

## **PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made to be effective beginning the 9<sup>th</sup> day of October, 2020 between the City of Seguin, Texas ("City"), 205 North River Street, Seguin, Texas 78155 and TSG Architects AIA, 312 Saint Francis Street, Gonzales, Texas 78269 ("Architect"), for the provision of professional architectural and related services in connection with the Seguin Central Fire Station Rehabilitation Project (the "Project").

The City and the Architect agree as follows:

### **ARTICLE 1 ARCHITECT'S SERVICES AND RESPONSIBILITIES**

#### **1.1 STANDARDS OF PERFORMANCE**

1.1.1 Architect will be responsible for the proper, accurate and adequate design and preparation of plans and specifications and other construction contract documents and for construction administration for the Project. The Project generally involves the design and eventual construction of the rehabilitation of a City owned Fire Station located at 110 Elm Street. The Project will be constructed utilizing the competitive sealed proposal method of construction, and the City will select the contractor utilizing a Request for Proposal ("RFP") process as authorized by the Texas Local Government Code.

1.1.2 The Architect's Basic Services consist of the services described in Sections 1.1 through 1.7 and include architectural services as well as structural, mechanical and electrical engineering services. Those professional services to be performed through the following consulting disciplines as subcontractors to the Architect:

- (1) Mechanical, Electrical and Plumbing Engineering and design
- (2) Structural Engineering

1.1.3 The performance of all services by the Architect in connection with this Agreement will be by persons appropriately licensed or registered under State, local and Federal laws governing their respective consulting disciplines. In performing all services under this Agreement, the Architect will use that degree of care and skill ordinarily exercised for similar projects by professional Architects who possess special expertise in the types of services involved under this Agreement. The Architect hereby represents and agrees that the plans, drawings, specifications and other documents prepared by it pursuant to this Contract must be complete and functional for the purposes intended, except as to any deficiencies which are due to causes beyond the control of the Architect, and that the Project, if constructed in accordance with such plans, drawings, specifications and other documents, will be structurally sound and a complete and properly functioning facility suitable for the purposes for which it is intended.

1.1.4 No work under this Agreement will be subcontracted by the Architect without prior written approval from the City. Any work or services subcontracted under this Agreement shall be specified by separate written Agreement and shall be subject to each provision of this Agreement.

1.1.5 Any provisions in this Agreement pertaining to the City's review, approval and/or acceptance of written materials prepared by the Architect and/or its subconsultants, contractors, and subcontractors in connection with this Agreement will not diminish the Architect's responsibility for the materials.

1.1.6 Architect will perform all of its services in coordination with the City. The Architect will advise the City of data and information the Architect needs to perform its services, and the Architect will meet with City representatives at mutually convenient times to assemble this data and information.

## **1.2 PHASE 1 – SCHEMATIC DEVELOPMENT**

The Architect will:

1.2.1 Review the assessment previously developed by the Architect in conjunction with the City to ascertain the final requirements of the Project and shall arrive at a mutual understanding of such requirements with the City.

1.2.2 Provide an updated evaluation of the City's program, schedule and construction budget requirements, each in terms of the other.

1.2.3 Review with the City alternative approaches to design and construction of the Project.

1.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, prepare, for approval by the City, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

1.2.5 Submit to the City a preliminary estimate of Construction Cost based on current area, volume or similar conceptual estimating techniques.

1.2.6 Meet with the City's Project Manager periodically or as needed to update the City on the progress of work.

1.2.7 Head the Project team and coordinate the integration of design, utility Engineering, ADA compliance, permitting, and other services as necessary, and previously approved.

1.2.8 Assist the City in the preparation of construction contract documents using City forms

based on the approved design development documents and any further adjustments authorized by the City in the scope, quality or budget of the Project. These contract documents will include detailed plans and technical specifications required for the Project to be accurately submitted for receipt of competitive proposals and efficiently constructed.

1.2.9 Use its best professional judgment to create technical documents that comply with applicable construction and development codes, local regulations and ordinances and other federal and state regulations which are known or which should reasonably be known to the Architect including those required under the ADA and Article 9102, of the Texas Statutes, and the Texas Architectural Barriers Act. The Architect will be responsible for the submission of all plans and specifications for the construction of this Project to the Texas Department of Licensing and Regulation for review and approval prior to the time construction is set to begin in conformance with the Architectural Barriers Act. The costs associated with the submission of plans for review under the Architectural Barriers Act will be paid by the City.

1.2.10 Ensure that no reports, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Architect.

### **1.3 PHASE 2 – DESIGN DEVELOPMENT**

The Architect will:

1.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the City in the program, schedule or construction budget, prepare, for approval by the City, design development documents consisting of drawings and other technical documents to fix and describe the size and character of the Project as to architectural, structural, civil, mechanical, electrical, including that needed for information technology systems, materials, landscaping, and such other elements as may be appropriate.

1.3.2 Advise the City of any adjustments to the preliminary estimate of Construction Cost.

1.3.3 Head the Project team and coordinate the integration of design, utility Engineering, ADA compliance, permitting, and other services as necessary, and previously approved.

### **1.4 PHASE 3 - CONSTRUCTION DOCUMENT DEVELOPMENT**

The Architect will:

1.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the City, prepare for approval by the City, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

1.4.2 Obtain approval from City Building Inspections Department of all technical plans and specifications necessary for successful completion of the Project prior to allowing the construction contract to be submitted for the receipt of competitive proposals.

1.4.3 Assist the City in the preparation of the necessary RFP information, proposal forms, the Conditions of the Contract, and the form of Agreement between the City and the Contractor.

1.4.4 Advise the City of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

1.4.5 Assist the Owner in connection with the City's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

1.4.6 Construction plans shall be developed in a manner consistent with a project where time is of essence and shall, to extent feasible, include an eight (8) month to completion schedule.

## **1.5 PHASE 4 - NEGOTIATION**

The Architect will:

1.5.1 Assist the City as requested, in the distribution of the RFP to prospective proponents and to plan rooms and the issuance of addenda (if any) following City's prior approval.

1.5.2 Assist the City in reviewing the Statement of Proponent's Qualifications, financial statements of proponents, lists of proponents' proposed subcontractors, and all other documents required to be submitted with the proposals.

1.5.3 Assist the City in conducting a pre-proposal conference and answer all questions of prospective or potential proponents and City's staff and make all necessary clarifications and interpretations of the construction contract documents.

1.5.4 Assist the City in obtaining negotiated proposals, preparing evaluation forms, and in awarding the contract for construction following the City's approval of the construction documents. Make a written recommendation to the City regarding award of a contract

1.5.5 Have no authority to issue a Notice to Proceed to any Contractor.

## **1.6 PHASE 5 – CONSTRUCTION ADMINISTRATION**

1.6.1 The Construction phase of this Project will commence, and the Architect's responsibility to provide Basic Services for Construction Administration under this Agreement will commence with the award of the construction contract and will terminate when the Project is accepted and approved by the Seguin City Council.

1.6.2 Provide administration of the construction contract as set forth in the construction documents unless otherwise provided in this Agreement and incorporated in the construction contract documents. Architect will not pursue a course of conduct which might jeopardize any of the City's rights hereunder. Minor deviations from the construction contract documents that do not affect the validity of performance bond(s) are permitted.

1.6.3 Be a representative but not an agent of the City during the construction phase, and advise and consult with the City and provide progress reports and advice to the City in writing; forward the City's instructions to the Contractor unless (1) Architect is unavailable by telephonic communication or otherwise to issue instructions necessary for the proper progress and acceptance of work; (2) jeopardy to life or property exists; or (3) lack of instructions and/or unavailability of Architect will result in, in City's opinion, harm to City, in which case instructions may be forwarded directly to the Contractor by the City; have authority to act on behalf of the City only to the extent provided herein and in the construction contract documents unless otherwise modified by written instrument in accordance with Section 12.1. Any instructions issued directly by City to Contractor will be promptly communicated to the Architect if the Architect was unavailable at the time of issuance of instructions.

1.6.4 Assist the City in conducting a pre-construction conference with the Contractor, members of City's staff, representatives of affected utility providers, and federal and state agencies having jurisdiction over the Project (including City inspectors) in order to establish construction schedules and to identify key representatives of the parties and lines of communication.

1.6.5 Assist the City in ensuring that all applicable permits and approvals have been obtained from the appropriate agencies prior to construction.

1.6.6 Make on-site inspections of the Project at least twice monthly to ensure familiarity with the progress and quality of the work, to determine if the work is proceeding in acceptable conformance with the construction contract documents, and to review the work with the City's designated representatives. On the basis of such on-site inspections by the Architect, the Architect will keep the City informed of the progress and quality of the work through written status reports and through meetings with the City's representative; and will also be reasonably available to perform site visitations at the specific request of the City by the next business day after a request is made. The City shall be responsible for inspecting electrical and plumbing to assure compliance with the plans and applicable codes.

1.6.7 In performing all services, including inspections, not have control or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, for the acts or omissions of the Contractor, subcontractors or any other persons performing any of the work, or for the failure of any of them to carry out the work in accordance with the construction contract documents unless such acts or omissions are due to the negligence of the Architect or are acts or omissions under the Architect's control. However, Architect will exercise its authority on behalf of City in accordance herewith and particularly during the construction phase so that all work performed by

the Contractor results in a Project completed in accordance with the construction contract documents, and during any phase should the Architect become aware of the Contractor's utilization of means, methods, techniques, sequences and/or procedures of construction which, in Architect's opinion, will not result in completion of the Project in accordance with the construction contract documents, or which are dangerous. Architect will immediately inform the City and will take all necessary action which the Architect is authorized under this Agreement to take to correct the matter.

1.6.8 At all times have access to the work wherever it is in preparation or progress.

1.6.9 Determine the amounts owing to the Contractor based on its on-site professional inspections and on evaluations of the Contractor's applications for payment including comparisons of Contractor's monthly cost reports with its applications for payment, and will make recommendations for payment in these amounts, as provided in the construction contract documents, or take such other appropriate action which the Architect deems necessary.

1.6.10 Make recommendations for payment that constitute a representation by Architect to the City, based on the Architect's on-site inspections as provided in subsection 1.7.6 and on the data comprising the Contractor's application for payment, that the work has progressed to the point indicated; that, to the best of the Architect's knowledge, information and belief, the quality of the work is in acceptable conformance with the construction contract documents (subject to an evaluation of the work for conformance with the construction contract documents upon substantial completion, subject to the results of any subsequent tests required by or performed under the construction contract documents, subject to minor variations from the construction contract documents correctable prior to completion, and subject to any specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has made any examination to ascertain how and for what purpose the Contractor has used the monies paid by the City.

1.6.11 Have authority to reject work which does not conform to the construction contract documents. Whenever, in the Architect's reasonable opinion, it is necessary or advisable for the proper implementation of the intent of the construction contract documents, and with the approval of the City, the Architect will have authority to require special inspection or testing of the work in accordance with the provisions of the construction contract documents, whether or not such work is then fabricated, installed or completed. The Architect will review the work and results of all testing laboratories as required by the construction contract documents.

1.6.12 Review and make all decisions regarding the approval or taking of other appropriate action upon the Contractor's submittals, including but not limited to, shop drawings, product data and samples, schedule of values and progress schedule. Such action will be taken with reasonable promptness, while allowing sufficient time in the Architect's professional judgment to permit adequate review, but generally not to exceed 15 working days or such period of time as

will not cause delay of the Project. The Consultant will be compensated for the review of shop drawings in excess of two reviews, if through no fault of the Consultant, as an additional service in accordance with Section 1.8 of this Agreement.

1.6.13 Prepare minor changes in the plans and specifications as directed by the City; and prepare necessary change orders in triplicate originals for approval by the City and execution in accordance with the construction contract documents. Architect will not issue change orders not previously approved in writing by City, and no course of conduct on the part of Architect or City will amend, waive or alter this provision.

1.6.14 Conduct professional inspections to determine the dates of substantial completion and final completion for the Project, to evaluate the work for acceptable conformance with the construction contract documents and in light of any subsequent tests performed as described in Subsection 1.7.10 to verify that any minor deviations from the construction contract documents have been corrected and that the reasons for any specific qualifications in any and all previous certificates for payment are either no longer valid or the condition(s) and/or problem(s) have been corrected; shall receive and review written warranties and related documents required by the construction contract documents and assembled by the Contractor; will issue final certificates for payment or take other appropriate action; and will make a written recommendation to the City regarding City's acceptance of the Project.

1.6.15 Require the submission by the Contractor, and subcontractors performing work on the Project site, of periodic wage rate payment reports and, with the City's assistance, verify compliance with federal and state wage rate requirements for the Project; and notice the City of any noncompliance, or of the failure by the Contractor or subcontractor's to make submissions.

1.6.16 Prepare, or cause to be prepared, and submit to the City a set of reproducible record drawings showing significant changes in the work made during the construction phase.

1.6.17 Conduct final inspection with the City and prepare a punch list prior to final acceptance by the City.

1.6.18 Prior to the end of the one-year warranty period, review the completed Project with the City and the Contractor and have all deficient items corrected. The extent of the duties, responsibilities and limitations of authority of the Architect as the City's representative during construction will not be modified or extended after the construction contract documents have been authorized by the City to be submitted for receipt of competitive proposals without written consent of the City and the Architect and with notice to the Contractor.

## **1.7 ADDITIONAL SERVICES/CHANGE IN SERVICES**

1.7.1 The City may direct the Architect to perform services outside of the scope of the Basic Services described in Sections 1.1 through 1.8 above. The Architect will submit a written

estimate of fees to the City and obtain the City's authorization before initiating any additional services.

1.7.2 Each material change (deletion or addition) in the services to be provided by Architect must be authorized by the City on the Authorization of Change in Services form attached to this Agreement as Attachment A. Compensation for additional services will be in addition to that specified for Basic Services in accordance with Section 15.3 of this Agreement.

## **ARTICLE 2 THE CITY'S RESPONSIBILITIES**

The City will:

**2.1** Provide full information to the Architect regarding the City's requirements for the Architect's services under this Agreement. The City will furnish the Architect with copies of official City design standards and construction standards, and other data and information in the City's possession needed by the Architect at the Architect's request.

**2.2** Designate Greg Odom as the City's Project Manager and authorized representative to act on the City's behalf with respect to this Agreement. The City will examine the documents and information submitted by the Architect and promptly render responses to the Architect on issues requiring a decision by the City.

**2.3** Provide access to and make all necessary provisions for the Architect to enter public and private property as required for the Architect to perform its services under this Agreement.

**2.4** Be responsible for the cost of printing and binding of the RFPs.

**2.5** Bear all costs incidental to this Article.

**2.6** Provide personnel to inspect plumbing and electrical construction to ensure compliance with the applicable international building codes and in consultation with the Architect compliance with construction documents.

## **ARTICLE 3 CONSTRUCTION COST**

### **3.1 DEFINITION**

3.1.1 The construction cost will be the total cost or estimated cost to the City of all elements of the Project designed or specified by the Architect.



3.1.2 The construction cost will include at current market rates, including a reasonable allowance for overhead and profit, the cost of any equipment which has been designed, specified, selected or specially provided for by the Architect, except that used materials and equipment will be included as if purchased new for the Project.

3.1.3 Construction cost does not include the compensation of the Architect and the Architect's consultants, or other costs which are the responsibility of the City as provided herein.

## **3.2 RESPONSIBILITY FOR CONSTRUCTION COST**

3.2.1 Evaluations of the City's Project budget, the preliminary estimate of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Architect, represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining prices, or over competitive market and negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that negotiated prices will not vary from the City's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Architect.

3.2.2 A fixed limit of construction cost for this Project. The Architect will be permitted to include contingencies for design, contract negotiation and price escalation, to determine what materials, equipment, and types of construction are to be included in the construction contract documents, to make reasonable adjustments in the scope of the Project and to include in the construction contract documents alternate proposals to adjust the construction cost to the fixed limit. The fixed limit of construction cost may be increased by the City to fit within the City's \$786,858.05 budget for the project.

3.2.3 If the lowest bona fide proposal, after all attempts to negotiate a contract for a lower cost have failed, and the proposal exceeds the Architect's most recent approved cost estimate established as a condition of this Agreement, the City will (1) give written approval of an increase in such fixed limit, (2) authorize the re-issuance of a RFP for the Project within a reasonable time, or (3) cooperate in revising the Project scope and quality to reduce the construction cost. During the development of the Project through the phases described by Article 1 of this Agreement and prior to the City's final approval of construction contract documents, the Architect will monitor the established probable construction cost in relation to the established fixed limit

3.2.4 If necessary, the Architect will implement construction cost savings measures or otherwise endeavor to limit probable construction cost to the level of available funds set by the City. Changes requiring significant modification by the Consultant (more than 8 man hours) to previously approved technical documents in order to implement cost savings shall be an additional cost to the City to be compensated as provided in Section 15.3.

**ARTICLE 4**  
**REIMBURSABLE EXPENSES.**

**4.1** Reimbursable expenses, including such things as expenses for plotting, reproduction of documents, transportation, delivery charges, long distance communications, freight, geotechnical services and state accessibility review are not included in the Architect's basic services compensation. Reimbursable expenses are to be charged to the City by the Architect at cost + 10%. Reimbursable expenses will not exceed \$15,000.00 without the City's prior written approval.

**ARTICLE 5**  
**PAYMENTS TO THE ARCHITECT**

**5.1 PAYMENTS ON ACCOUNT OF BASIC SERVICES**

Payments for Basic Services will be made to Architect monthly following receipt by City of Architect's invoices and appropriate payment requisitions. The amounts of these invoices will be based upon reimbursable costs and the extent of work completed by the Architect on an hourly basis within each phase of services, in accordance with Article 15 of this Agreement, less any disputed amounts, pending resolution thereof.

**5.2 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES**

Payments on account of the Architect's Additional Services as defined in Section 1.8 will be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred, less any disputed amounts, pending resolution thereof and an Authorization of Change in Services form executed by the Architect and the City.

**ARTICLE 6**  
**ARCHITECT'S RECORDS**

**6.1** All expense records of Architect will be kept on a recognized accounting basis acceptable to the City and will be available to the City at mutually convenient times.

**6.2** The City, its auditors, federal auditors, and state agencies that have monitoring or auditing responsibilities for this Agreement will have access to all books, documents, papers and records of the Architect which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, copying and transcriptions.

**6.3** The Architect will furnish to the City at such time and in such form as the City may require, financial statements including audited financial statements, records, reports, data and information, as the City may request pertaining to the matters covered by this Agreement.

## **ARTICLE 7 OWNERSHIP AND USE OF DOCUMENTS**

**7.1** All documents prepared by Architect in connection with this Agreement will become the property of the City whether any project related to this Agreement is executed or not. City agrees such documents are not intended or represented to be suitable for reuse for another project by City or others. Any such reuse by City or those who obtained said documents from City without written verification or adaptation by the Architect will be without liability or legal exposure to the Architect.

**7.2** The Architect will retain all of its records and supporting documentation relating to this Agreement, and not delivered to the City, for a period of three years except in the event that the Architect goes out of business during that period, it will turn over, to the City, all of its records relating to the Project for retention by the City.

## **ARTICLE 8 TERM OF AGREEMENT**

**8.1** The term of this Agreement begins on the effective date established in the first paragraph of the Agreement and will end upon the Architect's completion, and the City's acceptance of all services described in this Agreement unless this Agreement is terminated under Sections 8.2 or 8.3 below.

**8.2** This Agreement may be terminated by either party upon thirty (30) days prior written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

**8.3** In the event of termination as provided in this Article, the Architect will be compensated for all services performed to termination date which are deemed by the City to be in accordance with this Agreement. This amount will be paid by the City upon the Architect's delivering to the City all information and materials developed or accumulated by the Architect in performing the services described in this Agreement, whether completed or in progress. The expense of reproduction of these items will be borne by the City.

## **ARTICLE 9 CLAIMS AND DISPUTES**

### **9.1 MEDIATION**

**9.1.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation at the sole option of the City and as a condition precedent to the commencement of litigation. If such matter relates to or is the subject of a lien arising out of the

Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation.

9.1.2 If the City elects to mediate, the City and Architect shall endeavor to resolve claims, disputes and other matters in question between them by non-binding mediation. Unless the parties mutually agree otherwise the 25<sup>th</sup> District Court of Guadalupe County, Texas shall appoint the mediator, and the mediation shall be held at a mutually agreeable time and place in Seguin, Texas. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation.

9.1.3 The parties shall share the mediator's fee and any filing fees equally.

9.1.4 If the parties do not resolve a dispute through mediation pursuant to this Article, the dispute may be resolved through litigation in the District Courts of Guadalupe County, Texas.

## **ARTICLE 10 INSURANCE AND INDEMNITY**

**10.1 THE ARCHITECT WILL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY AND ITS EMPLOYEES, AGENTS, OFFICERS AND SERVANTS FROM ANY AND ALL LAWSUITS, CLAIMS, DEMANDS AND CAUSES OF ACTION OF ANY KIND ARISING FROM THE NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF THE ARCHITECT, ITS OFFICERS, EMPLOYEES OR AGENTS. THIS WILL INCLUDE, BUT NOT BE LIMITED TO, THE AMOUNTS OF JUDGMENTS, PENALTIES, INTEREST, COURT COSTS, REASONABLE LEGAL FEES, AND ALL OTHER EXPENSES INCURRED BY THE CITY ARISING IN FAVOR OF ANY PARTY, INCLUDING THE AMOUNTS OF ANY DAMAGES OR AWARDS RESULTING FROM CLAIMS DEMANDS AND CAUSES OF ACTION FOR PERSONAL INJURIES, DEATH OR DAMAGES TO PROPERTY. THIS OBLIGATION BY ARCHITECT WILL NOT BE LIMITED BY REASON OF THE SPECIFICATION OF ANY PARTICULAR INSURANCE COVERAGE IN THIS AGREEMENT.**

**10.2** The Architect will procure and maintain at Architect's expense insurance with insurance companies authorized to do business in the State of Texas as set forth in the attached Exhibit "A."

## **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**11.1** This Agreement is governed by and will be construed under the laws of the State of Texas. All obligations of both parties are performable and exclusive venue for any dispute arising under this Agreement is in Guadalupe County, Texas.

**11.2** As to all acts or failures to act by either party to this Agreement, any applicable statute of limitations will commence to run and any alleged cause of action will be deemed to have accrued when the party commencing the cause of action knew or should have known of the existence of the subject act(s) or failure(s) to act.

**11.3** The Architect will not use funds received by it directly or indirectly under the terms of this Agreement for any partisan political activity or to further the election or defeat of any candidate for public office.

**11.4** The Architect hereby affirms that Architect and Architect's firm have not made or agreed to make any valuable gift whether in the form of service, loan, thing, or promise to any person or any of his/her immediate family, having the duty to recommend, the right to vote upon, or any other direct influence on the selection of consultants to provide professional services to the City within the two years preceding the execution of this Agreement. A campaign contribution, as defined by the Texas Election Code or the Seguin City Code will not be considered as a valuable gift for the purposes of this Agreement.

**11.5** In performing the services required under this Agreement, the Architect will not discriminate against any person on the basis of race, color, religion, sex, national origin, age or disability or ancestry. The Architect agrees not to engage in employment practices which have the purpose or effect of discriminating against employees or prospective employees because of race, color, sex, religion, national origin, age or disability or ancestry. A breach of this covenant may be regarded as a default of the Architect of the Agreement.

**11.6** All references in this Agreement to any particular gender are for convenience only and will be construed and interpreted to be of the appropriate gender. The term "will" is mandatory in this Agreement.

**11.7** Should any provision in this Agreement be found or deemed to be invalid, this Agreement will be construed as not containing the provision, and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.

**11.8** All services provided pursuant to this Agreement are for the exclusive use and benefit of the City.

**11.9** In performing all services under this Agreement, the Architect, its subcontractors, successors and assigns will comply with all local, state and federal laws.

**11.10** The City's execution and performance under this Agreement will not act as a waiver by the City of any immunity from suit to which it is entitled under applicable law. The parties acknowledge that the City, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.

**11.11** The City of Seguin is governed by the Texas Public Information Act (the “Act”), Chapter 552 of the Texas Government Code. This Agreement and all written information generated under this agreement may be subject to release under the Act. The Architect shall not make any reports, information, data, etc. generated under this Agreement available to any individual or organization without the written approval of the City.

**11.12** The captions or headings included in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions, articles, or sections of this Agreement.

**11.13** In the event that the performance by either the City or the Architect of any of its obligations under this Agreement is interrupted or delayed by events outside of their control such as acts of God, war, riot or civil commotion, then the party is excused from such performance for the period of time reasonably necessary to remedy the effects of such events.

**11.14** In the event of a default or breach of this Agreement by the Architect, the City reserves the right to choose among the remedies for the default or breach available to the City. These remedies may be used in conjunction with one another or separately, and together with any other statutory or common law remedies available to the City. Any failure by the City to enforce this Agreement with respect to one or more defaults by the Architect will not waive the City’s ability to enforce the Agreement after that time.

## **ARTICLE 12 SUCCESSORS AND ASSIGNS**

**12.1** The City and the Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The City and the Architect will not assign, sublet or transfer any interest in this Agreement without the prior written consent of the other.

## **ARTICLE 13 EXTENT OF AGREEMENT**

**13.1** This Agreement, including appendices and referenced attachments represents the entire and integrated Agreement between the City and the Architect and supersedes all prior proposals, negotiations, representations or agreements either written or oral between the parties. This Agreement may be amended only by separate written instrument approved by the City’s governing body and signed by both the City and Architect.

**13.2** Any exhibits and/or attachments attached to this Agreement are incorporated by reference into this Agreement as though included verbatim herein.

**13.3** In the event of any conflict between the Agreement and the provisions of any exhibit or attachment to this Agreement, this Agreement will govern and control.

## **ARTICLE 14**

### **OTHER DUTIES AS SET FORTH IN THE CONSTRUCTION DOCUMENTS**

**14.1** Architect will have such other duties and responsibilities and limitations of authority as agreed to by Architect in writing and as are set forth in the construction contract documents for the Project. However in the event of conflict, dispute, or discrepancy between the provisions of this Agreement and the construction contract documents, the more restrictive and/or burdensome with respect to the Architect's role and responsibility will govern and control.

To the City:

City Manager  
City of Seguin  
205 N. River Street  
Seguin, Texas 78155

To the Architect:

Tim S. Gescheidle, AIA  
TSG Architects AIA  
312 Saint Francis Street  
Gonzales, Texas 78629

## **ARTICLE 15**

### **BASIS OF COMPENSATION**

**15.1** The City will compensate the Architect, in accordance with Article 5, Payments to the Architect, and the other terms and conditions of this Agreement, as follows:

**15.2** The total of all fees to be paid to Architect for Basic Services as described in this Agreement shall not exceed \$295,000.00, not including reimbursable expenses set out above in Article IV. This compensation is divided among the Basic Services as follows:


Schematic Design Phase	10%
Design Development Phase	15%
Construction Documents Phase	55%
Bidding or Negotiation Phase	5%
Construction Administration	15%

**15.3** Compensation for Additional Services for the Architect shall be computed based on the Architect's standard hourly rates, and cost of reimbursable expenses will be paid at cost plus 10%. The hourly rates set forth below for Additional Services will be adjusted by the Architect in accordance with the normal salary review practices of the Architect:

<b>Employee or Category</b>	<b>Rate per hour</b>
Architect Principal	\$195
Engineering Principal	\$195
Civil Engineer	\$175
Structural Engineer	\$175
Electrical Engineer	\$175
Mechanical Engineer	\$155
Project Architect	\$135
Associate Architect	\$135
Interior Designer	\$145
Landscape Architect	\$145
Data / IT Consultant	\$125
Modeling / BIM / 3-D Technician	\$125
General CAD Technician	\$75
Administrative	\$55
Clerical	\$35

Each of the persons executing this Agreement represents that he or she has full power and authority to execute this Agreement on behalf of the party that person represents. This Agreement will be effective as of the day and year established in the first paragraph of this Agreement.

City of Seguin

  
\_\_\_\_\_  
Steve Parker, City Manager

TSG Architects AIA

By:   
\_\_\_\_\_  
Tim S. Gescheidle, AIA

October \_\_, 2020

October 9, 2020