this Agreement. The fact that THE CITY may enter into other agreements with third parties that provide FDGS the authority to observe the work being performed by the third party shall not give rise to any duty or responsibility on the part of FDGS in favor of such third party.

## ARTICLE 12 MISCELLANEOUS

12.1 This Agreement shall be effective upon its execution by FDGS and the CITY, subject to the notice to proceed, and shall remain in full force until all obligations under this Agreement have been fulfilled, unless sooner terminated as provided herein.

12.2 This Agreement shall be construed and enforced for all purposes pursuant to the laws of the State of Texas. Venue shall be exclusively in the state courts of proper jurisdiction of Guadalupe County, Texas.

12.3 This Agreement is non-assignable. Neither FDGS nor the CITY shall assign, sublet or transfer its interest in this Agreement without the prior written consent of the other.

12.4 This Agreement, which expressly incorporates and includes the CITY's Request for Proposals or Qualifications, represents the entire agreement between FDGS and the CITY with respect to the subject matter hereof and supersedes and merges all prior negotiations, representations, discussions, or agreements, either written or oral, with respect to the subject matter hereof.

12.5 No statement, term or provision in any proposal, response to any Request for Proposal or Qualifications, Statement of Qualifications, general conditions, invoice, bill, or statement submitted by FDGS to the CITY will be construed to waive, amend, or modify any term or provision of this Agreement.

12.6 This Agreement may be amended only by written instrument signed by duly authorized representatives of both FDGS and the CITY. The CITY's payment of invoices or statements shall not be deemed as the CITY's acceptance of any term or

provision that amends or modifies this Agreement or the task order under which payment is made.

12.7 No consent or waiver, express or implied, by either party to this Agreement, to or of any breach of default by the other in the performance of any obligations under this Agreement shall be deemed or construed to be a consent or waiver to or of any other or future breach or default by such party. Failure on the part of any party to this Agreement to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder.

12.8 If a provision of this Agreement, or the application thereof to any person or circumstances, is rendered or declared illegal for any reason or shall be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law. The parties agree to negotiate in good faith for a proper amendment to this Agreement in the event any provision hereof is declared illegal, invalid, or unenforceable.

12.9 All notices required or permitted hereunder shall be in writing and shall be deemed delivered three (3) days after deposit with the United States Postal Service, certified mail, return receipt requested, addressed to the respective other party at the addresses shown below:

If to FDGS: Fitzpatrick Design Construction Services Group, LLC  
8951 Collin McKinney Ste. 1101  
McKinney, TX 75070  
Attn: Jerry Fitzpatrick

If to CITY: City of Seguin, Texas  
205 N River Street  
Seguin, TX 78155  
Attn: City Manager

12.10 The headings and captions used in this Agreement are for convenience only and shall not affect in any way the meaning or interpretations of the provisions set forth herein.

12.11 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement is hereby executed as of the date set forth.

City of Seguin, TX

By: \_\_\_\_\_  
City Manager

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

ATTEST:

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Secretary

APPROVED AS TO FORM:

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Attorney

Fitzpatrick Design Construction Services Group, LLC

By:   
\_\_\_\_\_  
Jerry Fitzpatrick, Managing Member

Date: 01/15/2026