

PROFESSIONAL SERVICES AGREEMENT
between
GARVER, LLC
And
THE MIDWEST CITY HOSPITAL AUTHORITY

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter referred to as “**Agreement**”) is entered into by and among The Midwest City Hospital Authority, a municipal trust (hereinafter referred to as “**Authority**”), and Garver, LLC, a limited liability company (hereinafter referred to as “**Service Provider**”) (**Authority**, and **Service Provider** being collectively referred to herein as the “**Parties**”) and is effective upon the date of execution by the last party hereto.

WITNESSETH:

WHEREAS, Authority is in need of the following professional services: See Attachment A; and

WHEREAS, Service Provider is in the business of providing professional services that are needed by the **Authority**; and

WHEREAS, the Authority and the **Service Provider** have reached an agreement for the **Service Provider** to provide the **Authority** the requested professional services; and

WHEREAS, Authority hereby retains **Service Provider** to provide professional services as an independent contractor; and

WHEREAS, Service Provider agrees to provide the **Authority** all Attachment A services, in accordance with the standards exercised by professionals in the field, necessary to provide the **Authority** services, products, solutions and deliverables that meet all the purposes and functionality requested or described in this Agreement.

NOW, THEREFORE, for and in consideration of the above premises and mutual covenants as set forth herein, the **Authority**, and **Service Provider** hereby agree as follows:

1. Services, Products, Solutions and Deliverables

Subject to the terms and conditions of this **Agreement**, the Authority retains the Service Provider as an independent contractor, to provide **Authority** all Services, in accordance with the ordinary Standard of Care, with project information delivered (“**Deliverables**”) as agreed within Attachment A to this Agreement. Upon issuance of the Agreement, the Service Provider shall be responsible for timely providing the Services authorized by the Agreement (“**Project**”). Service Provider shall invoice Authority on a monthly basis for completed Services. Such invoice will

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include supporting documentation reasonably necessary for Authority to know with reasonable certainty the proportion of Services accomplished. The Authority may meet with Service Provider to identify additional service needs as mutually agreed and to be provided within a fully executed amendment.

The Authority will pay Service Provider all undisputed amounts within thirty (30) days after receipt of the Service Provider's invoice. Upon completion of services and provision to the Authority of all Deliverables for that Project and payment of the invoice for that Project to the Service Provider, the Authority shall own all rights and license for the Deliverables ; provided, however, any and all underlying intellectual property, if any (unless provided by Authority), shall remain the property of Service Provider such that Service Provider may continue to perform its business in the normal course. Service Provider shall designate, on any Deliverables submitted to the Authority, what information in said Deliverables is deemed intellectual property. Service Provider hereby acknowledges that any intellectual property in the possession of the Authority is subject to the Oklahoma Open Records Act (Title 51 of the Oklahoma Statutes, Section 24A.1 *et seq.*). If the Authority receives an Open Records Request for any intellectual property of the Service Provider, the Authority shall notify the Service Provider of the receipt of the Open Records Request. Service Provider shall, within thirty (30) days of the receipt of the Open Records Request, provide to the Authority a response concerning whether the intellectual property can or cannot be released. If the Service Provider determines that the intellectual property cannot be released, then the Service Provider shall incur the obligation, including all financial obligations, to defend the determination in any future proceedings concerning the Open Records Request.

Upon payment in full, **Service Provider** shall grant **Authority** an irrevocable, non-exclusive, royalty-free license to use the same for the purposes contemplated under this **Agreement**. To the extent allowed under applicable law, **Authority** shall release, defend, indemnify, and hold harmless **Service Provider** and its subconsultants against all claims, losses, damages, injuries, and expenses, including reasonable attorneys' fees arising out of change to, or re-use of Deliverables for any other project. a) This Agreement governs the Scope of Services including, but not limited to, all Deliverables to be provided by Service Provider to the Authority.

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The Attachments are incorporated into this Agreement by reference and, should there be a conflict in language, terms, conditions, or provisions, shall have the priority and precedential value as set forth in this Agreement. b) The text of this Agreement together with the Attachments constitutes the entire Agreement and the only understanding and agreement between the Authority and the Service Provider with respect to the Services, products, solutions and deliverables to be provided by the Service Provider hereunder. This Agreement may only be amended, modified or changed in writing when signed by all parties, or their respective specifically authorized representatives, as set forth in this Agreement. Notwithstanding anything in this Agreement, Service Provider shall be entitled to an equitable adjustment in the cost and/or schedule for circumstances outside the reasonable control of Service Provider, including modifications in the Scope of Services, applicable law, codes, or standards after the effective date of this Agreement. c) If there is a conflict in language, terms, conditions, or provisions, in this Agreement between the text of this document, and any language, term, condition, or provision in any Attachment, then the text of this document, shall govern and control over any conflicting language, term, condition, or provision in any Attachment. As among the Attachments any conflict in the language, terms, conditions, or provisions shall be governed in the following order of priority and precedence:

- Attachment “A” (“Services” or “Scope of Services”)
- Attachment “B” (“Schedule of Fees / Rate Card”),
- Attachment “C” (Service Provider’s Project Team, members, and positions).

2. RETENTION OF SERVICES PROVIDER AND SCOPE OF SERVICES

A. **Service Provider** is solely responsible for the actions, non-action, omissions, and performance of **Service Provider’s** employees, agents, contractors, and subcontractors (herein collectively included in the term “Service Provider’s Project Team”) and to ensure the timely provision of the Project, timely performance of the Scope of Services, and the timely performance of the Project and the provision of all Deliverables as each are defined in **Attachment “A” (“Scope of Services”)** or the Project.

B. **Service Provider** will be solely responsible to ensure the **Service Provider’s Project Team (Attachment “C”)** fully understands the Project, the Scope of Services, the

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Deliverables, the schedule for performance, and **Authority's** goals and purposes. Service Provider will be solely responsible to ensure the **Service Provider's Team (Attachment "C")**, specifically assigned to work on the Project for the Authority, is adequately trained, instructed, and managed so that **Service Provider** timely provides the Project task and satisfies the **Service Provider's** obligations under this Agreement. The **Service Provider** may not change the **Service Provider's Team (Attachment "C")**, for the Services to be provided as set forth on Attachment "C" ("**Service Provider's Team**") without the prior written consent of the **Authority**, not to be unreasonably withheld.

C. **Service Provider** shall comply with all applicable federal, state and local laws, standards, codes, ordinances, administrative regulations pertaining in any manner to the performance of Services provided under this **Agreement**. **Service Provider** shall obtain all patents, licenses and any other permission required to provide all Deliverables and for use of all Deliverables by the **Authority** (except to the extent from information provided or specified by **Authority**).

3. CONSIDERATION

A. The **Authority** shall pay the **Service Provider** the compensation after completion of Services as specified in Section one (1) of this **Agreement**, and in **Attachment "B" ("Schedule of Fees")**.

B. The **Authority** and the **Service Provider** acknowledge that the compensation to be paid the **Service Provider** pursuant to this **Agreement** has been established at an amount reasonable for the availability and Services of the **Service Provider and the Service Provider's Team (Attachment "C")**.

4. INDEPENDENT CONTRACTOR STATUS

The parties hereby acknowledge and covenant that:

A. Service Provider is an independent contractor and will act exclusively as an independent contractors. Service Provider is not an agent or employee of the Authority in performing the duties in this Agreement.

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1. The parties do not intend, and will not hold out that there exists, any corporation, joint venture, undertaking for a profit or other form of business venture or any employment relationship among the parties other than that of an independent contractor relationship.

2. All payments to **Service Provider** pursuant to this **Agreement** shall be due and payable in the State of Oklahoma, even if services of **Service Provider** are performed outside the State of Oklahoma.

B. The **Authority** shall not withhold any social security tax, workmen's compensation, Medicare tax, federal unemployment tax, federal income tax, or state income tax from any compensation paid to **Service Provider** as **Service Provider** is an independent contractor and the members of its **Service Provider's Team**, assigned to work on the Project for the **Authority** are not employees of the **Authority**. Any such taxes, if due, are the responsibilities of **Service Provider** and will not be charged to the **Authority**.

C. **Service Provider** acknowledges that as an independent contractor it and **Service Provider's Project Team**, assigned to work on the Project for the **Authority** are not eligible to participate in any health, welfare or retirement benefit programs provided by the **Authority** or its employees.

5. TERM, TERMINATION AND STOP WORK

A. This **Agreement** shall commence upon execution by the last party hereto and shall continue in effect for one-year from the date of execution, unless terminated by either party as provided for herein. This **Agreement** may be extended by mutual agreement of the **Parties** in one-year increments, until the Project is completed and accepted as provided herein.

B. The **Authority** may issue notices of termination or suspension to the **Service Provider**. This **Agreement** may be terminated, with or without cause, upon written notice, at the option of **Authority**.

1. Upon receipt of a notice of termination for the *convenience* from the **Authority**, the **Service Provider** shall immediately discontinue all Services and activities (unless the notice directs otherwise), and

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2. Upon payment for Services fully performed and accepted, **Service Provider** shall deliver to the **Authority** all licenses, work, products, deliverables, solutions, communication recommendations, plans, messaging strategies, style guides, design elements, internal and external messaging campaigns, documents, data analysis, reports, and other information and materials accumulated or created in performing this **Agreement** which are included as Deliverables within the Scope of Services required from **Service Provider**, whether the same are complete or incomplete, unless the notice directs otherwise. Upon termination for *convenience* by the **Authority**, the **Authority** shall pay **Service Provider** for completed Projects and Deliverables up to the time of the notice of termination for *convenience*, in accordance with the terms, limits and conditions of the **Agreement** and as further limited by the “not to exceed” amounts set out in this **Agreement**.

3. Upon notice of termination for *cause* from the **Authority**, and following reasonable opportunity to cure, the **Service Provider** shall be entitled to receive payment for all Services properly performed prior to such termination in accordance with the terms, conditions, and rates set forth in this **Agreement**. Provided, however, upon notice of termination for cause and payment for **Service Provider**'s undisputed services, the **Service Provider** shall deliver to the **Authority** all Deliverables required under the Scope of Services, whether complete or incomplete, unless the notice directs otherwise.

4. The rights and remedies of the **Authority** provided in this paragraph are in addition to any other rights and remedies provided by law or under the **Agreement**. Termination herein shall not terminate or suspend any warranty, indemnification, insurance, or confidentiality required to be provided by **Service Provider** under this **Agreement**.

C. Upon notice to **Service Provider**, the **Authority** may issue a stop work order suspending any Projects, Services, performances, work, products, Deliverables, or solutions under this **Agreement**. Any stop work order shall not terminate or suspend any warranty, indemnification, insurance, or confidentiality required to be provided by **Service Provider** under this **Agreement**. In the event the **Authority** issues a stop work order to **Service Provider**, the **Authority** will provide a copy of such stop work order to the **Service Provider**. Upon receipt

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of a stop work order issued from the **Authority**, the **Service Provider** shall suspend all work, Services and activities except such work, Services, and activities expressly directed by the **Authority** in the stop work order. Upon notice to the **Service Provider**, this **Agreement**, and any or all work, Services, and activities thereunder, may be suspended up to thirty (30) calendar days by the **Authority**, without cause and without cost to the **Authority**; provided however, the **Service Provider** shall be entitled to an extension of all subsequent deadlines for a period equal to the suspension periods for those suspended work, Services, and activities only.

D. Obligation upon Termination for Convenience.

1. In the event this **Agreement** is terminated for convenience hereunder, the **Authority** shall pay **Service Provider** (i) for such properly documented invoices, if any, in accordance with the provisions of this **Agreement** above, through the date of termination for *convenience* and the period set forth in the notice, and (ii) documented and reasonable costs (plus profit on such costs) incurred by **Service Provider** to implement such termination (including demobilization costs, and termination/cancellation costs under subcontracts and purchase orders), thereafter the **Authority** shall have no further liability under this **Agreement** to **Service Provider** and **Service Provider** shall have no further obligations to the **Authority**.

2. Upon termination for *convenience* of the Project and the providing to the **Authority** of all Deliverables for the Project and payment of the invoice for the Project to **Service Provider**, the **Authority** shall own all rights and license for the Deliverables and other work products related to that Project, as provided in Section 1 herein.

6. WARRANTIES

A. **Service Provider** warrants that the Projects performed and Deliverables provided under this **Agreement** shall be performed consistent with generally prevailing professional standards and qualifications according to the ordinarily accepted standard and practices employed by the applicable United States professional services industries as of the effective date of this **Agreement**, practicing under similar conditions and locale. Such generally accepted practices and standards are not intended to be limited to the optimum practices, methods, techniques, or standards to the exclusion of all others, but rather to a spectrum of reasonable and prudent

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practices employed by the United States professional services industry (“Standard of Care”). **Service Provider** shall maintain during the course of this **Agreement** said Standard of Care, skill, diligence and professional competency for any and all such Services. **Service Provider** agrees to require all members of the **Service Provider’s Team**, also including FTEs assigned to work on the Project, to provide any and all Services, products, solutions and Deliverables at said same Standard of Care, skill, diligence and professional competence required of **Service Provider**.

B. During the term of this Agreement, the Authority’s initial remedy for any breach of the above warranty shall be to permit Service Provider one additional opportunity to perform the work, Services, and activities or provide the Projects and Deliverables without additional cost to the Authority. If the Services Provider cannot perform the work, Services, and activities or provide the products, solutions and deliverables according to the standards and requirements set forth in this Agreement within thirty (30) calendar days of the original performance date, the Authority shall be entitled to recover, should the Authority so determine to be in their best interest, any fees paid to the Service Provider for Services which do not meet the performance standard in Section 6.A above, and Service Provider shall make reimbursement or repayment within thirty (30) calendar days of a demand by the Authority. Should the Service Provider fail to reimburse the Authority within thirty (30) calendar days of demand, the Authority shall also be entitled to interest at 1.5% percent per month on all outstanding reimbursement and repayment obligations.

7. INSURANCE

A. Service Provider must provide and maintain at all times throughout the term of this **Agreement**, and any renewal hereof, such *commercial general insurance with a limit of \$1,000,000 per occurrence for bodily injury and tangible property damage and \$2,000,000*

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F. Notwithstanding any other provision to the contrary, upon termination or lapse of insurance coverage required hereunder, this **Agreement** may be terminated. Termination of this **Agreement** pursuant to this paragraph must take precedence and supersede any other paragraph establishing the term of this **Agreement**, establishing a procedure for revocation or termination, or requiring notice and/or providing an opportunity to cure a breach.

8. INDEMNIFICATION

A. **Service Provider** agrees to indemnify, and hold harmless the **Authority** from and against all liability for: (a) bodily injuries or death to persons caused by **Service Provider's** negligence or fault; (b) third party claims for costs, losses, and expenses caused by **Service Provider's** negligence or fault; (c) reasonable legal fees, legal expenses, and court costs related to the same; and (d) third party claims for damages, or loss to tangible property of third parties, which are caused by the negligence of **Service Provider**, its officers, representatives, agents, contractors, and employees which arise during the performance of this Agreement, except to the extent such injuries, losses, damages and/or costs are caused by the negligence or willful misconduct of the indemnified party. The **Service Provider** must give the **Authority** prompt and timely notice of any claim or suit instituted which in any way, directly or indirectly, contingently or otherwise, affects or might affect the **Authority**, provided, however, such notice will not be a precondition to indemnification hereunder. The rights granted by this paragraph will not limit, restrict, or inhibit the rights of the **Authority** under any other paragraph, including but not limited to any insurance provision or requirement in this **Agreement**.

B. The provisions of this paragraph shall survive the expiration of this **Agreement**. It is understood that these indemnities and hold harmless provisions are not limited or defined by the insurance required under the insurance provisions of this **Agreement**.

9. CONFIDENTIALITY

Service Provider acknowledges that in the course of training and providing Services to the **Authority**, the **Authority** may provide **Service Provider** with access to valuable information of a confidential and proprietary nature including but not limited to information relating to the

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Authority's employees, customers, marketing strategies, business processes and strategies, security systems, data and technology. **Service Provider** agrees that during the time period this **Agreement** is in effect, and thereafter, neither **Service Provider** nor **Service Provider's Team**, without the prior written consent of the **Authority**, shall disclose to any person, other than to the **Authority**, any information obtained by **Service Provider** that is marked as "Confidential Information" or "Proprietary Information" or identified as confidential pursuant to this Section 10 in writing promptly after being disclosed verbally; and (ii) all documents resulting from **Service Provider's** performance of Services to be "Confidential Information". Except as legally required, Confidential Information shall not be discussed with or transmitted to any third parties, except on a "need to know basis" with equal or greater confidentiality protection or written consent of the disclosing party. Confidential Information shall not include and nothing herein shall limit either Party's right to disclose any information provided hereunder which: (i) was or becomes generally available to the public, other than as a result of a disclosure by the receiving party or its personnel; (ii) was or becomes available to the receiving party or its representatives on a non-confidential basis, provided that the source of the information is not bound by a confidentiality agreement or otherwise prohibited from transmitting such information by a contractual, legal, or fiduciary duty; (iii) was independently developed by the receiving party without the use of any Confidential Information of the disclosing party; or (iv) is required to be disclosed by applicable law or a court order. All confidentiality obligations hereunder shall expire three (3) years after completion of the Services. Nothing herein shall be interpreted as prohibiting **Service Provider** from disclosing general information regarding the project for future marketing purposes. **Service Provider** shall require and maintain adequate confidentiality protections with its employees, agents, contractors, and subcontractors.

10. NOTICES

A. Notices and other communications to the **Authority** pursuant to the provisions hereof will be sufficient if sent by first class mail, postage prepaid, return receipt required, or by a nationally recognized courier service, addressed to:

The Midwest City Hospital Authority, Secretary
100 N. Midwest Boulevard

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Midwest City, OK 73110

respectively, and notices or other communications to the **Service Provider** pursuant to the provisions hereof will be sufficient if by first class mail, postage prepaid, return receipt required, or by a nationally recognized courier service, addressed to:

J. Bret Cabbiness, PE
Garver, LLC
750 SW 24th Street, Suite 200
Moore, OK. 73160

B. Any party hereto may change the address or addressee for the giving of notice to it by thirty (30) days prior written notice to the other parties hereto as provided herein. Unless otherwise specified in this **Agreement**, notice will be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to this paragraph.

11. ABIDES BY LAW

The **Service Provider** must abide by the conditions of this **Agreement**, the ordinances of the **Authority**, and all laws and regulations of the State of Oklahoma and the United States of America (“Laws”), applicable to **Service Provider’s** activities. **Service Provider** will be responsible for securing any license, permits and/or zoning which may be required prior to commencement of the Project.

12. ASSIGNMENT AND SUBLEASE

Service Provider may not assign or sublease its interest under this **Agreement** without the prior written consent of the **Authority**, not to be unreasonably withheld. Any assignment or sublease shall become effective upon receipt of a request signed by authorized and empowered officers/agents of the **Service Provider** and sublessee and provision by the sublessee of a certificate of insurance evidencing the insurance required by this **Agreement** and upon approval of such sublease by **Authority**. The **Authority** may, but not required, to execute a letter approving either the assignment or sublease as provided herein on behalf of **Authority**. Upon approval of such assignment or sublease, **Service Provider** will not be relieved of future performance, liabilities, and obligations under this **Agreement**. **Authority** shall be provided with a copy of

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each written sublease agreement, and all amendments thereto, entered into by **Service Provider** within forty-five (45) days after the entering into of same.

13. COMPLETE AGREEMENT AND AMENDMENT

This is the complete agreement between the parties and no additions, amendments, alterations, or changes in this **Agreement** shall be effective unless reduced to writing and signed by all parties hereto. Additionally, no statements, discussions, or negotiations shall be deemed or interpreted to be included in this **Agreement**, unless specifically and expressly provided herein.

14. TIME OF ESSENCE

For the purposes of this **Agreement**, time shall be deemed to be of material consideration.

15. MULTIPLE ORIGINALS

This **Agreement** shall be executed in multiple counterparts, each of which shall be deemed an original.

16. ANTI-COLLUSION

Service Provider agrees that it has not been and shall not be a party to any collusion with any of their officials, trustees, or employees of the **Authority** as to the terms or conditions of this **Agreement**, and has not and will not exchange, give or donate money or other things of value for special consideration to any officials, trustees, or employees of the **Authority**, either directly or indirectly, in procuring and execution of this **Agreement**.

17. BREACH AND DEFAULT

A. A material breach of any provision of this **Agreement** shall act as a breach of the entire **Agreement** unless said breach is expressly waived in writing by all other parties hereto. Failure to enforce or timely pursue any material breach shall not be deemed a waiver of that breach or any subsequent breach. No waiver of any breach by any party hereto of any terms, covenants, or conditions herein contained shall be deemed a waiver of any subsequent breach of the same, similar, or different nature.

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B. Further, except as otherwise specifically and expressly provided and any other paragraph hereto, should any party hereto fail to perform, keep or observe any of the terms, covenants, or conditions herein contained, this **Agreement** may be terminated by any party not in default thirty (30) days after receipt of written notice and opportunity to cure, less and except as such lesser time is provided in this **Lease**.

18. THIRD PARTY BENEFICIARIES

All parties expressly agree that no third-party beneficiaries, expressly or implicitly, are intended to be or shall be created or acknowledged by this **Agreement**. This **Agreement** is solely for the benefit of the **Service Provider** and the **Authority**, and none of the provisions hereof are intended to benefit any third parties.

19. VENUE AND CHOICE OF LAW

All parties hereto expressly agree that the venue of any litigation relating to or involving this **Agreement** and/or the rights, obligations, duties and covenants therein shall be in the appropriate court (state or federal) located in Oklahoma County, Oklahoma. All parties agree that this **Agreement** shall be interpreted and enforced in accordance with Oklahoma law and all rights of the parties shall be determined in accordance with Oklahoma law.

20. DISPUTE RESOLUTION

Either **Party** may commence the dispute resolution process pursuant to this provision, by providing the other **Party** written notice of the dispute between the **Parties** concerning any term of this **Agreement** or attachment hereto. The notice shall contain:

- (i) a statement setting forth the position of the party giving such notice and a summary of arguments supporting such position and
- (ii) the name and title of **Party** Representative and any other Persons who will accompany the Representative at the meeting at which the parties will attempt to settle the Dispute.

Within ten (10) days of receipt of the notice, the other **Party** shall respond with

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- (i) a statement setting forth the position of the party giving such notice and a summary of arguments supporting such position and
- (ii) the name and title of **Party** Representative and any other Persons who will accompany the Representative at the meeting at which the parties will attempt to settle the Dispute.

The **Parties** shall make good faith attempts to negotiate a settlement between their appointed representatives. If the **Parties** are unable to settle the dispute themselves, the **Parties** shall be required to mediate the dispute, with the **Parties** equally sharing in the cost of said mediation. Mediation shall last at least six (6) hours and be attempted before any litigation shall be filed.

21. VALIDITY

The invalidity or unenforceability of any provision of this **Agreement** shall not affect the validity or enforceability of any other provisions of this **Agreement**, which shall remain in full force and effect.

22. NO WAIVER

The failure or neglect of either of the **Parties** hereto to insist, in any one or more instances, upon the strict performance of any of the terms or conditions of this **Agreement**, or waiver by any party of strict performance of any of the terms or conditions of this **Agreement**, shall not be construed as a waiver or relinquishment in the future of such term or condition, but such term or condition shall continue in full force and effect.

23. NO EXTRA WORK

No claims for extra work, product, services, solution, or deliverables of any kind or nature or character shall be recognized or paid by or be binding upon the **Authority** unless such services, work, product, solution, or deliverable is first requested and approved in writing by the **Authority** through a purchase order.

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24. AMENDMENT

This **Agreement** may be amended by mutual agreement of the **Parties**, in writing and signed by both **Parties**. The **Authority** hereby delegates to the City Manager all amendments to this **Agreement** for approval and execution, unless the amendment would increase the contracted amount by more than ten percent (10%).

25. EFFECTIVE DATE

The Effective Date of this **Agreement** is the date approved by the **Authority** as the last party hereto.

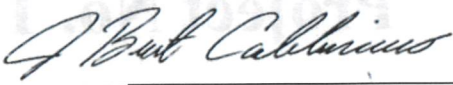
26. LIMITATION OF LIABILITY

Notwithstanding anything in the **Agreement** to the contrary, to the extent allowed under applicable law, neither Party (including its subconsultants, agents, assignees, affiliates, and vendors) shall be liable to the other for any special, consequential, indirect, punitive, exemplary or incidental damages of any kind regardless of the cause or action (including negligence of any kind or character including gross negligence). Notwithstanding any provision to the contrary herein, to the extent allowed under applicable law, the Service Provider's (including its subconsultants, agents, assignees, affiliates and vendors) total aggregate liability under the Agreement shall be limited to 100% of the fee received by Service Provider under the Attachment A Scope of Services, or 100% of the fee received by Service Provider under an approved purchase order giving rise to the liability, (whichever may be applicable) regardless of the cause or action (including negligence of any kind or character).

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IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute this Agreement on the dates set forth below.

Service Provider: Garver, LLC

By: 

Name: J. Bret Cabbinus, PE


Title: Sr. Project Manager

APPROVED by the Trustees and **SIGNED** by the Chairman of The Midwest City Hospital Authority this 9 day of January, 2024.



MIDWEST CITY HOSPITAL AUTHORITY


CHAIRMAN


SARA HANCOCK, SECRETARY

REVIEWED for form and legality.


DONALD D. MAISCH, ATTORNEY

Attachment A

Scope of Services

City of Midwest City
SE 29th St – I-40 to Midwest Blvd
Project No. T28-2301979



Prepared By:



750 SW 24th Street, Suite 200

Moore, Oklahoma 73160

ATTACHMENT A SCOPE OF SERVICES

PART I - DESCRIPTION OF PROJECT

The City of Midwest City solicited the resurfacing of SE 29th Street starting at the end of the concrete section east of I-40 and ending at the concrete section just west of the SE 29th Street and Midwest Boulevard intersection. Along the above corridor, the five signalized intersections are also to be reconstructed with concrete. The five specific intersections with SE 29th Street to be reconstructed are:

- Air Depot Boulevard
- Lowe's Entrance
- Mid-America Boulevard
- Town Center Drive
- Marshall Drive

Approximately 650' of new sidewalk will also be constructed on the north side of SE 29th Street between Tinker Diagonal and Air Depot Boulevard. This new sidewalk will fill the only sidewalk gap along the project extents. Additionally, there are areas of ADA non-compliance along the corridor that will need to be replaced or modified.

Under the north approach of SE 29th Street and Air Depot Boulevard, there is a known waterline leak. The repair or reconstruction of the waterline will be included as part of the project. To minimize traffic impacts, this work will coincide with the intersection reconstruction of Air Depot Boulevard.

Due to the nature of the project, it is not anticipated that right-of-way will need to be acquired. However, if right-of-way is required, then easements will be acquired using the federally approved process. This will be added as an on needed basis.

PART II - DESIGN CRITERIA

The final construction plans shall be prepared in accordance with current Oklahoma Department of Transportation (ODOT) Roadway Standards & Specifications for Highway Construction. Pedestrian improvements will be designed to be within compliancy of Americans with Disabilities Act (ADA) Guidelines. Any additional specifications or technical provisions required for this project will be prepared by Garver for approval by the City of Midwest City and ODOT.

PART III – DESIGN SERVICES

Task 1 - Topographical Survey

As with all design projects, the accuracy and timely delivery of the topographical survey is a critical element of the project's success. A topographical survey will be conducted along the previously described extents within the present right-of-way.

The topographical survey scope of work (at a minimum) is as follows:

- Survey and Drainage Vicinity Map.
- Horizontal and vertical control referenced to the Oklahoma State Plane Coordinate System and NAVD88, respectively.
- Spot elevations, including but not limited to the following:
 - Existing roadway, driveways, driveway cuts
 - Crown of roadway(s) and associated tapers
 - Drainage swales and open-channel flowlines
 - Building or structure finish floor elevations
- Contour lines and datum at one-foot intervals.
 - Earthen culvert channels within the Right of Way, as applicable.
 - Top of bank / toe of slope, and edge of water surface of ponds.
 - Edge of pavement.
 - Top of curb & gutter
- Utility locations: Sewer size and flow line, water line size, gas line size, available electric service, telephone, and cable locations.
 - Elevation of Storm and Sanitary Sewer Systems showing flowline elevations and pipe alignment
 - Utility owner contact phone numbers.
 - Visible improvements such as utility markers, utility meters, light standards, manholes, valves, fire hydrants, inlets, meters, faces of buildings, mailboxes, fences, signs, culverts, and associated structures.
- Identify the Right of Way of record along the previously described limits.
 - Section lines, ¼ section lines, property lines, easements, and rights-of-way of record.
- Other topographical features to be surveyed (not a complete list):
 - General outline of landscaped areas within right-of-way (no details within areas).
 - Trees with trunk sizes within right-of-way (if dense, limits of drip line).
 - Fences, gates, field entrances, drives, mailboxes, structures, canopies, and awnings, etc.
 - Monitoring wells, water wells, septic tanks, buried tank vents and pipeline markers.
- 3D Digital Terrain Model of the existing surface, verified for continuity.
- The deliverables will be a digital CADD file containing the Survey information along with a signed/sealed printed hard copy of the Survey.
 - Dependent on the project schedule of the Engineering design, the Surveyor will coordinate with the Design Engineer on the feasibility of interim submittals.

Task 2 – Geotechnical Engineering

Due to the nature of the existing SE 29th Street pavement, it is recommended that a geotechnical engineering report with pavement rehabilitation recommendations be commissioned to support the Preliminary Design. We anticipate that five (5) pavement cores be drilled in the existing pavement (at locations to be determined by the engineer) to confirm the existing conditions of the pavement and what means or methods of pavement rehabilitation would be required. These five (5) pavements cores will be used in conjunction with the Owner's provided Geotechnical Pavement Report previously provide to the Engineer. Inclusive with the geotechnical report would be pavement typical sections required for a twenty (20) year design life.

The geotechnical engineering scope of work (at a minimum) is as follows:

- Drill five (5) pavement cores of the existing SE 29th Street pavement.
- Conduct laboratory testing of the pavement cores to determine the existing condition of the asphalt and/or concrete pavement.
- Prepare a written report with recommendations as to means and methods of pavement rehabilitation. Likewise, provide a pavement design for both asphalt and Portland Cement (PC) concrete overlay to meet the existing field conditions and provide a twenty (20) year rehabilitated pavement life.

Task 3 – Preliminary Design (30% Complete)

The Preliminary Design phase will represent approximately a 30% level-of-effort of Final Design Documents. The Preliminary Design phase deliverable will include 30% construction plans and estimate. Garver will not begin design on the subsequent submittal until the Preliminary Design deliverable is approved.

Garver anticipates the following sheets will be required for the 30% construction plans:

- Title Sheet
- Location Map Sheet
- Preliminary Typical Sections
- Preliminary Summary of Pay Quantities
- Preliminary Roadway Plan and Profile Sheets
- Preliminary Water Line Plan & Profile Sheet
- Preliminary Water Line Details

A KMZ Google Earth file will be provided to assist ODOT with the any required NEPA environmental studies.

After submitting the Preliminary Design (30% Complete) plans, Garver will attend one (1) design review meeting with the owner to discuss the design progress and any recommended changes suggested by the owner. Meeting minutes will be taken and compiled into a written memorandum documenting the preliminary design and recommended changes.

Deliverables:

- Furnish one (1) PDF copy of the 30% construction plans and 30% construction estimate to each entity for review.

Task 4 – R/W and Utility Submittal (65% Complete)

The R/W and Utility phase will represent approximately a 65% level-of-effort of Final Design Documents. The R/W and Utility phase deliverable will include 65% construction plans and estimate. Garver will not begin design on the subsequent submittal until R/W and Utility deliverable is approved. Garver will incorporate review comments from the 30% phase to develop the 65% phase design.

Garver anticipates the following sheets will be required for the 65% construction plans:

- Title Sheet
- Location Map Sheet
- Typical Sections
- Summary of Pay Quantities
- Geometric Data Sheets
- Roadway Plan and Profile Sheets
- Water Line Plan & Profile Sheet
- Water Line Details
- Cross Sections Sheets
- Preliminary Survey Data Sheets
- Preliminary Traffic Control Details

After submitting the R/W and Utility Submittal (65% Complete) plans, Garver will attend one (1) design review meeting with the owner to discuss the design progress and any recommended changes suggested by the owner. Meeting minutes will be taken and compiled into a written memorandum documenting the current design and recommended changes.

Deliverables:

- Furnish one (1) PDF copy of the 65% construction plans and 65% construction plans estimate to each entity for review.

Task 5 – Final Plans for Review (90% Complete)

The Final Plans for Review phase will represent approximately a 90% level-of-effort of Final Design Documents. The Final Plans for Review phase deliverable will include 90% construction plans and estimate. Garver will not begin design on the subsequent submittal until the Final Plans for Review deliverable is approved. Garver will incorporate review comments from the 65% phase to develop the 90% phase design.

Garver anticipates the following sheets will be required for the 90% construction plans:

- Title Sheet
- Location Map
- Typical Sections
- Summary of Pay Quantity
- Summary of Sheets
- Drainage Map and Design Record
- Storm Water Management Plan
- Erosion Control Sheets
- Geometric Data Sheets
- Roadway Plan and Profile Sheets
- Water Line Plan & Profile Sheet
- Water Line Details
- Removal Sheets
- Structure Detail Sheets
- Survey Data Sheets
- Traffic Control Details
- Signing and Striping Sheets
- Cross Sections Sheets

After submitting the Final Plans Submittal (90% Complete) plans, Garver will attend one (1) design review meeting with the owner to discuss the design progress and any recommended changes suggested by the owner. Meeting minutes will be taken and compiled into a written memorandum documenting the current design and recommended changes.

Deliverables:

- Furnish one (1) PDF copy of the 90% construction plans and 90% construction estimate to each entity for review.

Task 6 – Final PS&E

- Furnish electronic copies of the PS&E Submittal, to each entity which will include final construction plans and estimate, standard details, and construction specifications.
- City and ODOT will be provided with CAD files to be used by the awarded contractor.

WORK NOT INCLUDED

Extra Work will be as directed by the Owner in writing for an additional fee as agreed upon by the Owner and the Engineer. The following items are not included under this agreement but will be considered as Extra Work:

- Easement coordination or easement documents.
- Design of improvements off-site or beyond scope extents.
- Redesign for the Owner's convenience or due to changed conditions after previous direction and/or approval.
- Submittals or deliverables in addition to those listed herein.
- Additional meetings beyond those identified in the scope.
- Bidding Services
- Construction Administration Services

In addition to those obligations set forth in the Agreement, Owner shall:

- Give thorough consideration to all documents and other information presented by Garver and informing Garver of all decisions within a reasonable time so as not to delay the Services.
- Make provision for the Personnel of Garver to enter public and private lands as required for Garver to perform necessary preliminary surveys and other investigations.
- Obtain the necessary lands, easements, and right-of-way for the construction of the work. All costs associated with securing the necessary land interests, including property acquisition and/or easement document preparation, surveys, appraisals, and abstract work, shall be borne by the Owner outside of this Agreement.
- Furnish Garver such plans and records of construction and operation of existing facilities, available aerial photography, reports, surveys, or copies of the same, related to or bearing on the proposed work as may be in the possession of Owner. Such documents or data will be returned upon completion of the Services or at the request of Owner.
- Furnish Garver any record plats for the project property.
- Pay all plan review and advertising costs in connection with the project.
- Provide legal, accounting, and insurance counseling services necessary for the project and such auditing services as Owner may require.
- Furnish permits, permit fees, and approvals from all governmental authorities having jurisdiction over the project and others as may be necessary for completion of the project.

PROJECT SCHEDULE

MILESTONE SUBMITTALS	ANTICIPATED COMPLETION DATE
Task 1 - Topographical Survey	January 2024
Task 2 – Geotechnical Engineering	January 2024
Task 3 – Preliminary Design (30% Complete)	March 2024
Owner Review 30%	March 2024
Task 4 – (R/W and Utility Submittal) (65% Complete)	May 2024
Owner Review 65%	June 2024
Task 5 – Final Plans for Review (90% Complete)	August 2024
Owner Review 90%	September 2024
Task 6 – Final PS&E	October 2024

**ATTACHMENT B
SCHEDULE OF FEES**

Design Services	Fee Type	Fee Amount
Task 1 – Topographical Survey	Lump Sum	\$ 43,575.00
Task 2 – Geotechnical Design	Lump Sum	\$ 5,250.00
Task 3 – Preliminary Design	Lump Sum	\$ 79,478.00
Task 4 – R/W and Utility Submittal	Lump Sum	\$ 69,671.00
Task 5 – Final Plans for Review	Lump Sum	\$ 122,312.00
Task 6 – PS&E Submittal	Lump Sum	\$ 7,218.00
TOTAL COMPENSATION		\$ 327,504.00

The table above presents a summary of the fee amounts and types for this Agreement. The lump sum amount to be paid under this Agreement is \$327,504.00.

**ATTACHMENT C
PROJECT TEAM
(PROPRITARY INFORMATION)**

Garver, LLC

Please do not use multiple tables. Combine all subs in ONE TABLE only.

Name, Telephone Number, Fax, Cell Phone Number and E-Mail Address	Key Personnel Classification	Performance Characteristics (Job Description)	Primary Location Where Work Will Be Completed (Physical Address)
J. Bret Cabbiness, PE 405.928.6331 JBCabbiness@GarverUSA.com	Sr. Project Manager II (E-6)	Principal In Charge	Moore, OK
Kevin Moore, PE KMMoore@GarverUSA.com	Sr. Project Manager I (E-5)	QA/QC	Moore, OK
Brett Moran, PE BDMoran@GarverUSA.com	Sr. Project Engineer (E-3)	Project Engineer	Moore, OK
John Strahorn, EI JMStrahorn@GarverUSA.com	Project Engineer (E-2)	Project Engineer	Moore, OK
Joe Taylor JATaylor@GarverUSA.com	CADD Tech (T-2)	CADD Tech	Moore, OK
Melissa Corrick JTRundle@GarverUSA.com	CADD Tech (T-1)	CADD Tech	Moore, OK
Kirsten McCollough, AICP, RPA KJMccullough@GarverUSA.com	Environmental Specialist IV (ES6)	Environmental Project Manager	Tulsa OK
Claire McKinney, PE CEMckinney@GarverUSA.com	Project Manager (E-4)	Traffic Engineer	Frisco, Texas
Jeff Rundle, PE JTRundle@GarverUSA.com	Sr. Project Engineer (E-3)	Structural Engineer	Oklahoma City, OK

**ATTACHMENT C
SUB-CONSULTANT PARTICIPATION
(PROPRITARY INFORMATION)**

Garver, LLC

FIRST TIER SUB-CONSULTANT PARTICIPATION					
The table presents the following sub-consultant participants in this offer and any resulting contract.					
Name of Business Address where work will be performed	Type of Work to be performed, Project Component, Job Piece No., Project Component Job No.	Estimated Fees	Method of Compensation	Local Business (Y or N)	DBE (Y or N)
Elevation Land Surveying	Land Surveying	42,745	Lump Sum	Y	N
Terracon	Geotechnical Engineering	TBD	Lump Sum	Y	N

Submitted by: J. Bret Cabbiness, PE

Date: 12/12/2023

Total Contract Value: _____

D.B.E. Goal: 00%

**ATTACHMENT C
APPROVED HOURLY AND OVERHEAD RATES
(PROPRITARY INFORMATION)**

Garver, LLC

Please do not use multiple tables. Combine all subs in ONE TABLE only.

Personnel Classification	Average Hourly Wage Rate	Approved Rate Multiplier	Approved Hourly Rate
GARVER, LLC			
Senior Project Manager II (E6)	\$99.00	3.26	\$322.74
Senior Project Manager I (E5)	\$79.00	3.26	\$257.54
Project Manager (E4)	\$64.25	3.26	\$209.46
Sr. Project Engineer (E3)	\$56.00	3.26	\$182.56
Project Engineer (E2)	\$50.00	3.26	\$163.00
Design Engineer (E1)	\$40.50	3.26	\$132.03
Environmental Specialist VI	\$94.00	3.26	\$306.44
Environmental Specialist V	\$84.00	3.26	\$273.84
Environmental Specialist IV	\$61.75	3.26	\$201.31
Environmental Specialist III	\$50.75	3.26	\$165.45
Environmental Specialist II	\$45.00	3.26	\$146.70
Environmental Specialist I	\$31.50	3.26	\$102.69
Designer III (D3)	\$52.00	3.26	\$169.52
Designer II (D2)	\$43.75	3.26	\$142.63
Designer I (D1)	\$37.50	3.26	\$122.25
Technician III (T3)	\$45.75	3.26	\$149.15
Technician II (T2)	\$36.00	3.26	\$117.36
Technician I (T1)	\$30.50	3.26	\$99.43
Constr. Observer III (C3)	\$57.25	3.26	\$186.64
Constr. Observer II (C2)	\$44.75	3.26	\$145.89
Constr. Observer I (C1)	\$34.00	3.26	\$110.84
Resource Specialist III	\$61.00	3.26	\$198.86
Resource Specialist I	\$31.00	3.26	\$101.06
Admin. IV	\$54.50	3.26	\$177.67
Admin. III	\$42.00	3.26	\$136.92
Admin. II	\$33.25	3.26	\$108.40
Admin. I	\$23.00	3.26	\$74.98
Mileage	Current Govt. Rates		
Travel Expenses (Lodging, Per Diem)	Current Govt. Rates		
Miscellaneous Project Expenses	At Cost as Approved by ODOT		

