

MASTER AGREEMENT BETWEEN THE TOWNSHIP AND ARCHITECT

This Agreement (“Agreement”), by and between The Woodlands Township (“The Township”), a political subdivision of the State of Texas, duly created and operating pursuant to Chapter 289, Acts of the 73rd Texas Legislature, Regular Session, 1993, as amended and Joiner Partnership, Inc., a Texas corporation (“Architect”), is effective on _____, 2011, and shall continue until terminated as hereinafter set forth in Article V (the “Term”).

RECITALS:

- The Township desires to engage Architect to perform for The Township certain Architecture, Engineering, and Planning services incident to the planning for, design and construction of a fire station (“Central Fire Station”#) located at 9951 Grogans Mill Road, The Woodlands, Texas, 77380 as specified by The Township in a Project Authorization and accepted by Architect (“Project”). Such Project Authorization shall be incorporated into this Agreement by reference as if fully set forth herein.
- The planning and construction of Central Fire Station # on land to be procured from a third party.
- Architect desires to perform such services for The Township under the terms and conditions of this Agreement.

In consideration of the terms and conditions of this Agreement, and other valuable consideration, of which the parties acknowledge the receipt and sufficiency, The Township and Architect agree as follows:

ARTICLE I ARCHITECT’S SERVICES

1.01 Schedule of Services.

- (a) (i) Architect shall complete all services required under Section 1.03 within the time specified in a Project Authorization after its receipt of The Township's written notice to proceed with Architect's Schematic Design Phase services.
 - (ii) Architect shall complete all services required under Section 1.04 within the time specified in a Project Authorization after its receipt of The Township's written notice to proceed with Architect's Design Development Phase services.
 - (iii) Architect shall complete all services required under Section 1.05, if any, within the time specified in a Project Authorization after its receipt of The Township’s written notice to proceed with Architect's Construction Documents Phase services.
- (b) The “Schematic Design Phase”, “Design Development Phase”, “Construction Documents Phase”, and the “Construction Phase” are hereinafter collectively or individually referred to as a “Phase”. The Township shall not be responsible for any “fees” or “reimbursable expenses” as set forth in a Project Authorization associated with Architect’s services for a

particular Phase unless The Township has delivered written notice to proceed with such Phase to Architect.

1.02 Basic Services. Architect's Basic Services are the normal Architectural and Planning services and any other design services customarily furnished and reasonably necessary, for the Project, and the services described in this Article 1. As a material inducement to The Township to enter into this Agreement, Architect represents that it is a sophisticated architectural firm and is experienced in large-scale and complex projects. In light of that status and experience, Architect shall follow the usual and customary professional standards in performing the services required under this Agreement. Architect must perform its services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work and, in any event, within the time periods prescribed by The Township in the Project Authorization. Architect's initial Basic Services are the following:

- (a) Consult with The Township's employees or representatives regarding the design and construction of the Project.
- (b) Cooperate with any consultants or other professionals retained by The Township, including, but not limited to, representatives of The Woodlands Fire Department.
- (c) Review site surveys, subsoil data, logs of borings, and other data furnished to Architect by The Township under Article II. After such review, Architect must advise The Township whether all data furnished is sufficient for Architect to complete its Project design work. The data shall be deemed sufficient if Architect fails to advise The Township to the contrary in a timely manner.
- (d) Advise The Township if additional consultants are required by the scope of work set forth in the Project Authorization. When authorized or required, engage, at its expense, the following types of consultants for Project design: Mechanical, Electrical, Structural, and Plumbing Engineers, and shall engage as an Additional Service, at The Township's expense, any Civil Engineers and any specific consultant for compliance with the Americans with Disabilities Act and the Texas Removal of Architectural Barriers Act specified by The Township. Architect shall submit the names of all other consultants to be engaged by Architect for the Project for The Township's approval. If The Township disapproves a consultant, or if Architect desires to change a consultant, then Architect shall propose another to whom The Township has no objection.
- (e) Designate a project manager, satisfactory to The Township, to be in charge of Architect's services during the completion of the services required by the Project Authorization. Architect shall replace the project manager if The Township notifies Architect that The Township considers the project manager's work unacceptable.
- (f) The Architect shall visit the Project site(s) at least two times a week during actual construction operations for routine observations especially prior to "cover up" of such items as prepared subgrade, concrete reinforcement, reinforcing steel, roof deck, metal studs, insulation, masonry backup, piping, areas above the ceilings, electrical

service, and air conditioning ductwork and piping. The intent of all of these observations is for the Architect to become generally familiar with the progress and quality of the Work (as defined below) completed and to determine in general if the Work, when completed, will be in accordance with the Contract Documents (as defined below). However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.

- (g) On the basis of on-site observations as an architect, the Architect shall keep The Township informed of the progress and quality of the Work, and shall endeavor to guard The Township against defects and deficiencies in the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, (other than those means, methods, techniques, sequences, or procedures specifically provided for in this Agreement or in writing by The Township), or for safety precautions and programs in connection with the Work. Architect shall coordinate all inspections, and order and review all inspection reports.

1.03 Schematic Design Phase.

- (a) Upon Architect's receipt of The Township's written notice to proceed with the Schematic Design Phase, Architect shall do the following:
 - (i) In consultation with The Township's designated employees or representatives, review the program furnished by The Township, the Construction Budget, The Township's Project construction schedule, and other requirements of the Project, each in relation to the others, and prepare a written evaluation of these items.
 - (ii) Review with The Township's alternative approaches to design and construction of the Project.
 - (iii) Meet with any representative of the Texas Department of Licensing and Regulations or other governmental authorities to discuss the Project's compliance with "Applicable Laws". "Applicable Laws" means all (I) applicable federal, state, and local statutes, codes (including the City of Houston Building Code), ordinances, regulations, rules, and other laws, (II) private land use restrictions encumbering the Project site filed of record in Montgomery and/or Harris County, Texas, and (III) the Commercial/Industrial Planning & Design Standards ("Design Standards") of the Development Standards Committee or the Community Standards Committee (as applicable) ("Review Committee") of The Woodlands, Texas.
 - (iv) Submit the following to The Township for The Township's approval:
 - a. **Schematic Design Documents**
In compliance with the parameters set forth in the program furnished by The Township, The Township's Project construction schedule, and the

Construction Budget, prepare for The Township's approval the "Schematic Design Documents". The "Schematic Design Documents" are the drawings and other documents illustrating the scale and relationship of the Project components, including site plans, sections, and other graphic material necessary

The Schematic Design Documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan to convey the architectural design of the Project, and preliminary building plans, sections and elevations. The Schematic Design Documents shall include any study models, perspective sketches, electronic modeling or combinations of these media necessary to adequately convey the architectural design of the Project. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

Architect shall, in addition to its delivery of the Schematic Design Documents to The Township, deliver copies of such documents to the third party duplication service specified by The Township. If The Township, or any other party designated by The Township, desires additional copies of the Schematic Design Documents, such party shall obtain those copies from the third party duplication service.

- (b) Upon its receipt of the Schematic Design Documents, The Township shall review such documents and submit them to The Township's "Cost Estimator" for a determination of the "Estimated Construction Cost". "Cost Estimator" means a third party, such as the general contractor chosen by The Township to construct the Project or a cost-estimating consultant, designated by The Township to determine the Estimated Construction Cost. "Estimated Construction Cost" means an estimate of the cost to construct the Project itemized for each Phase of development and for each Major Category of Work. "Contractor" shall mean the general contractor chosen by The Township with input from the Architect to construct the Project. If The Township approves, in its sole and absolute discretion, the Schematic Design Documents, and desires to proceed with the Design Development Phase, it shall issue a written notice to proceed with the Design Development Phase to Architect.
- (c) Architect shall NOT provide work beyond initial planning without the express written consent of The Township.

1.04 Design Development Phase.

- (a) Upon Architect's receipt of The Township's written notice to proceed with the Design Development Phase, Architect, in consultation with The Township, shall do the following:
 - (i) Submit the following to The Township for The Township's approval:

a. **Design Development Documents**

In compliance with the approved Schematic Design Documents and any adjustments authorized by The Township in the program, Project construction schedule, or Project Construction Budget, prepare the “Design Development Documents”. The “Design Development Documents” are the drawings, floor plans, elevations, cross sections, construction details, and other documents to fix and describe the size and character of the Project as to architectural, civil, structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate and shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include specifications that identify major materials and systems and establish in general their quality levels. Architect shall, in addition to its delivery of the Design Development Documents to The Township, deliver copies of such documents to the third party duplication service specified by The Township. If The Township, or any other party designated by The Township, desires additional copies of the Design Development Documents, such party shall obtain those copies from the third party duplication service.

- (ii) Prepare and submit for The Township's review a written preliminary code analysis identifying those items for which any of the Applicable Laws requires The Township to obtain handicapped accessibility approvals. All of the foregoing information shall be incorporated into the Drawings.
- (iii) Provide for The Township's review and approval a preliminary color schedule and samples of textures and finishes of all Project materials.

- (b) Upon its receipt of the Design Development Documents, The Township shall review such documents and submit them to the Cost Estimator for its determination of the Estimated Construction Cost. If the updated Estimated Construction Cost determined by the Cost Estimator exceeds the last approved, adjusted Construction Budget, then The Township may, at its sole and absolute discretion, (i) approve the Design Development Documents as submitted with the increased Estimated Construction Cost becoming the new Construction Budget, or (ii) require Architect, at Architect's sole cost, to revise the Design Development Documents to decrease the cost of the Project. Architect shall then submit any revised Design Development Documents to The Township for approval. If The Township approves, in its sole and absolute discretion, the Design Development Design Documents, and desires to proceed with the Construction Documents Phase, it shall issue a written notice to proceed with the Construction Documents Phase to Architect.

1.05 Construction Documents Phase.

- (a) Upon Architect's receipt of The Township's written notice to proceed with the Construction Documents Phase, Architect, in consultation with The Township, shall do the following:
- (i) Submit the following to The Township for The Township's review and approval:
- a. Construction Documents**
- Based on the approved Design Development Documents, prepare the "Construction Documents" set forth in the Project Authorization and/or The Township's written notice to proceed with the Construction Documents Phase. The "Construction Documents" are the Drawings and Specifications setting forth in detail the quality levels of materials and systems required for the construction of the Project. Architect shall exercise usual and customary professional care to prepare the Construction Documents in full compliance with Applicable Laws, and properly coordinate all work on the Project, including the work to be done by Architect and its consultants, so that Project construction may proceed without material delays or changes due to corrections in the Construction Documents.
- During the development of the Construction Documents, the Architect shall assist The Township in the development and preparation of: (1) bidding and procurement information which describes the time, place and conditions of bidding; bidding or proposal forms; and the form of agreement between The Township and the Contractor; and (2) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect also shall compile the Project Manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.
- (ii) Certify to The Township, each Lender, and the Review Committee that, to the best of Architect's professional knowledge, information and belief, the Construction Documents comply with all Applicable Laws.
- (iii) Upon its receipt of the check set of the ninety-five percent (95%) complete Construction Documents, The Township shall review such documents and submit them to the Cost Estimator for its determination of the Estimated Construction Cost. If the updated Estimated Construction Cost determined by the Cost Estimator exceeds the last approved, adjusted Construction Budget, then The Township may, at its sole and absolute discretion, (i) approve the Construction Documents as submitted with the increased Estimated Construction Cost becoming the new Construction Budget, or (ii) require Architect, at Architect's sole cost, to revise the Construction Documents to decrease the cost of the Project. Architect shall then submit any revised Construction Documents to The Township for approval.

1.06 Construction Phase. If authorized by The Township in the Project Authorization, The Construction Phase shall commence with The Township’s award of the contract or contracts for construction, together with Architect's obligation to provide the Basic Services (except as otherwise provided in this Agreement), and shall terminate upon the end of the one (1) year period provided for Contractor to correct the Work under Section 12.2.2 of AIA Document A201, General Conditions of the Contract for Construction (“AIA General Conditions”), unless otherwise earlier terminated as provided in this Agreement. The contracts and related documents presented to and executed by The Township for the construction of the Project shall be the “Contract Documents.” All terms not otherwise defined herein shall be given the definition provided for such in the AIA General Conditions. During the Construction Phase, Architect shall do the following:

- (a) Provide the administration services as set forth in AIA Document A201-1997 General Terms and Conditions, in their most current version as of the date of the Project Authorization.
- (b) As The Township's representative during the Construction Phase, advise and consult with The Township and Contractor with regard to the construction of the Project. Architect may act on behalf of The Township only to the extent provided in this Agreement and the Project Authorization. Architect shall have access to the Work whenever it is in preparation or progress.
- (c) Make a minimum of one (1) visit per week , or as otherwise specified in the Project Authorization, to the Project during the Construction Phase to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. These visits are in addition to the site visits required by (i) Section 1.02(f) for visits before the Construction Phase, (ii) Sections 1.06(n) and (o) to determine Substantial Completion and Final Completion, and (iii) Section 1.06(u) for visits by consultants.
- (d) On the basis of Architect's on-site observations, keep The Township informed of the progress and quality of the Work, and endeavor to guard the Project against defects and deficiencies in Contractor's Work. Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality of the Work. Architect shall not be responsible for (i) the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, or (ii) Contractor's failure to carry out the Work according to the Contract Documents, unless such failure results from Architect's negligence, malfeasance, bad faith, or breach of this Agreement. The Township may assign various inspectors to inspect the progress and quality of the Work. Architect shall promptly evaluate and respond to any oral or written report made by any of The Township's inspectors which are furnished to Architect regarding the Project construction.

- (e) Based on Architect's observations at the Project site and its evaluations of Contractor's Applications for Payment, (i) determine, after review with The Township's representatives, the amounts due to Contractor, (ii) certify the Applications for Payment, and (iii) issue the Certificates for Payment in such amounts. By certifying each Application for Payment, Architect represents to The Township that (I) the Work has progressed to the point indicated, (II) to the best of Architect's knowledge, information, and belief, the quality of the Work conforms with that required by the Contract Documents, and (III) Contractor is entitled to payment in the amount certified.
- (f) Interpret the Contract Documents and judge Contractor's performance under the Contract Documents upon The Township's written request. Architect shall render written decisions, within a reasonable time and so as not to cause delay, on all claims, disputes, and other matters in question between The Township and Contractor relating to the execution or progress of the Work, as provided in the Contract Documents, or the interpretation of the Contract Documents. Architect's interpretations and decisions must be (i) consistent with the intent of and reasonably inferable from the Contract Documents, and (ii) in written or graphic form. Architect's decisions shall be subject to mediation if provided in the Contract Documents, but not to arbitration.
- (g) Provide technical advice, interpret the Contract Documents for The Township's representatives, and advise The Township's representatives of all decisions rendered by Architect.
- (h) May, upon The Township's approval, reject Work that does not conform with the Contract Documents.
- (i) Within a reasonable time and so as not to cause delay, review Shop Drawings, Product Data, Samples, schedules, wiring and control diagrams, lists of materials and equipment and other descriptive data pertaining to materials, equipment, or methods of construction for conformance with information given and the design concept expressed in the Contract Documents. Architect shall advise The Township and Contractor as to the acceptability of such items.
- (j) Within a reasonable time and so as not to cause delay, review and advise The Township as to the acceptability of any of Contractor's proposed substitutions.
- (k) Within a reasonable time and so as not to cause delay, (i) prepare for The Township's approval and execution Change Orders and Construction Change Directives, and (ii) analyze price quotations received from Contractor for proposed Change Orders and recommend to The Township the acceptability of the quotations.
- (l) Within a reasonable time and so as not to cause delay, make all revisions and changes to the Contract Documents, as directed by The Township, to correct errors, conflicts, or omissions, except revisions which are the result of The Township significantly

changing the scope of the Project. A significant change in scope by The Township shall be an "Additional Service" under Section 1.07.

- (m) Provide a final color schedule and samples of textures and finishes of all materials in the Project for The Township's review and approval.
- (n) Conduct inspections, in collaboration with The Township, to determine the date of Substantial Completion of the Work, (ii) assist The Township in compiling a "punch list" of items which are not in compliance with the Contract Documents, and (iii) issue a certificate of Substantial Completion.
- (o) Conduct inspections, in collaboration with The Township, to determine that Contractor has completed all "punch list" items and has otherwise complied with the Contract Documents, including, but not limited to, the completion and delivery of the "Record Drawings" and other materials listed in Section 1.06(t), and all written warranties and other materials listed in Section 1.06(p), (ii) advise The Township as to the acceptability of the Work performed by Contractor, (iii) issue a certificate of Final Completion upon completion of the above items, and (iv) issue a final Certificate of Payment.
- (p) Review and deliver to The Township written warranties, guarantees, operating and maintenance instruction books, diagrams, and related documents which the Contract Documents require Contractor to provide.
- (q) Assist The Township in fulfilling any Lender requirements regarding disbursements under the Contract Documents.
- (r) Make all certifications required of Architect under the Design Standards and sign the letter attached as a part of Exhibit "A".
- (s) Review on a monthly basis Contractor's record copy of the Drawings, Specifications, addenda, Change Orders and other Modifications, Shop Drawings, Product Data, Samples, and other submittals maintained at the Project site for completeness, including any revisions made during the course of construction.
- (t) Promptly after Architect's receipt of the items listed in Section 1.06(s) upon Final Completion (or after any termination of this Agreement before such time), shall cause the General Contractor to prepare and deliver to The Township (i) one sepia mylar form of permanent transparent reproductions of all Drawings (with changes made during construction properly annotated and cross-referenced) signed by Architect, dated, and noted as a "Record Drawing", (ii) one set of computer disks storing all Drawings in a computer-aided drafting and design (CADD) format compatible with The Township's current software system, and (iii) the other items listed in Section 1.06(s) provided to Architect.
- (u) Be responsible for Architect's consultants and their proper observance of the Work according to the schedule set forth in the Project Authorization for Project site visits.

- (v) Give prompt written notice to The Township if Architect observes or otherwise becomes aware of any breach under, or failure of the Project to conform to, the Contract Documents.
- (w) Recommend in writing that The Township order Contractor to stop any portion of the Work, if, in Architect's judgment, Work is not being performed according to the Contract Documents.

1.07 Additional Services. Architect shall perform Additional Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Architect shall promptly notify The Township of the need for any Additional Services. The following are “Additional Services” and, when authorized by The Township in writing, The Township shall pay for them as provided in Article III:

- (a) Making measured drawings of existing construction when required for planning additions or alterations to the Project.
- (b) Revising Design Development Documents or Construction Documents as a result of The Township significantly changing the scope of the Project. Revisions made as a result of the Construction Cost Estimate, as determined by the Cost Estimator, exceeding the applicable Construction Budget, shall not be an Additional Service.
- (c) Consulting with The Township regarding replacement of any Work damaged by fire or other casualty during construction, and furnishing such professional services as The Township requests in connection with the replacement of such Work.
- (d) Providing professional services made necessary by Contractor's default in performing the Work, including any professional services made necessary by construction deficiencies uncovered during the warranty period under the Contract Documents. Architect shall use its best efforts to help The Township obtain reimbursement for the cost of Architect's services under this Section from the party at fault or any Project surety.
- (e) Recommending methods of correction of any deficiencies in construction of the Project which develop after acceptance of the Work. Architect shall use its best efforts to help The Township receive reimbursement for the costs of Architect's services under this Section from Contractor or any Project surety.
- (f) Providing contract administration and observation of construction after the original period to complete the Work under the Contract Documents is exceeded by more than twenty percent (20%) through no fault of Architect.
- (g) Providing services in connection with any public hearing or legal proceeding, except where Architect is a party to such hearing or proceeding.

- (h) Providing special consultant(s) for services other than normal structural, mechanical, and electrical engineering services.
- (i) Preparing renderings, scale models, and mock-ups to the extent not contemplated in the Basic Services.

ARTICLE II THE TOWNSHIP'S RESPONSIBILITIES

2.01 The Township's Responsibilities. The Township shall do the following during the Term of this Agreement:

- (a) Examine documents submitted by Architect and render decisions pertaining to such documents. Notwithstanding anything in this Agreement to the contrary, Architect's duties, as set forth in this Agreement, shall not be diminished because of any approval by The Township of the Drawings or Specifications, nor shall Architect be released from any liability because of The Township's approval since The Township is relying upon Architect's skill and knowledge in preparing the Drawings and Specifications. Additionally, notwithstanding anything in this Agreement to the contrary, any approval of any Drawings or Specifications submitted by Architect during the Design Development Phase or the Construction Documents Phase before Architect's submission of the completed Design Development Documents or Construction Documents (as applicable) shall not relieve Architect of Architect's responsibility to design the Project so that the Estimated Construction Cost does not exceed the Construction Budget.
- (b) Designate a representative, from time to time, authorized to act on The Township's behalf with respect to the Project. Any such representation shall not, however, relieve Architect from any of Architect's duties or obligations under this Agreement.
- (c) Provide to Architect (i) a program setting forth The Township's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expansion capability, special equipment, systems, and site requirements and (ii) a Project construction schedule.
- (d) Furnish to Architect an accurate land survey of the Project site showing, as necessary, (i) grades and lines of streets, alleys, pavements, and adjoining properties, (ii) easements, (iii) encroachments, (iv) boundaries, (v) topography of the site, and (vi) the location, dimensions, and floor elevations of existing buildings, other improvements, and trees. The Township shall also furnish complete information concerning any private land use restrictions and available utility lines or services. Architect may rely on the information furnished to Architect under this Section to the extent Architect does not know, or have reason to know, that such information is incorrect or inaccurate. If Architect discovers that any of such information is incorrect or inaccurate, Architect shall notify The Township immediately.

- (e) When reasonably requested by Architect, furnish the services of a geotechnical engineer to determine subsoil conditions, including such services as test borings, test pits, soil bearing values, and other necessary operations. Architect may rely on the information provided to Architect under this Section to the extent Architect does not know, or have reason to know, that such information is incorrect or inaccurate. If Architect discovers that any of such information is incorrect or inaccurate, Architect shall notify The Township immediately.
- (f) Furnish structural, mechanical, hazardous materials, and other laboratory and environmental tests, inspections, and reports as required by Applicable Law or the Contract Documents. Architect may rely on the information provided to Architect under this Section to the extent Architect does not know, or have reason to know, that such information is incorrect or inaccurate. If Architect discovers that any of such information is incorrect or inaccurate, Architect shall notify The Township immediately.
- (g) Furnish all of The Township's legal, accounting, and insurance counseling services for the Project, including any auditing services The Township may require to verify Contractor's Applications for Payment or to ascertain how or for what purposes Contractor has used the money paid by The Township.

**ARTICLE III
ARCHITECT'S COMPENSATION**

3.01 Fees and Expenses. The Township shall pay Architect the basic fee equal to 6.5% of the construction costs for Basic Services ("Basic Fee"). Fees for the Architect's services and for reimbursable expenses under this Agreement shall be set forth in detail in each Project Authorization. Any Additional Services required beyond the Basic Services shall be provided at the following rates:

| | |
|------------------------------|---------------|
| Principals | \$150/hr. |
| Management | \$100-125/hr. |
| Project Architects/Designers | \$75-100/hr. |
| Technical Personnel | \$50-75/hr. |

3.02 Payment. The amount The Township pays each month for Basic Services compensation shall be based on the following formula: the difference of (a) the product of (i) the percentage of completion of a Phase, *multiplied by* (ii) the "Phase Percentage", *multiplied by* (iii) the Basic Services compensation provided in the Project Authorization, *minus* (b) all amounts previously paid to Architect. The Phase Percentages are as follows:

| Phase | Phase Percentage |
|------------------------------|-------------------------|
| Schematic Design Phase | 15% |
| Design Development Phase | 35% |
| Construction Documents Phase | 75% |
| Bid Phase | 80% |
| Construction Phase | 98% |

The Township's receipt of the Record Drawings and other materials provided in Section 1.06(t) after Final Completion

100%

Architect shall submit an invoice, in the form attached as Exhibit "B" and incorporated in this Agreement by reference for all purposes, to The Township by the 15th day of each month for the Basic Services and any Additional Services performed, and any reimbursable expenses incurred, by Architect in the previous month. With respect to any Additional Services fees or reimbursable expenses included in an invoice, Architect shall also submit reasonable supporting documentation, invoices, and receipts to substantiate such fees or expenses. The Township shall pay to Architect the amount due within thirty (30) days of The Township's receipt of Architect's monthly invoice. Architect may not submit an invoice for a particular Phase of Architect's services until Architect has submitted invoices for all of Architect's services in the prior Phases.

ARTICLE IV DOCUMENTS

4.01. The Township and Use of Documents. With the except of standard and generic materials common to any construction project contained within the construction documents, all Drawings, Specifications, models, and other materials (and the electronic methods of reproducing such documents, including, but not limited to, computer tapes or disks) prepared or furnished pursuant to this Agreement ("Project Materials") are the property of The Township, regardless of whether the Project is begun or completed. Architect shall treat all Project Materials as confidential. Architect shall not use any of the Project Materials, or copies of such materials, on other work or disclose such materials to any other party without The Township's prior written approval. The Township may use and re-use all Project Materials at any time without further compensation to Architect and without any restrictions. The Township may reproduce and publish the Project Materials, and use these materials to complete the Project if this Agreement or a Project Authorization is terminated, at any time without further compensation to Architect and without any restrictions. If The Township uses any of the Project Materials in connection with any project other than this Project without the written consent of Architect, The Township shall indemnify, defend, and hold Architect harmless from all claims arising out of the use of such materials on such other project.

ARTICLE V REMEDIES; SUSPENSION; TERMINATION; DEATH OR INCAPACITY

5.01 Remedies.

(a) Upon default by Architect under this Agreement, The Township may pursue all of its remedies under this Agreement, at law or in equity, including, but not limited to, terminating the Agreement or a Project Authorization by written notice to Architect. Upon any such termination, Architect shall be entitled to compensation for all services performed before receipt of the notice of termination and Reimbursable Expenses incurred up to the date of termination. The Township, however, may offset any amounts due and payable to Architect by the amounts of any damages incurred

by The Township because of Architect's breach of this Agreement. Such offset shall not prejudice The Township's right to recover additional damages or to exercise any other remedy at law or in equity. Breach is defined in this Section 5.01(a) as any breach by Architect of any material obligation hereunder and failure to cure such breach within ten (10) days following written notice by The Township.

- (b) Upon default by The Township under this Agreement, Architect may pursue all of its remedies under this Agreement, at law or in equity, including, but not limited to, terminating the Agreement or a Project Authorization by written notice to The Township. Upon any such termination, Architect shall be entitled to compensation for all services performed before delivery of the notice of termination and Reimbursable Expenses incurred up to the date of termination. Architect shall not be entitled to receive termination expenses, unabsorbed overhead, lost profit, or any type of consequential damages. Notwithstanding anything in this Agreement to the contrary, Architect may not, upon default by The Township, withhold any documents, drawings, specifications, models, surveys, reports, or any similar items from The Township, whether prepared by Architect or submitted to Architect by others, and shall promptly deliver such items to The Township upon request. Breach is defined in this Section 5.01(b) as any breach by The Township of any material obligation hereunder and failure to cure such breach within ten (10) days following written notice by Architect.

5.02 Suspension and Termination.

- (a) The Township may order that Architect suspend all or any part of the services provided under a Project Authorization for The Township's convenience upon written notice to Architect. The Township shall pay Architect all amounts otherwise due under the Project Authorization as of the date of the suspension, and reasonable direct suspension expenses incurred by Architect, but The Township shall not be obligated to pay or reimburse Architect for lost profits, overhead, or any type of consequential damages.
- (b) The Township may terminate this Agreement or a Project Authorization without cause upon seven (7) days' prior written notice to Architect. In the event of any such termination without cause, Architect's sole remedy under this Agreement or at law or in equity shall be to receive payment for that part of its Basic Services and Additional Services, if any, then performed and for any Reimbursable Expenses then incurred as of the date of The Township's termination notice.
- (c) The Township reserves the right to immediately terminate this Agreement, including any Project Authorization in progress, for cause upon giving Architect forty-eight (48) hours prior written notice of such termination. Cause is defined as: (i) breach by Architect of the confidential information requirements herein; (ii) illegal conduct by Architect or conduct by Architect which is detrimental to The Township; (iii) breach by Architect of any material obligation hereunder and failure to cure such breach within ten (10) days following written notice; and/or (iv) insolvency, making an assignment for the benefit of creditors, filing a petition in bankruptcy, or appointment

of a receiver or trustee to take possession of assets.

5.03 Death or Incapacity. If Architect is an individual, this Agreement shall terminate on Architect's death or incapacity. If (i) Architect is a partnership, joint venture, professional corporation, or limited liability company, (ii) one of Architect's partners, shareholders, or members, as applicable, dies or becomes incapacitated and (iii) the other partners, shareholders, or members continue to render architectural services, The Township may, at its sole and absolute discretion, terminate this Agreement or continue the Agreement with the reconstituted or remaining partnership, joint venture, professional corporation, limited liability company, or limited liability partnership. Termination under this Section shall not limit or impair the other rights and remedies of The Township under this Agreement or at law or in equity.

ARTICLE VI INSURANCE; INDEMNIFICATION

6.01 Insurance.

(a) Architect shall maintain, and require its subcontractors (if any) to maintain, at all times during the term of this Agreement, the following insurance coverage from insurance companies satisfactory to The Township:

(i) Commercial General Liability Insurance (“occurrence basis”) with the following minimum limits:

1. Combined single limit of liability for Bodily Injury and Property Damage, including death:

\$2,000,000.00 per occurrence

\$2,000,000.00 aggregate

2. Broad form CGL liability coverage: \$1,000,000

3. Products/Operations aggregate: \$1,000,000

(ii) Architect's Professional Liability Insurance (“claims made” basis) with minimum limits of \$1,000,000.00.

(iii) Worker's Compensation insurance with a minimum Employers Liability coverage of \$100,000.

(iv) Automobile Liability (including Owned and Non-Owned autos) with minimum coverages of \$250,000 each person and \$500,000 each occurrence

for bodily injury; and minimum \$100,000 each occurrence for Property Damage

- (iii) Umbrella Liability Insurance (“occurrence” basis) in excess of the limits of coverage provided in (i) and (ii) above with minimum limits of \$1,000,000 each occurrence, \$1,000,000 annual aggregate; and \$25,000 self-insured retention..
- (iv) Valuable Papers Insurance with a minimum limit of \$50,000.00.

Additionally, Architect shall maintain the above Professional Liability Insurance for at least three (3) years after termination of this Agreement.

- (b) Architect shall require its civil, structural, mechanical, electrical, or other consultants to procure and maintain similar types of insurance as Architect deems necessary.
- (c) Other than the policies specified in Section 6.01(a)(ii), each policy referred to in Section 6.01 shall identify The Township, each Lender, and their successors or assigns as additional insureds. Each policy described in Section 6.01(a) shall be primary to any insurance carried by The Township. Architect shall furnish to The Township, on or before the date of this Agreement (and annually after such date for three (3) years with respect to Architect’s Professional Liability Insurance), a certificate of insurance showing that the above insurance is in force, stating policy numbers, dates of expiration, and limits of liability. Such certificates shall further provide that the insurance will not be canceled or changed until the expiration of at least thirty (30) days after written notice by certified or registered mail, return receipt requested, of such cancellation or change has been sent to The Township.

6.02 Indemnification.

- (a) **Architect shall protect, defend, indemnify, and hold The Township, its affiliates, directors, officers, employees, consultants, and representatives harmless from and against all claims, demands, causes of action, suits, loss, damage, liabilities, costs, and expenses (including attorneys' fees and court costs) of every kind and character including, without limitation, injury to or death of any person and property damage asserted against or incurred by The Township arising out of or related to any negligent (to the extent or degree on a comparative basis of fault), grossly negligent, or intentional act, error, or omission of Architect or its employees, consultants, or agents arising out of or related to this Agreement.**
- (b) Architect shall discharge at once or bond or otherwise secure against all liens and attachments in connection with the Work which are filed in connection with the Work by Architect or Architect's employees, consultants, or agents and shall indemnify, protect, defend, and hold The Township harmless from and against all claims, demands, causes of action, suits, loss, damage, liabilities, costs, and expenses (including attorneys' fees and court costs) relating to such liens and attachments.

**ARTICLE VII
MISCELLANEOUS**

- 7.01 Assignment.** Architect may not assign its rights under this Agreement without The Township's prior written consent, which may be granted or withheld in The Township's sole discretion. The Township may assign or collaterally assign its rights under this Agreement at any time without Architect's consent; however, The Township may only be released from its duties and obligations under this Agreement with Architect's written consent.
- 7.02 Independent Contractor Status.** In Architect's performance of its services under this Agreement, Architect shall be an independent contractor and not an agent or employee of The Township. Architect and its employees shall not be entitled to participate in any benefit plans or programs provided to The Township's employees. Architect's agents and employees, and the agents and employees of Architect's consultants, if any, shall be subject solely to Architect's control, supervision, and authority. Architect shall be solely liable for all taxes, charges, or contributions with respect to or imposed on Architect's services under this Agreement, including such taxes or contributions imposed on the wages, salaries, and other compensation paid to Architect's employees and consultants. Architect shall pay such taxes or contributions when due to the proper governmental authorities. Architect shall indemnify and hold The Township harmless from any liability or expense because of Architect's or its consultants' failure to pay such taxes or contributions.
- 7.03 Governing Law; Venue; Attorneys Fees.** This Agreement shall be construed, and its performance enforced, under Texas law except for its conflict of laws provisions. Exclusive venue for any action shall be in Montgomery County, Texas. The non-prevailing party in any dispute between the parties shall reimburse the prevailing party for the prevailing party's reasonable attorneys' fees and court costs.
- 7.04 Merger; No Waiver; Severability.** This Agreement represents the entire and integrated agreement between The Township and Architect with respect to the Project. This Agreement supersedes all prior negotiations, representations, and agreements, either written or oral, with respect to the Project. This Agreement may be amended only by a written instrument signed by both The Township and Architect. The waiver of any breach of any term or condition of this Agreement shall not waive any other breach of that term or condition or of any other term or condition. If any part of this Agreement is found to be unenforceable by a court of competent jurisdiction, all other portions shall nevertheless remain enforceable.
- 7.05 Notices; Delivery of Plans and Specifications.** Any notice required or permitted to be delivered under this Agreement shall be deemed received when (i) personally delivered, (ii) two (2) days after being sent by United States mail, postage prepaid, certified mail, return receipt requested, and properly addressed, (iii) one (1) day after being deposited with a nationally recognized overnight courier service, charges prepaid, and properly addressed, or (iv) sent by facsimile properly addressed and confirmation of receipt is received. The addresses of each party shall be that set forth below the signature of such party, unless otherwise designated by either party, from time to time, by written notice to the other party. Architect shall deliver to The Township all plans and specifications prepared by or on behalf

of Architect pursuant to this Agreement by the methods set forth in Article I of this Agreement.

- 7.06 Licensing.** Architect hereby represents and warrants that (i) Architect, if an individual, is licensed in the State of Texas, and (ii) all employees of Architect working on the Project are, or are working under the direction of, an architect or architects licensed by the State of Texas.
- 7.07 Survival.** Section 1.06(t) (delivery of materials), Section 4.01 (use of documents), Section 5.01 (remedies), Section 6.01 (insurance), Section 6.02 (indemnities), and Section 7.08 (mediation/arbitration joinder) shall survive the termination of this Agreement.
- 7.08 Joinder.** Architect consents to being joined, consolidated, or included in any other manner in any mediation proceeding arising out of or relating to the Contract Documents where The Township is a party to such mediation.
- 7.09 Definitions; Articles, Sections, and Exhibits.** Any capitalized term in this Agreement which is not defined herein shall have the same definition as that term is defined in the AIA General Conditions, as amended by The Township's Supplementary Conditions, both in their most current version as of the date of this Agreement. All references to Articles and Sections refer to articles and sections of this Agreement, and all references to Exhibits are to exhibits attached to this Agreement, each of which is made a part of this Agreement for all purposes.

[Remainder of this page left intentionally blank]

[Signatures on the following page]

Executed to be effective on the Effective Date.

THE WOODLANDS TOWNSHIP.

BY: _____
NAME: _____
TITLE: _____

JOINER PARTNERSHIP, INC.

BY: _____
NAME: _____
TITLE: _____

Two Kingwood Place
700 Rockmead, Suite 265
Kingwood, TX 77339

Federal Tax Identification No.:

EXHIBIT "A"

(Architect's Letterhead)

(Date)

Development Standards Committee
Attention: Chairperson
2201 Timberloch Place
The Woodlands, Texas 77380

RE: Development Standards Committee
Commercial / Industrial Planning & Design Standards
Structure and Improvements _____
Location – Parcel _____
Village _____ Section _____
DDA Certificate No. _____ Dated _____
Development Standards Committee Approval Date _____

To Whom It May Concern:

I prepared the final plans and, if applicable, specifications for the subject Improvements and made site visits and inspections of the Improvements during and upon completion of construction. Based upon this, I represent to you that the following statement is true and correct as of the date of this letter.

To the best of my knowledge, based on limited site visits per agreement, the Improvements have been substantially completed in accordance with the plans and, if applicable, specifications approved by the Development Standards Committee.

I understand that the Development Standards Committee (1) is relying on this letter in issuing a Certificate of Compliance for the Improvements under the Commercial / Industrial Planning & Design Standards and (2) would not issue the Certificate of Compliance without this letter. This is based solely on information available during the normal course of architectural services on this project.

Sincerely,

(Seal)

Name _____
Registered Architect

State of Texas Reg. No.

Exhibit "B"
Sample Invoice

Date of Invoice
Invoice Number
Project Name
Client's Project Number

Total Fee 500,000

| Phase | Percentage | Fee | Fee Earned | Previously Billed | This Invoice |
|------------------------------|------------|---------|------------|-------------------|--------------|
| Schematic Design Phase | 5% | 25,000 | 12,500 | 0 | 12,500 |
| Design Development Phase | 10% | 50,000 | | | |
| Construction Documents Phase | 50% | 250,000 | | | |
| Construction Phase | 25% | 125,000 | | | |
| Bid | 2% | 10,000 | | | |
| Value Engineering | 3% | 15,000 | | | |
| Final Completion | 5% | 25,000 | | | |
| Total | | 100% | 500,000 | | |

Signature_____