City of Bentonville
Bentonville Utility Board Meeting
Tuesday, July 5th – 11:30 am
Bentonville City Hall 305 SW "A" St.
City Council Chambers

AGENDA

Call to Order
Pledge of Allegiance
Attendance
Approval of Minutes: June 21st, 2022

New Business

1. Resolution – Water Master Plan Update – Beau Thompson (pages 2-32)
2. Resolution – POD #7 Modification – Travis Matlock, PE (Pages 33-58)
3. Adjournment

Agenda Item Form

Date of City Council Meeting	**7/12/2022**
Department	**Water Utilities**
Submitted by	**Mike Bender, Preston Newbill**
Phone	**(479) 271-6873, (479) 271-3140**

Item Type: (*Check Applicable Item Type)*

☑ Budget Adjustment	☐ Change Order	☐ Informational	☐ Ordinance	☑ Resolution	☐ Bid Award

Recommendation/Suggested Action *(Enter recommendation in space below):*

Resolution - Staff is requesting approval of a resolution authorizing the Mayor and City Clerk to enter into a professional services agreement with Garver, LLC in the amount of $230,000.00 to update the Water Master Plan and associated budget adjustment in the amount of $30,000.00. The 2022 budget included $200,000.00 for this study. Funding for the increased cost will be from the Water Utilities Reserves. This firm was selected following the City's standard RFQ solicitation and selection process for the procurement of professional services in accordance with state law.

Estimated Cost	**$230,000.00**
Is this Item Budgeted?	☑ Yes ☐ No **$200,000.00 budgeted. Total cost is $230,000.00**

If no, please explain how item will be funded *(briefly explain in space below)* :

Funds to cover cost over budget will come from Water Utilities Reserves

THE CITY OF BENTONVILLE

Budget Adjustment Request

Date of City Council Meeting	**7/12/2022**
Department	**Water Utilities**
Submitted by	**Mike Bender, Preston Newbill**
Phone	**(479) 271-6873, 271-3140**

Purpose of Budget Adjustment ***(Enter purpose in space below):***

Budget Adjustment - Staff is requesting approval of a budget adjustment in the amount of $30,000.00 to cover costs above budget amount associated with the Water Master Plan Update. The 2022 budget includes $200,000.00 for the study. Funding will be from the Water Utilities Reserves.

General Ledger Account Information*				
Org (Department)	**Object**	**Account Description**	**Revenue + (-)**	**Expense + (-)**
503020	43410	Professional Services / Other		$ 30,000.00
		Totals	$ -	$ 30,000.00
		Net Impact on Fund Balance	$ (30,000.00)	

***Final Account Number will be determined by Accounting Department after approval and purchase**

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PLEASE RECYCLE

Memo

To: City Council, Mayor Orman

From: Mike Bender

CC:

Date: June 24, 2022

Re: Garver Agreement, Water Master Plan Update

Staff is requesting approval of a resolution authorizing the Mayor and City Clerk to enter into a professional services agreement with Garver, LLC in the amount of $230,000.00 to update the City's Water Master Plan and associated budget adjustment in the amount of $30,000.00. The 2022 budget includes $200,000.00 for this study. Funding for the over budgeted cost will come from Water Utilities Reserves.

This Water Master Plan Update will include growth projects, existing system assessment, major infrastructure risk assessment, distribution system water quality analysis, proposed capital improvements, and hydraulic model.

After development of the model, staff will work with Garver to prepare a thorough training program which will require additional costs. This agreement will be handled as an amendment to the contract or separate agreement.

Thank you for your consideration of this request.

Mike Bender

RESOLUTION NO. ____________

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH GARVER, LLC IN THE AMOUNT OF TWO HUNDRED THIRTY THOUSAND DOLLARS ($230,000.00) TO UPDATE THE CITY OF BENTONVILLE'S WATER MASTER PLAN; AMENDING THE 2022 BUDGET TO FUND THIS AGREEMENT THROUGH A TRANSFER FROM WATER UTILITIES RESERVES TO ACCOUNT NO. 503020-43410, PROFESSIONAL SERVICES/OTHER; AND FOR OTHER PURPOSES

WHEREAS, the City of Bentonville requires professional services related to updating the City's Water Master Plan; and

WHEREAS, Garver, LLC was selected for this service pursuant to the City of Bentonville's selection process in accordance with state law; and

WHEREAS, a budget adjustment in the amount of thirty thousand dollars ($30,000.00) is required in order to fund this contract.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF BENTONVILLE, ARKANSAS.

Section 1**:** That the Mayor and City Clerk be and are hereby authorized to enter into a Professional Services Agreement with Garver, LLC. In the amount of two hundred thirty thousand dollars ($230,000.00) to update the City of Bentonville's Water Utilities Master Plan;

Section 2**:** That a budget adjustment from Water Utilities Reserves should be and the same is hereby approved as set forth below:

General Ledger Account Information*				
Org (Department)	Object	Account Description	Revenue + (-)	Expense + (-)
503020	43410	Professional Services / Other		$ 30,000.00
		Totals	$ -	$ 30,000.00
		Net Impact on Fund Balance	$ (30,000.00)	

Section 3 - Severability Provision: If any part of this Resolution is held invalid, the remainder of this Resolution shall continue in effect as if such invalid portion never existed; and

Section 4 - Repeal of Conflicting Provisions: All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Resolution are repealed to the extent of such conflict.

This resolution shall be in full force and effect from and after the date of its passage.

PASSED and APPROVED this __________ day of _________________, 2022.

APPROVED:

____
Stephanie Orman, MAYOR

ATTEST:

____
Kirby Romines, CITY CLERK

Agreement
For
Planning Services

City of Bentonville, Arkansas

Project No. 22W01291

Contents

THIS PROFESSIONAL SERVICES AGREEMENT (“**Agreement**”) is made as of the Effective Date by and between the **City of Bentonville, Arkansas** (hereinafter referred to as “**Owner**”), and **Garver, LLC** (hereinafter referred to as “**Garver**”). Owner and Garver may individually be referred to herein after as a “Party” and/or “Parties” respectively.

RECITALS

WHEREAS, Owner intends to conduct a water distribution system analysis and prepare a Water Master Plan Update to assess the capacity of the City’s distribution system and identify capital improvements required to meet the needs of the community served (the **“Project”**).

WHEREAS, Garver will provide professional Services related to the Project as further described herein.

NOW THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

In addition to other defined terms used throughout this Agreement, when used herein, the following capitalized terms have the meaning specified in this Section:

“Effective Date” means the date last set forth in the signature lines below.

“Damages” means any and all damages, liabilities, or costs (including reasonable attorneys’ fees recoverable under applicable law).

“Hazardous Materials” means any substance that, under applicable law, is considered to be hazardous or toxic or is or may be required to be remediated, including: (i) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, (ii) any chemicals, materials or substances which are now or hereafter become defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” or any words of similar import pursuant to applicable law; or (iii) any other chemical, material, substance or waste, exposure to which is now or hereafter prohibited, limited or regulated by any governmental instrumentality, or which may be the subject of liability for damages, costs or remediation.

“Personnel” means affiliates, directors, officers, partners, members, employees, and agents.

2. SCOPE OF SERVICES

2.1. Services. Owner hereby engages Garver to perform the scope of service described in Exhibit A attached hereto (“**Services**”). Execution of this Agreement by Owner constitutes Owner’s written authorization to proceed with the Services. In consideration for such Services, Owner agrees to pay Garver in accordance with Section 3 below.

3. PAYMENT

3.1. Fee. For the Services described under Section 2.1, Owner will pay Garver in accordance with this Section 3 and Exhibit B. Owner represents that funding sources are in place with the available funds necessary to pay Garver in accordance with the terms of this Agreement.

3.2. Invoicing Statements. Garver shall invoice Owner on a monthly basis. Such invoice shall include supporting documentation reasonably necessary for Owner to know with reasonable certainty the proportion of Services accomplished.

3.3. Payment.

3.3.1. Due Date. Owner shall pay Garver all undisputed amounts within thirty (30) days after receipt of an invoice. Owner shall provide notice in writing of any portion of an invoice that is disputed in good faith within fifteen (15) days of receipt of an invoice. Garver shall promptly work to resolve any and all items identified by Owner relating to the disputed invoice. All disputed portions shall be paid promptly upon resolution of the underlying dispute.

3.3.2. If any undisputed payment due Garver under this Agreement is not received within forty-five (45) days from the date of an invoice, Garver may elect to suspend Services under this Agreement without penalty.

3.3.3. Payments due and owing that are not received within thirty (30) days of an invoice date will be subject to interest at the lesser of a one percent (1%) monthly interest charge (compounded) or the highest interest rate permitted by applicable law.

4. AMENDMENTS

4.1. Amendments. Garver shall be entitled to an equitable adjustment in the cost and/or schedule for circumstances outside the reasonable control of Garver, including modifications in the scope of Services, applicable law, codes, or standards after the Effective Date (“Amendment”). As soon as reasonably possible, Garver shall forward a formal Amendment, in the form set forth in Exhibit D, to Owner with backup supporting the Amendment. All Amendments should include, to the extent known and available under the circumstances, documentation sufficient to enable Owner to determine: (i) the factors necessitating the possibility of a change; (ii) the impact which the change is likely to have on the cost to perform the Services; and (iii) the impact which the change is likely to have on the schedule. All Amendments shall be effective only after being signed by the designated representatives of both Parties. Garver shall have no obligation to perform any additional services created by such Amendment until a mutually agreeable Amendment is executed by both Parties.

5. OWNER'S RESPONSIBILITIES

5.1. In connection with the Project, Owner's responsibilities shall include the following:

5.1.1. Those responsibilities set forth in Exhibit A.

5.1.2. Owner shall be responsible for all requirements and instructions that it furnishes to Garver pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Garver pursuant to this

Agreement. Garver may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items as further set forth in Exhibit A.

5.1.3. Owner shall give prompt written notice to Garver whenever Owner observes or otherwise becomes aware of the presence at the Project site of any Hazardous Materials or any relevant, material defect, or nonconformance in: (i) the Services; (ii) the performance by any contractor providing or otherwise performing construction services related to the Project; or (iii) Owner's performance of its responsibilities under this Agreement.

5.1.4. Owner shall include "Garver, LLC" as an indemnified party under the contractor's indemnity obligations included in the construction contract documents.

5.1.5. Owner will not directly or indirectly solicit any of Garver's Personnel during performance of this Agreement and for a period of one (1) year beyond completion of this Agreement.

6. GENERAL REQUIREMENTS

6.1. Standards of Performance.

6.1.1. Industry Practice. Garver shall perform any and all Services required herein in accordance with generally accepted practices and standards employed by the applicable United States professional services industries as of the Effective Date 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 practices employed by the United States professional services industry.

6.1.2. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Garver's services. Garver shall promptly correct deficiencies in technical accuracy without the need for an Amendment unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

6.1.3. On-site Services. Garver and its representatives shall comply with Owner's and its separate contractor's Project-specific safety programs, which have been provided to Garver in writing in advance of any site visits.

6.1.4. Relied Upon Information. Garver may use or rely upon design elements and information ordinarily or customarily furnished by others including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

6.1.5. Aside from Garver's direct subconsultants, Garver shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Garver have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any such contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to that contractor's services. Garver shall not be responsible for the acts or omissions of any contractor for whom it does not have a direct contract. Garver neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the construction contract documents applicable to the contractor's work, even when Garver is performing construction phase services.

6.1.6. In no event is Garver acting as a "municipal advisor" as set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission. Garver's Services expressly do not include providing advice pertaining to insurance, legal, finance, surety-bonding, or similar services.

6.2. Instruments of Service.

6.2.1. Deliverables. All reports, specifications, record drawings, models, data, and all other information provided by Garver or its subconsultants, which is required to be delivered to Owner under Exhibit A (the "**Deliverables**"), shall become the property of Owner subject to the terms and conditions stated herein.

6.2.2. Electronic Media. Owner hereby agrees that all electronic media, including CADD files ("**Electronic Media**"), are tools used solely for the preparation of the Deliverables. Upon Owner's written request, Garver will furnish to Owner copies of Electronic Media to the extent included as part of the Services. In the event of an inconsistency or conflict in the content between the Deliverables and the Electronic Media, however, the Deliverables shall take precedence in all respects. Electronic Media is furnished without guarantee of compatibility with the Owner's software or hardware. Because Electronic Media can be altered, either intentionally or unintentionally, by transcription, machine error, environmental factors, or by operators, it is agreed that, to the extent permitted by applicable law, Owner shall indemnify and hold Garver, Garver's subconsultants, and their Personnel harmless from and against any and all claims, liabilities, damages, losses, and costs, including, but not limited to, costs of defense arising out of changes or modifications to the Electronic Media form in Owner's possession or released to others by Owner. Garver's sole responsibility and liability for Electronic Media is to furnish a replacement for any non-functioning Electronic Media for reasons solely attributable to Garver within thirty (30) days after delivery to Owner.

6.2.3. Property Rights. All intellectual property rights of a Party, including copyright, patent, and reuse ("**Intellectual Property**"), shall remain the Intellectual Property of that Party. Garver shall obtain all necessary Intellectual Property from any necessary third parties in order to execute the Services. Any Intellectual Property of Garver or any third party embedded in the Deliverables shall remain so imbedded and may not be separated therefrom.

6.2.4. License. Upon Owner fulfilling its payment obligations under this Agreement, Garver hereby grants Owner a license to use the Intellectual Property, but only in the operation and maintenance of the Project for which it was provided. Use of such Intellectual Property for modification, extension, or expansion of this Project or on any other project, unless under the direction of Garver, shall be without liability to Garver and Garver's subconsultants. To the extent permitted by applicable law, Owner shall indemnify and hold Garver, Garver's subconsultants, and their Personnel harmless from and against any and all claims, liabilities, damages, losses, and costs, including but not limited to costs of defense arising out of Owner's use of the Intellectual Property contrary to the rights permitted herein.

6.3. Opinions of Cost.

6.3.1. Since Garver has no control over: (i) the cost of labor, materials, equipment, or services furnished by others; (ii) the contractor or its subcontractor(s)' methods of determining prices; (iii) competitive bidding; (iv) market conditions; or (v) similar material factors, Garver's opinions of Project costs or construction costs provided pursuant to Exhibit A, if any, are to be made on the basis of Garver's experience and qualifications and represent Garver's reasonable judgment as an experienced and qualified professional engineering firm, familiar with the construction industry. Garver cannot and does not guarantee that proposals, bids, or actual Project or construction costs will not vary from estimates prepared by Garver.

6.3.2. Owner understands that the construction cost estimates developed by Garver do not establish a limit for the construction contract amount. If the actual amount of the low construction bid or resulting construction contract exceeds the construction budget established by Owner, Garver will not be required to re-design the Services without additional compensation. In the event Owner requires greater assurances as to probable construction cost, then Owner agrees to obtain an independent cost estimate.

6.4. Underground Utilities. Except to the extent expressly included as part of the Services, Garver will not provide research regarding utilities or survey utilities located and marked by their owners. Furthermore, since many utility companies typically will not locate and mark their underground facilities prior to notice of excavation, Garver is not responsible for knowing whether underground utilities are present or knowing the exact location of such utilities for design and cost estimating purposes. In no event is Garver responsible for damage to underground utilities, unmarked or improperly marked, caused by geotechnical conditions, potholing, construction, or other contractors or subcontractors working under a subcontract to this Agreement.

6.5. Hazardous Materials. Nothing in this Agreement shall be construed or interpreted as requiring Garver to assume any role in the identification, evaluation, treatment, storage, disposal, or transportation of any Hazardous Materials. Notwithstanding any other provision to the contrary in this Agreement and to the fullest extent permitted by law, Owner shall indemnify and hold Garver and Garver's subconsultants, and their Personnel harmless from and against any and all losses which arise out of the performance of the Services and relating to the regulation and/or protection of the environment including without limitation, losses incurred in connection with characterization, handling, transportation, storage, removal, remediation, disturbance, or disposal of Hazardous Material, whether above or below ground.

6.6. Confidentiality. Owner and Garver shall consider: (i) all information provided by the other Party that is marked as "Confidential Information" or "Proprietary Information" or identified as confidential pursuant to this Section 6.7 in writing promptly after being disclosed verbally; and (ii) all documents resulting from Garver'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 Garver from disclosing general information regarding the Project for future marketing purposes.

7. INSURANCE

7.1. Insurance.

7.1.1. Garver shall procure and maintain insurance as set forth in Exhibit C until completion of the Service. Upon request, Garver shall name Owner as an additional insured on Garver's General Liability policy to the extent of Garver's indemnity obligations provided in Section 9 of this Agreement.

7.1.2. Upon request, Garver shall furnish Owner a certificate of insurance evidencing the insurance coverages required in Exhibit C.

8. DOCUMENTS

8.1. Audit. Garver will retain all pertinent records for a period of three (3) years beyond completion of the Services. Owner may have access to such records during normal business hours with three (3) business days advanced written notice. In no event shall Owner be entitled to audit the makeup of lump sum or other fixed prices (e.g., agreed upon unit or hour rates).

8.2. Delivery. After completion of the Project, and prior to final payment, Garver shall deliver to the Owner all Deliverables required under Exhibit A.

9. INDEMNIFICATION / WAIVERS

9.1. Indemnification.

9.1.1. Garver Indemnity. Subject to the limitations of liability set forth in Section 9.2, Garver agrees to indemnify and hold Owner, and Owner's Personnel harmless from Damages due to bodily injury (including death) or third-party tangible property damage to the extent such Damages are caused by the negligent acts, errors, or omissions of Garver or any other party for whom Garver is legally liable, in the performance of the Services under this Agreement.

9.1.2. Owner Indemnity. Subject to the limitations of liability set forth in Section 9.2, Owner agrees to indemnify and hold Garver and Garver's subconsultants and their Personnel harmless from Damages due to bodily injury (including death) or third-party tangible property damage to the extent caused by the negligent acts, errors, or omissions of Owner or any other party for whom Owner is legally liable, in the performance of Owner's obligations under this Agreement.

9.1.3. In the event claims or Damages are found to be caused by the joint or concurrent negligence of Garver and the Owner, they shall be borne by each Party in proportion to its own negligence.

9.2. Waivers. Notwithstanding any other provision to the contrary, the Parties agree as follows:

9.2.1. The Parties agree that any claim or suit for Damages made or filed against the other Party will be made or filed solely against Garver or Owner respectively, or their successors or assigns, and that no Personnel shall be personally liable for Damages under any circumstances.

9.2.2. Mutual Waiver. To the fullest extent permitted by law, neither Owner, Garver, nor their respective Personnel shall be liable for any consequential, special, incidental, indirect, punitive, or exemplary damages, or damages arising from or in connection with loss of use, loss of revenue or profit (actual or anticipated), loss by reason of shutdown or non-operation, increased cost of construction, cost of capital, cost of replacement power or customer claims, and Owner hereby releases Garver, and Garver releases Owner, from any such liability.

9.2.3. Limitation. In recognition of the relative risks and benefits of the Project to both the Owner and Garver, Owner hereby agrees that Garver's and its Personnel's total liability under the Agreement shall be limited to one hundred percent (100%) of Garver's fee set forth in Exhibit B.

9.2.4. No Other Warranties. No other warranties or causes of action of any kind, whether statutory, express or implied (including all warranties of merchantability and fitness for a particular purpose and all warranties arising from course of dealing or usage of trade) shall apply. Owner's exclusive remedies and Garver's only obligations arising out of or in connection with defective Services (patent, latent or otherwise), whether based in contract, in tort (including negligence and strict liability), or otherwise, shall be those stated in the Agreement.

9.2.5. The limitations set forth in Section 9.2 apply regardless of whether the claim is based in contract, tort, or negligence including gross negligence, strict liability, warranty, indemnity, error and omission, or any other cause whatsoever.

10. DISPUTE RESOLUTION

10.1. Any controversy or claim ("**Dispute**") arising out of or relating to this Agreement or the breach thereof shall be resolved in accordance with the following:

10.1.1. Any Dispute that cannot be resolved by the project managers of Owner and Garver may, at the request of either Party, be referred to the senior management of each Party. If the senior management of the Parties cannot resolve the Dispute within thirty (30) days after such request for referral, then either Party may request mediation. If both Parties agree to mediation, it shall be scheduled at a mutually agreeable time and place with a mediator agreed to by the Parties. Should mediation fail, should either Party refuse to participate in mediation, or should the scheduling of mediation be impractical, either Party may file for arbitration in lieu of litigation.

10.1.2. Arbitration of the Dispute shall be administered by the American Arbitration Association ("AAA") in accordance with its Construction Industry Arbitration Rules. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY AND ALL RIGHT TO TRIAL BY JURY. The arbitration shall be conducted by a single arbitrator, agreed to by the Parties. In no event may a demand for arbitration be made if the institution of legal or equitable proceedings based on such dispute is barred by the applicable statute of limitations.

10.1.3. The site of the arbitration shall be Little Rock, Arkansas. Each Party hereby consents to the jurisdiction of the federal and state courts within whose district the site of arbitration is located for purposes of enforcement of this arbitration provision, for provisional relief in aid of arbitration, and for enforcement of any award issued by the arbitrator.

10.1.4. To avoid multiple proceedings and the possibility of inconsistent results, either Party may seek to join third parties with an interest in the outcome of the arbitration or to consolidate arbitration under this Agreement with another arbitration. Within thirty (30) days of receiving written notice of such a joinder or consolidation, the other Party may object. In the event of such an objection, the arbitrator shall decide whether the third party may be joined and/or whether the arbitrations may be consolidated. The arbitrator shall consider whether any entity will suffer prejudice as a result of or denial of the proposed joinder or consolidation, whether the Parties may achieve complete relief in the absence of the proposed joinder or consolidation, and any other factors which the arbitrators conclude should factor on the decision.

10.1.5. The arbitrator shall have no authority to award punitive damages. Any award, order or judgment pursuant to the arbitration is final and may be entered and enforced in any court of competent jurisdiction.

10.1.6. The prevailing Party shall be entitled to recover its attorneys' fees, costs, and expenses, including arbitrator fees and costs and AAA fees and costs.

10.1.7. The foregoing arbitration provisions shall be final and binding, construed and enforced in accordance with the Federal Arbitration Act, notwithstanding the provisions of this Agreement specifying the application of other law. Pending resolution of any Dispute, unless the Agreement is otherwise terminated, Garver shall continue to perform the Services under this Agreement that are not the subject of the Dispute, and Owner shall continue to make all payments required under this Agreement that are not the subject of the Dispute.

10.1.8. Owner and Garver further agree to use commercially reasonable efforts to include a similar dispute resolution provision in all agreements with independent contractors and subconsultants retained for the Project.

10.1. <u>Litigation Assistance</u>. This Agreement does not include costs of Garver for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by Owner, unless litigation assistance has been expressly included as part of Services. In the event Owner requests such services of Garver, this Agreement shall be amended in writing by both Owner and Garver to account for the additional services and resulting cost in accordance with Section 4.

11. TERMINATION

11.1. <u>Termination for Convenience</u>. Owner shall have the right at its sole discretion to terminate this Agreement for convenience at any time upon giving Garver ten (10) days' written notice. In the event of a termination for convenience, Garver shall bring any ongoing Services to an orderly cessation. Owner shall compensate Garver in accordance with Exhibit B for: (i) all Services performed and reasonable costs incurred by Garver on or before Garver's receipt of the termination notice, including all outstanding and unpaid invoices, (ii) all costs reasonably incurred to bring such Services to an orderly cessation; and (iii) a cancellation fee equal to five percent (5%) of the value of the unperformed Services as a direct result of the termination.

11.2. Termination for Cause. This Agreement may be terminated by either Party in the event of failure by the other Party to perform any material obligation in accordance with the terms hereof. Prior to termination of this Agreement for cause, the terminating Party shall provide at least seven (7) business days written notice and a reasonable opportunity to cure to the non-performing Party. In all events of termination for cause due to an event of default by the Owner, Owner shall pay Garver for all Services properly performed prior to such termination in accordance with the terms, conditions and rates set forth in this Agreement.

11.3. Termination in the Event of Bankruptcy. Either Party may terminate this Agreement immediately upon notice to the other Party, and without incurring any liability, if the non-terminating Party has: (i) been adjudicated bankrupt; (ii) filed a voluntary petition in bankruptcy or had an involuntary petition filed against it in bankruptcy; (iii) made an assignment for the benefit of creditors; (iv) had a trustee or receiver appointed for it; (v) becomes insolvent; or (vi) any part of its property is put under receivership.

12. MISCELLANEOUS

12.1. Governing Law. This Agreement is governed by the laws of the State of Arkansas, without regard to its choice of law provisions.

12.2. Successors and Assigns. Owner and Garver each bind themselves and their successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; neither Owner nor Garver shall assign, sublet, or transfer their interest in this Agreement without the written consent of the other, which shall not be unreasonably withheld or delayed.

12.3. Independent Contractor. Garver is and at all times shall be deemed an independent contractor in the performance of the Services under this Agreement.

12.4. No Third-Party Beneficiaries. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than Owner and Garver. This Agreement does not contemplate any third-party beneficiaries.

12.5. Entire Agreement. This Agreement constitutes the entire agreement between Owner and Garver and supersedes all prior written or oral understandings and shall be interpreted as having been drafted by both Parties. This Agreement may be amended, supplemented, or modified only in writing by and executed by both Parties.

12.6. Severance. The illegality, unenforceability, or occurrence of any other event rendering a portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision of this Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.

12.7. Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together constitute one Agreement. Delivery of an executed counterpart of this Agreement by fax or transmitted electronically in legible form, shall be equally effective as delivery of a manually executed counterpart of this Agreement.

13. EXHIBITS

13.1. The following Exhibits are attached to and made a part of this Agreement:

Exhibit A – Scope of Services
Exhibit B – Compensation Schedule
Exhibit C – Insurance
Exhibit D – Form of Amendment

If there is an express conflict between the provisions of this Agreement and any Exhibit hereto, the terms of this Agreement shall take precedence over the conflicting provisions of the Exhibit.

Owner and Garver, by signing this Agreement, acknowledges that they have independently assured themselves and confirms that they individually have examined all Exhibits, and agrees that all of the aforesaid Exhibits shall be considered a part of this Agreement and agrees to be bound to the terms, provisions, and other requirements thereof, unless specifically excluded.

Acceptance of this proposed Agreement is indicated by an authorized agent of the Owner signing in the space provided below. Please return one signed original of this Agreement to Garver for our records.

IN WITNESS WHEREOF, Owner and Garver have executed this Agreement effective as of the date last written below.

City of Bentonville, Arkansas

By: ______________________
Signature

Name: Stephanie Orman
Printed Name

Title: Mayor

Date: ______________________

Attest: ______________________

Garver, LLC

By: ______________________
Signature

Name: Jerry T. Martin
Printed Name

Title: Arkansas Water Team Leader

Date: 06/17/2022

Attest: ______________________
Chris Buntin, Senior Project Manager

EXHIBIT A
(SCOPE OF SERVICES)

1.0 General

1.1 Garver shall provide professional engineering services to conduct a water distribution system analysis and prepare a Water Master Plan Update to assess the capacity of the City's distribution system and identify capital improvements required to meet the needs of the community served.

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

1.2.1 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.

1.2.2 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 required under the applicable Work Order.

1.2.3 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.

1.2.4 Pay all plan review costs in connection with the project.

1.2.5 Provide legal, accounting, and insurance counseling services necessary for the project and such auditing services as Owner may require.

1.2.6 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.

1.3 Project Management

1.3.1 Garver will perform planning activities to set up the project management plan (PMP), budgets, schedule, tools, and templates.

1.3.2 A project kickoff meeting will be held with the Owner, at the Owner's office (or virtually if required by the Owner), to confirm project objectives, communications protocols, schedule milestones, deliverables, and administrative requirements. Garver staff not located in Arkansas will attend the meeting remotely.

1.3.3 At the end of each month, Garver will develop and deliver a monthly progress report and invoice to the Owner. This report shall document overall progress, outstanding issues, decision logs, schedule status, major accomplishments and milestones achieved, and significant concerns requiring Owner's input.

2.0 Data Collection

2.1 Garver will collect, review, and evaluate the existing data in the following list. Garver will coordinate data collection with the Water Utilities Deputy Director and submit detailed request(s) in memorandum format.

2.1.1 Water service agreements
2.1.2 Maintenance and inspection records for pumping, storage, and control valve facilities
2.1.3 Record drawings
2.1.4 SCADA data from Owner and Beaver Water District (BWD)
2.1.5 Billing and consumption data
2.1.6 Water quality data
2.1.7 Water loss data
2.1.8 Growth and demographic data from the Northwest Arkansas Regional Planning Commission (NWARPC) and City of Bentonville Comprehensive Planning
2.1.9 GIS files
2.1.10 Records of historical complaint/problem areas
2.1.11 Reports by others

2.2 Garver will meet with Owner's staff to review operation of the water distribution system facilities; it is assumed that two (2) Garver employees will tour all pumping, storage, and control valve facilities with Owner's Staff.

2.3 Field Data Collection

2.3.1 Garver will develop a field data collection plan outlining use of hydrant pressure loggers and hydrant flow tests to collect data for calibration and validation of the hydraulic model.

2.3.2 Garver will furnish one (1) high-frequency pressure logger and up to eight (8) standard hydrant pressure loggers for deployment in the distribution system. Garver will support Owner's staff in installation of the loggers at two sets of locations to collect pressure data for up to two (2) weeks; it is assumed that two (2) Garver staff members will be present for two days of logger deployment. It is anticipated that the logger deployment will occur in July or August 2022. It is also anticipated that the high-frequency logger will be placed on the water transmission line to record pressure surges from the BWD high service pump station.

2.3.3 Garver will support Owner's staff with performing hydrant flow tests; it is assumed that two (2) Garver staff members will be present for two (2) days of hydrant flow testing and logger collection. Owner's staff will need to be available to operate the hydrants.

2.3.4 Garver will provide QA/QC according to the PMP.

3.0 Growth Projection

3.1 Garver will use historical and projected population data from others to estimate the existing and projected population at ultimate buildout and number of connections for the Owner's existing and future water service areas.

3.2 Garver will identify up to three (3) intermediate planning horizons (between existing and buildout) to complete model evaluations and support development of the capital improvement plan (CIP). These planning horizons will be developed with consideration for timing of potential water supply infrastructure changes. For each planning horizon, Garver will develop spatial growth and water demand projections, based on historical growth data and Owner input.

3.3 Garver will submit a draft Growth Projection Technical Memorandum to the Owner for review and comment.

3.4 Garver will conduct a workshop with the Owner to present and discuss the Growth Projection Technical Memorandum . Garver will incorporate Owner comments and submit the revised technical memorandum as part of the draft master plan described in Task 8.

3.5 Garver will provide QA/QC according to the PMP.

4.0 Water Distribution Model Development and Existing System Assessment

4.1 Utilizing the existing model and GIS files provided by the Owner, Garver will prepare a hydraulic model utilizing Bentley WaterGEMS. WaterGEMS models can be used in a standalone, MicroStation, AutoCAD, or ArcGIS platform.

4.2 Garver will assess water meter data (billing records) and develop bins (maximum of 10) of water customers based on type of account (e.g., residential, commercial, etc.) and magnitude of demand (e.g., low usage, medium usage, high usage). These bins will allow for more accurate development of spatial demand allocations for both existing and future demand scenarios.

4.3 Garver will assess water meter demand data to develop representative diurnal demand patterns for each account type. Garver will provide meter locations to extract individual hourly AMI data from up to five hundred (500) meters. Garver will develop representative average and maximum day diurnal curves for each account type based on averaging of a subset of meter data from each account type.

4.4 Garver will develop existing average day and maximum day demands alternatives using water meter data and the representative diurnal demand curves. Garver will use a demand allocation methodology that maximizes the number of junctions receiving demands in order to limit the presence of zero-demand junctions on dead-end lines.

4.5 Garver will review SCADA data to identify typical pumping and tank operations and to develop system-wide diurnal curves.

4.6 Based upon Field Data Collection and SCADA, Garver will calibrate the existing water distribution model. Garver will utilize both extended-period simulations (EPS) and steady-state simulations to calibrate the hydraulic model.

4.7 Garver will assess the following components relative to design and evaluation criteria for existing demands:.

- 4.7.1 System pressures
- 4.7.2 Pipe velocities
- 4.7.3 Head loss gradient
- 4.7.4 Pumping capacity and operating points
- 4.7.5 Fire flow
- 4.7.6 Water storage capacity (total and elevated)
- 4.7.7 Water age
- 4.7.8 Source trace

4.8 Garver will conduct a workshop with the Owner to review existing findings and discuss and document design criteria.

4.9 Garver will document findings in an Existing System Assessment Technical Memorandum and submit to the Owner for review and comment. Garver will incorporate Owner comments and incorporate the revised technical memorandum in the draft master plan described in Task 8.

4.10 Garver will provide QA/QC according to the PMP.

5.0 Capital Improvement Plan

5.1 Garver will evaluate system performance under average and maximum day demands for selected planning horizons. New infrastructure will be added to accommodate growth. Infrastructure will be added for each planning horizon.

5.2 Garver will evaluate two western corridor transmission line alternatives for connection to the BWD Western Corridor Pump Station, and the evaluation will include 20-year life cycle costs.

5.3 Garver will conduct a workshop with the Owner to review findings and proposed capital improvements.

5.4 Garver will document findings in a Capital Improvement Plan Technical Memorandum. Garver will incorporate Owner comments and submit the revised technical memorandum as part of the draft master plan described in Task 8.

5.5 Garver will create up to 15 individual project justification sheets for capital and non-capital improvements with project description, map, justification, unintended consequences, special considerations, potential alternatives, additional professional services, schedule and triggers, and costs.

5.6 Garver will provide QA/QC according to the PMP.

6.0 Major Infrastructure Risk Assessment

6.1 Garver will conduct risk assessments for up to five (5) scenarios to determine how to mitigate risk on infrastructure critical to the water distribution system. Garver will determine the scenarios to be analyzed in conjunction with the Owner; a scenario consists of a set of one or more infrastructure pieces being removed from service and a specific horizon and demand condition. For example, one scenario could be the existing system under average day conditions with loss of the transmission main from Beaver Water District (BWD).

6.2 Garver will evaluate emergency connection alternatives with Benton/Washington Regional Public Water Authority (BWRPWA), Rogers Water Utilities, and Springdale Water Utilities. Garver will evaluate how much water the Owner can provide to the neighboring systems under average day demand conditions and controls needed to maintain minimum pressures within the Owner's distribution system. Garver will also determine the minimum flow and supply HGL required from the neighboring systems to maintain minimum pressures within the Owner's distribution system during an emergency under average day demand conditions, the availability of which will be confirmed by Others. Garver will compare the water quality from the BWD and BWRPWA in terms of chemical stability and aggressiveness using the RTW Model to determine possible water quality impacts of blending water from the two sources during an emergency.

6.3 Garver will submit a draft technical memorandum to the Owner for review. Garver will incorporate Owner comments and submit the revised technical memorandum as part of the draft master plan described in Task 8.

6.4 Garver will provide QA/QC according to the PMP.

7.0 Distribution System Water Quality Analysis

7.1 Garver will review distribution system water quality data and identify system deficiencies and alternatives to improve water quality.

7.2 Garver will submit a draft technical memorandum to the Owner for review. Garver will incorporate Owner comments and submit the revised technical memorandum as part of the draft master plan described in Task 8.

7.3 Garver will provide QA/QC according to the PMP.

8.0 Master Plan

8.1 Garver will prepare a draft master plan and submit it to the Owner for review. Garver will conduct a workshop with the Owner and incorporate Owner comments. The master plan will include the following:

- Cover
- Table of Contents
- Executive Summary
- Introduction
- Existing System Assessment Summary
- Capital Improvement Plan Summary
- Appendices
    - Growth Projection Technical Memorandum
    - Existing System Assessment Technical Memorandum
    - Capital Improvement Plan Technical Memorandum
    - Major Infrastructure Risk Assessment Technical Memorandum
    - Distribution System Water Quality Analysis Technical Memorandum

8.2 After incorporating Owner review comments on the draft master plan, Garver will prepare a presentation to the Owner's Utility Board for Owner review. Garver will incorporate Owner comments on the presentation and present it to the Utility Board. After presentation to the Utility Board, Garver will present an abbreviated presentation to the City Council.

8.3 Garver will finalize the master plan and submit and coordinate approval with the Arkansas Department of Health (ADH).

8.4 Garver will provide a PDF and six hard copies of the final master plan, approved by ADH, to the Owner. Garver will also provide the hydraulic model to the Owner.

8.5 Garver will provide QA/QC according to the PMP.

9.0 Project Deliverables

The following will be submitted to the Owner by Garver:

1. Electronic PDF of technical memoranda
    1.1 Growth Projection Technical Memorandum
    1.2 Existing System Assessment Technical Memorandum

1.3 Capital Improvement Plan Technical Memorandum
1.4 Major Infrastructure Risk Assessment Technical Memorandum
1.5 Distribution System Water Quality Analysis Technical Memorandum
2. Electronic PDF of the draft Water Master Plan
3. Six (6) hard copies of the final Water Master Plan
4. Electronic files including progress reports, schedules, meeting minutes, final master plan, hydraulic models and other files as requested

10.0 Summary of Project Meetings and Workshops

The following is a summary of the coordination meetings and workshops with the Owner as indicated above:

1. Project Kickoff Meeting
2. Growth Projection Workshop
3. Existing Water System Assessment Workshop
4. Capital Improvement Plan Workshop
5. Draft Master Plan Workshop
6. Utility Board Presentation
7. City Council Presentation

11.0 Schedule

Garver shall begin work under this Agreement within ten (10) days of a Notice to Proceed and shall complete the work in accordance with the schedule below:

Phase Description	Date/Calendar Days
Draft TM for Growth Projections	45 days from receipt of historical data
Draft TM for Existing System Assessment	120 days from Owner Comments on Growth Projections TM
Draft TM for Major Infrastructure Risk Assessment	45 days from Owner Comments on Existing System Assessment TM
Draft TM for Distribution System Water Quality Analysis	125 days from Owner Comments on Existing System Assessment TM
Draft TM for Proposed Capital Improvements	125 days from Owner Comments on Existing System Assessment TM
Draft Water Master Plan Update	30 days from Owner Comments on Proposed Capital Improvements TM
Final Water Master Plan Update	30 days from Owner and Commission Comments on Water Master Plan Update

12.0 Extra Work

Extra Work will be as directed by the Owner in writing for an additional fee as described in Exhibit B. The following items are not included under this agreement but will be considered as extra work:

1. Public meetings or workshops beyond those listed herein.

2. Impact Fee Determination.
3. Rate Study or Impact Fee Analysis.
4. Water Conservation Plan.
5. Drought Contingency Plan.
6. Hazard Mitigation Planning.
7. Service Line Inventory for Compliance with Lead and Copper Rule Revisions.
8. Pump and/or wire-to-water testing.
9. Pipe condition assessment and asset management.
10. Facility condition assessment and asset management.
11. Funding and/or Financial Assistance.
12. Design Services of any kind.
13. Water Quality Testing of any kind.
14. Hydraulic transient/surge modeling.
15. Computational fluid dynamics (CFD) modeling.
16. Tank mixing analysis.
17. Confined space entry.
18. Traffic control for field investigations.
19. Topographic Site and Route Surveys.
20. Easement and Property Acquisition.
21. Subsurface Utility Engineering (SUE).
22. Geotechnical Investigation.
23. Environmental Site Assessment.
24. Operations Support Services, including Operations Audit/Optimization.
25. Warranty Assistance Services.
26. Re-evaluation for the Owner’s convenience or due to changed conditions after previous alternate direction and/or approval.
27. Submittals or deliverables in addition to those listed herein.

EXHIBIT B
(COMPENSATION SCHEDULE)

The table below presents a summary of the fee amounts and fee types for this Agreement.

WORK DESCRIPTION	FEE AMOUNT	FEE TYPE
Task 1 - Project Management	$10,000.00	Hourly Rate + Expenses
Task 2 - Data Collection	$33,000.00	
Task 3 - Growth Projections	$22,000.00	
Task 4 - Water Distribution Model Development and Existing System Assessment	$50,000.00	
Task 5 - Capital Improvement Plan	$53,000.00	
Task 6 - Major Infrastructure Risk Assessment	$13,000.00	
Task 7 - Distribution System Water Quality Analysis	$14,000.00	
Task 8 - Master Plan	$35,000.00	
TOTAL FEE	$230,000.00	

The Owner will pay Garver for Service rendered at the agreed upon rates for each classification of Garver's personnel (may include contract staff classified at Garver's discretion) plus reimbursable expenses including but not limited to printing, courier service, reproduction, and travel. The total not to exceed amount paid to Garver under this Agreement is estimated to be $230,000. The agreed upon rates herein will be increased annually with the first increase effective on or about July 1, 2023.

Expenses other than salary costs that are directly attributable to performance of our Services will be billed as follows:

1. Direct cost for travel, outside reproduction and presentation material preparation, and mail/courier expenses.
2. Charges similar to commercial rates for reports, plan sheets, presentation materials, etc.

Underruns in any phase may be used to offset overruns in another phase as long as the overall Agreement amount is not exceeded.

Additional Services (Extra Work). For services not described or included in Section 2 but requested by the Owner in writing or otherwise permitted under Section 4, the Owner will pay Garver as expressly set forth in the applicable Amendment.

AGREED UPON RATES

Garver Hourly Rate Schedule: July 2022 - June 2023		
Classification		**Rates**
Engineers / Architects		
	E-1	$ 114.00
	E-2	$ 132.00
	E-3	$ 160.00
	E-4	$ 187.00
	E-5	$ 228.00
	E-6	$ 280.00
	E-7	$ 373.00
Planners / Environmental Specialist		
	P-1	$ 137.00
	P-2	$ 172.00
	P-3	$ 209.00
	P-4	$ 239.00
	P-5	$ 273.00
	P-6	$ 316.00
	P-7	$ 390.00
Designers		$ -
	D-1	$ 106.00
	D-2	$ 124.00
	D-3	$ 148.00
	D-4	$ 172.00
Technicians		
	T-1	$ 83.00
	T-2	$ 105.00
	T-3	$ 128.00
Surveyors		
	S-1	$ 51.00
	S-2	$ 68.00
	S-3	$ 91.00
	S-4	$ 130.00
	S-5	$ 172.00
	S-6	$ 196.00

	2-Man Crew (Survey)	$ 208.00
	3-Man Crew (Survey)	$ 259.00
	2-Man Crew (GPS Survey)	$ 228.00
	3-Man Crew (GPS Survey)	$ 279.00
Construction Observation		
	C-1	$ 100.00
	C-2	$ 129.00
	C-3	$ 158.00
	C-4	$ 194.00
	C-5	$ 232.00
Management/Administration		
	M-1	$ 381.00
	X-1	$ 65.00
	X-2	$ 89.00
	X-3	$ 123.00
	X-4	$ 157.00
	X-5	$ 193.00
	X-6	$ 238.00
	X-7	$ 287.00
	X-8	$ 359.00
	X-9	$ 433.00

EXHIBIT C
(INSURANCE)

Pursuant to Section 7.1 of the Agreement, Garver shall maintain the following schedule of insurance until completion of the Services:

Worker's Compensation	Statutory Limit
Automobile Liability	
Combined Single Limit (Bodily Injury and Property Damage)	$500,000
General Liability	
Each Occurrence	$1,000,000
Aggregate	$2,000,000
Professional Liability	
Each Claim Made	$1,000,000
Annual Aggregate	$2,000,000

EXHIBIT D
(FORM OF AMENDMENT)

AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
City of Bentonville, Arkansas
Project No. 20W01291

AMENDMENT NO. ___

This Amendment No. ___, effective on the date last written below, shall amend the original contract between the City of Bentonville, Arkansas (**"Owner**") and Garver, LLC (**"Garver"**), dated __________________ (the "**Agreement**").

This Amendment No. __ adds/modifies the Services for the:

The Owner intends to conduct a water distribution system analysis and prepare a Water Master Plan Update to assess the capacity of the City's distribution system and identify capital improvements required to meet the needs of the community served.

The Agreement is hereby modified as follows:

SECTION ___ – __________________

Section ____ of the Agreement is hereby amended as follows:

This Amendment may be executed in two (2) or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Owner and Garver have executed this Amendment effective as of the date last written below.

City of Bentonville, Arkansas		**Garver, LLC**	
By:	______________________ *Signature*	By:	______________________ *Signature*
Name:	______________________ *Printed Name*	Name:	______________________ *Printed Name*
Title:	______________________	Title:	______________________
Date:	______________________	Date:	______________________
Attest:	______________________	Attest:	______________________

THE CITY OF BENTONVILLE

Agenda Item Form

Date of City Council Meeting	**7/12/2022**
Department	**Electric**
Submitted by	**Traivs Matlock**
Phone	**479-271-5941**

Item Type: (*Check Applicable Item Type)*

☐ Budget Adjustment	☐ Change Order	☐ Informational	☐ Ordinance	☑ Resolution	☐ Bid Award

Recommendation/Suggested Action *(Enter recommendation in space below):*

Resolution authorizing the Mayor and City Clerk to enter into an agreement with SWEPCO to modify the Delivery Point Agreement for the Point of Delivery #7 (I Sub) associated with the expansion of I Sub.

Estimated Cost	**$50,000.00**
Is this Item Budgeted?	☐ Yes ☑ No

If no, please explain how item will be funded *(briefly explain in space below)* :

This is an engineering estimate and not actual costs. Bentonville will only be charged the actual construction costs. Also, there is no money due up front. Actual costs will be rolled into Bentonville's monthly metering charge with SWEPCO.

M E M O R A N D U M

DATE: July 12, 2022

TO: **City Council, Mayor Orman**

FROM: Travis Matlock, Electric Utility Director

RE: **Revised POD #7 DPA**

Electric Dept. staff recommends entering into a revised Delivery Point Agreement (DPA) with SWEPCO for the revision of Point of Delivery (POD) #6 that feeds Substation I associated with the expansion of the Substation (addition of 2nd transformer and associated breakers). The charges listed in the appendix of the DPA are engineering estimate and Bentonville will only be charged the actual costs of installations, with no money due up front.

With the upsizing of Substation I, there will need to add a second set of meters at the substation and changes to the month charges listed on the interconnection agreement. In order for SWEPCO to begin the engineering required for the upgrades, Bentonville and SWEPCO need to enter into this agreement.

Once the agreement is signed, BEUD's consultant (Ampirical) and SWEPCO will begin the coordination for the upgrades.

SUBSTATION I DELIVERY POINT AGREEMENT

This **Substation I Delivery Point Agreement** (the "Agreement") is entered into as of ___ ______________, 20__ (the "Execution Date") by and among Southwestern Electric Power Company, a [Delaware corporation ("SWEPCO"), American Electric Power Service Corporation as agent for Southwestern Electric Power Company, as agent for City of Bentonville, Arkansas ("AEPSC"), and City of Bentonville, Arkansas ("Bentonville") a municipal corporation, organized and existing under the laws of the State of Arkansas. AEPSC and Bentonville may be referred to collectively as "Customers". SWEPCO, AEPSC, and Bentonville may be referred to individually as a "Party" and collectively as the "Parties."

RECITALS

A. The Parties desire to expand the Bentonville Substation I as described in Schedule A (such activity being herein called the "Project").

B. The Project will be undertaken within the Southwest Power Pool ("SPP") region.

C. Customer and SPP are parties to a Network Integration Transmission Service Agreement, SPP SA# 1606 ("NITSA"). SPP, American Electric Power Service Corporation, as agent for Bentonville, and SWEPCO are parties to a Network Operating Agreement attached to NITSA ("NOA").

AGREEMENTS

NOW, THEREFORE, the Parties hereby agree as follows:

1. DEFINITIONS; RULES OF CONSTRUCTION

1.1. Definitions. As used in this Agreement, terms defined in Exhibit 1.1 have the meanings set forth therein.

1.2. Rules of Construction. Unless the context of this Agreement requires otherwise, the plural includes the singular, and the singular includes the plural. The words "include," "includes" and "including" are not limiting and have the inclusive meaning of "including without limitation." The words "hereof," "herein," "hereby," "hereunder" and other similar terms of this Agreement refer to this Agreement as a whole and not exclusively to any particular provision of this Agreement. All pronouns and any variations thereof will be deemed to refer to masculine, feminine, or neuter, singular, or plural, as the identity of the Person or Persons may require. Unless otherwise expressly provided, any agreement, instrument, or Applicable Law defined or referred to herein means such agreement or instrument or Applicable Law as from time to time amended, modified, or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Applicable Law) by succession of comparable successor law and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein. A reference to a Party includes its successors and permitted assigns. This Agreement is the result of negotiations between, and has been reviewed by, the Parties, and their respective counsel have had the opportunity to review this Agreement.

Accordingly, this Agreement shall be deemed to be the product of all Parties hereto, and no ambiguity shall be construed in favor of or against any Party.

2. EFFECTIVE DATE; TERM; TERMINATION

2.1. Effective Date. AEP shall file this Agreement with the Commission and Customers agree to cooperate with AEP and provide reasonable assistance to AEP in such filing and proceedings related thereto. This Agreement shall become effective on the date deemed effective by the Commission ("Effective Date"). However, if the Commission or any reviewing court, in such order or in any separate order, suspends this Agreement or any part thereof, institutes an investigation or proceeding under the provisions of the Federal Power Act with respect to the justness and reasonableness of the provisions of this Agreement or any other agreement referred to or contemplated by this Agreement, or imposes any conditions, limitation or qualifications under any of the provisions of the Federal Power Act which individually or in the aggregate are determined by AEP or Customers to be adverse to it, then either AEP or Customers may terminate this Agreement upon written notice to the other Party. Alternatively, the Parties can agree that this Agreement should remain in effect, with each Party retaining its rights to address any relevant order, including seeking to negotiate with the other Party an amendment to this Agreement.

2.2. Term. The term of this Agreement shall commence on the Effective Date and unless earlier terminated pursuant to Section 2.3, shall terminate sixty (60) Calendar Days following the completion of all Work as provided for hereunder and satisfaction of all payment obligations of the Parties with respect to the Work.

2.3. Events of Termination. This Agreement may be terminated by the Parties as follows:

2.3.1. This Agreement may be terminated by mutual written agreement of the Parties.

2.3.2. Either Customers or AEP may terminate this Agreement as provided in Section 2.1.

2.3.3. Either Customers or AEP may terminate this Agreement (a) if any Governmental Authority denies approval of any necessary or appropriate approvals for the Work; (b) a Party ceases to maintain any Governmental Approval necessary for such Party's performance of this Agreement or the contemplated ownership or operation of the Project facilities; or (c) if any Governmental Authority shall have issued an order, decree, ruling, or other action restraining, enjoining, or otherwise prohibiting a Party's performance of this Agreement or its contemplated ownership or operation of the Project facilities.

2.3.4. Either Customers or AEP may terminate this Agreement for default as provided in Section 8.2.

2.4. Regulatory Approval of Termination. Any termination of this Agreement provided for herein shall be subject to any necessary approval by the Commission, if applicable.

2.5. Survival of Rights. Termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such termination, including, without limitation, cost responsibility, true-up and payment obligations, remedies, indemnification obligations, confidentiality and any provisions of this Agreement that explicitly provide for survival after termination.

3. DEVELOPMENT OF THE PROJECT

3.1. Scope of Work. The "Work" with respect to the Project is described in Schedule 3.1 and any attachments referenced therein, and includes the provision of all design, engineering, construction, site preparation, excavation, acquisition of land rights, labor, materials, supplies, equipment supervision, testing, acquisition of Governmental Approvals and other activities necessary or appropriate for the completion of the Project in accordance with this Agreement.

3.2. Obligations of the Parties.

3.2.1. Each Party will undertake, directly or through its affiliates or contractors (or any combination thereof), the performance of its obligations with respect to the Work as indicated on Schedule 3.1. The Parties will exchange relevant information concerning the Project and the Work. The Project facilities will be designed so as to render them compatible with AEP's existing transmission facilities in AEP's reasonable judgment. The Parties will coordinate to review and approve the Parties' plans and specifications and construction of the Project facilities. No such review and approval will constitute a waiver by any Party of any provision of this Agreement or an endorsement by any Party of the design of the portion of the Project facilities to be designed and constructed by the other Party or a warranty or other assurance by any Party of the safety, durability or reliability of such portion of the Project facilities.

3.2.2. Each Party will perform its obligations with respect to the Work for which it is responsible consistent with Applicable Law, applicable Governmental Approvals, and Good Utility Practice. Unless otherwise mutually agreed, each Party will construct its Project facilities consistent with the Connection Requirements. EXCEPT AS PROVIDED HEREIN, EACH PARTY HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR GOOD AND WORKMANLIKE PERFORMANCE.

3.3. Completion and Commissioning of the Project Facilities. The Parties will use commercially reasonable efforts in accordance with the standards of performance set forth in Section 3.2.2 to have the Project facilities ready for service by the "Projected In-Service Date" set out in Schedule 3.1 or any other date to which the Parties may subsequently agree in writing. The Projected In-Service Date will be extended to reflect any delays as a result of Force Majeure and extended to reflect any suspension of the Work as provided for and in accordance with the provisions of this Agreement. The Parties will coordinate the timing and implementation of the final connection and energization of the circuitry for the Project facilities, and reasonably cooperate with one another to complete such activities.

3.4. Direct Assignment Facilities. The table in Schedule 3.1 identifies the facilities in the scope of Work. Estimates of such costs are set forth in the applicable column of that table if directly assigned to the Customer. Those facilities will be considered "Direct Assignment Facilities" as defined in the SPP Tariff.

3.5. Access and Land Rights.

3.5.1. Each Party hereby gives the other Parties the right, when accompanied by an authorized representative of the owner, to enter its premises at all reasonable times for the purpose of completing work in accordance with this Agreement. Each Party hereby grants to the other Parties the right to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove all facilities and equipment which may be reasonably necessary for the Parties to perform their obligations in accordance with this Agreement. In exercising the right of access, the accessing Party shall not unreasonably disrupt or interfere with the normal operation of the owner and shall adhere to the safety rules and procedures established for the premises.

3.5.2. Upon request of an accessing Party, each Party shall grant to the other Parties, without cost, any easements across property that it owns in fee, or assignments of easements across property to which it holds easement rights, to the extent reasonably necessary for the Parties to perform their obligations in accordance with this Agreement.

3.5.3. No Party will directly or indirectly do or permit any act or omission that would give rise, with respect to any obligation of such Party or any of its affiliates, subcontractors, or suppliers, to any lien or encumbrance on any real property interest or other property held by the other Party. A Party that becomes aware of any such lien or encumbrance on the property of the other Party shall promptly (a) notify the other Party and (b) at its own expense, take such action as may be necessary to duly discharge such lien or encumbrance.

4. COSTS

4.1. Responsibility for Costs.

4.1.1. Schedule 3.1 of Exhibit 1 sets forth the allocation of the responsibility for costs of the Work between the Parties and may contain either initial fixed charges or estimates of the costs of the AEP Work. With respect to cost estimates, such estimates are for informational purposes only. Customer Work is the cost responsibility of the Customer. With respect to Work for which Customer is responsible and which is not subject to a fixed charge, the costs for AEP Work under this Agreement will include all reasonable costs, charges, and expenses incurred by AEP in connection with the Work, including the costs of materials, equipment, and supplies from third parties, the costs of materials and equipment withdrawn from AEP's internal inventories (or those of its affiliates), transportation and storage costs, internal payroll and payroll loading factors, travel expenses, overhead factors, other internal costs, third party expenses, sales and use taxes if applicable, and fees and costs for Governmental Approvals.

4.1.2. If this Agreement, or the Work hereunder, is terminated before the Project facilities are placed in service, then in addition to (but without duplication of) costs otherwise to be borne by Customers, Customers will bear all costs theretofore, thereby, or thereafter incurred by AEP with respect to the Work to the extent that such costs are not included in AEP's transmission rate base. In the case of such termination, Customers shall, at its cost, also be required to clean up, and at AEP's request remove, any Work it has performed on AEP's property.

4.1.3. If the Project facilities are placed in service, but any portion of such costs are expressly found by appropriate Governmental Authority to be not includible in AEP's transmission rate base, Customer will bear all such disallowed costs as costs for Direct Assignment Facilities, except to the extent that the AEP-owned Facilities are placed in service to serve a customer other than Customers.

4.1.4. If Customers in good faith disputes the charges with respect to the Direct Assignment Facilities under this Agreement, Customers will (a) explain the basis for the dispute in writing to AEP within fifteen (15) Calendar Days of the date of the invoice and (b) without prejudice to its claim for refund of any disputed amount, pay the entire portion of the invoiced amount on or before the due date stated on the invoice. Any such disputes as to such invoices shall be resolved pursuant to Section 12 (Dispute Resolution) of the SPP Tariff, as modified by the immediately preceding sentence. If the determination of such dispute resolution process is that AEP is required to refund any portion of the disputed amount, AEP shall promptly refund such amount, with interest computed in accordance with 18 C.F.R. §35.19a(a)(2). Nothing herein affects or prejudices the true-up to actual costs provided for in Section 4.2.

4.2. Information and True Up Concerning Costs.

4.2.1. Upon reasonable advance notice, Customer shall have the right to review information concerning costs related to the Direct Assignment Facilities as is reasonably necessary to verify that AEP's charges have been incurred in accordance with this Agreement. Any review or audit of AEP accounts and records shall be conducted by Customer during regular business hours at the applicable AEP office(s). Customer will not have the right to examine the records pertaining to a particular invoice unless written notice of the examination is given within twenty four (24) months of the date of such invoice. Information obtained by Customer from AEP pursuant to this section shall be considered Confidential Information of AEP subject to the confidentiality provisions of Article 9 hereof regardless of whether such information is marked as confidential.

4.3. Tax Treatment of Costs.

4.3.1. In the event that AEP determines that a Customer payment to AEP for the construction of AEP-owned facilities is a contribution in-aid of construction ("CIAC"), the Customer shall reimburse AEP for the tax effect of such CIAC (a "Tax Effect Recovery Factor" or "TERF"), where such payment is considered taxable income and subject to income tax under the Internal Revenue Service ("IRS") and/or a state department of revenue ("State") requirements. The TERF shall be computed consistent with the methodology set forth in *Ozark Gas Transmission Corp*., 56 F.E.R.C ¶ 61,349 (1991) as reflected in the following formula: TERF = (Current Tax Rate x (Gross Income Amount - Present Value of Tax Depreciation))/(1-Current Tax Rate). The Present Value Depreciation amount shall be computed by discounting AEP's anticipated tax depreciation deductions with respect to the constructed property by AEP's current weighted average cost of capital. If, based on current law, AEP determines such contribution by the Customer shall not be taxable, AEP will not charge a TERF; however, in the event that such contribution is later determined by the IRS or State tax authority to be taxable, the Customer shall reimburse AEP, the amount of the TERF, including any interest and penalty charged to AEP by the IRS and/or State. Such reimbursement is due within thirty (30) Calendar Days of the date upon which AEP notifies the Customer of such determination.

4.3.2. At Customer's request and expense, AEP shall file with the IRS a request for a private letter ruling as to whether any CIAC paid, or to be paid, by Customer to AEP is subject to federal income taxation. Customer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Customer's knowledge. AEP and Customer shall cooperate in good faith with respect to the submission of such request. AEP shall keep Customer fully informed of the status of such request for a private letter ruling and shall execute either a privacy act waiver or a limited power of attorney, in a form acceptable to the IRS that authorizes Customer to participate in all discussions with the IRS regarding such request for a private letter ruling. AEP shall allow Customer to attend all meetings with IRS officials about the request and shall permit Customer to prepare the initial drafts of any follow-up letters in connection with the request.

4.3.3. If Customer shall have reimbursed AEP for the TERF, upon request by Customer and at Customer's expense, AEP shall contest the taxability of such CIAC; provided, however, that AEP shall not be required to contest such taxability if AEP waives the payment by Customer of any amount that might otherwise be payable by Customer under this Agreement in respect of such determination.

4.4. Survival. The provisions of this Article 4 shall survive termination of this Agreement.

5. INDEMNIFICATION

5.1. Parties' Indemnification. To the extent permitted by Applicable Law, each Party (an "Indemnifying Party") shall indemnify, defend (if the Indemnifying Party exercises its right to defend in accordance with Section 5.2), and hold harmless the other Parties and each of the other Parties' affiliates, and each of their respective directors, managers, officers, employees, agents and contractors (each an "Indemnified Person") for any personal injuries suffered by third parties or damage to a third parties's tangible property, arising out of, in connection with, or resulting from, the performance by the Indemnifying Party of its obligations pursuant to this Agreement (each, a "Loss"), but only to the extent such injuries or damage are caused by a breach of this Agreement by, or the negligence or willful misconduct of, the Indemnifying Party or its officers, employees, agents or contractors. If any Loss is caused by the joint or concurrent actions or omissions of the Parties or their affiliates (or their respective officers, employees, agents, or contractors), the Parties will bear the Loss in proportion to their or their affiliates' (or their respective officers', employees', agents' or contractors') degree of responsibility for the Loss. Further, to the extent that a Parties' immunity as a complying employer, under the worker's compensation and occupational disease laws of the state where the Work is performed, might serve to bar or affect recovery under or enforcement of the indemnification otherwise granted herein, each Party hereby waives such immunity.

5.2. Indemnification Procedures. Promptly after receipt by an Indemnified Person of any claim, demand or notice of the commencement of any suit, action, administrative or legal proceeding, or investigation as to which the indemnity provided for in this Article 5 may apply (each an "Indemnified Claim"), the Indemnified Person shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect an Indemnifying Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party. The Indemnifying Party will have the right to control the defense and settlement of such Indemnified Claim with counsel reasonably acceptable to the Indemnified Person; provided that (a) the Indemnified Person may retain counsel at its expense to assist in the defense and settlement of such Indemnified Claim, and (b) the Indemnifying Party shall not settle or make a plea with respect to any Indemnified Claim without the Indemnified Person's prior written consent.

5.3. Survival. The provisions of this Article 5 shall survive the termination of this Agreement.

6. LIMITATION OF LIABILITY

6.1. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, EXCEPT AS SET FORTH BELOW IN THIS ARTICLE 6, NO PARTY SHALL BE LIABLE UNDER ANY PROVISION OF, OR BASED ON, THIS AGREEMENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR REVENUE, LOSS OF BUSINESS, LOSS OF USE OF EQUIPMENT, COST OF CAPITAL, OR DAMAGE TO REPUTATION OR RELATIONS) WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY, STATUTORY LIABILITY, OR ANY OTHER THEORY OF LIABILITY EVEN IF APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. HOWEVER, THE PRECEDING LIMITATION OF LIABILITY SHALL NOT APPLY TO THE EXTENT SUCH DAMAGES (OTHER THAN EXCLUDED DAMAGES (AS DEFINED BELOW)) ARE CLAIMED BY A THIRD PARTY IN A THIRD PARTY PROCEEDING FOR WHICH THE INDEMNIFYING PARTY HAS AN OBLIGATION OF INDEMNIFICATION TO AN INDEMNIFIED PERSON UNDER SECTION 5.1 OF THIS AGREEMENT. "EXCLUDED DAMAGES" SHALL MEAN DAMAGES OF ANY TYPE THAT A THIRD PARTY IS NOT ENTITLED TO RECOVER FROM AN INDEMNIFIED PERSON FOR OR IN CONNECTION WITH THE LOSS IN ACCORDANCE WITH THE TERMS OF THE INDEMNIFIED PERSON'S OR ITS AFFILIATES' RETAIL TARIFFS, CUSTOMER AGREEMENT OR OTHER CONTRACTUAL ARRANGEMENT.

6.2. Notification. In the event of the occurrence of an event of Force Majeure, which prevents a Party from performing its obligations hereunder, such Party shall notify the other Party of such Force Majeure, in writing or by telephone as soon as reasonably possible after the determination that event of Force Majeure has occurred, but in any event within seven (7) Calendar Days thereafter (telephone notices to be confirmed in writing as soon as reasonably possible).

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7. FORCE MAJEURE

7.1. Effect of Force Majeure. In the event that any Party is rendered unable by reason of an event of Force Majeure occurring or arising without the fault or negligence of such Party, to perform, wholly or in part, any obligation or commitment set forth in this Agreement, then the obligations of such Party (except for the obligation to pay sums of money owing hereunder for periods prior to the event of Force Majeure) shall be suspended to the extent of such Force Majeure condition, and such Party shall not be deemed to be in default of this Agreement, for the period of such Force Majeure condition. A Party's lack of funds shall not be an event of Force Majeure. An adjustment shall be made to the Projected In-Service Date as the result of an event of Force Majeure in accordance with Section 3.3 hereof.

7.2. Notification. In the event of the occurrence of an event of Force Majeure, that prevents a Party from performing its obligations hereunder, such Party shall notify the other Parties of such Force Majeure, in writing or by telephone as soon as reasonably possible after the determination that an event of Force Majeure has occurred, but in any event within seven (7) Calendar Days thereafter (telephone notices to be confirmed in writing as soon as reasonably possible).

7.3. Labor Disputes. No Party will be required by this Agreement to settle any strike, walkout, lockout, or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest, it being understood that the settlement of strikes, walkouts, lockouts, or other labor disputes will be at the sole discretion of the Party having the difficulty.

8. DEFAULT AND REMEDIES

8.1. Events of Default. An "Event of Default" will exist:

8.1.1. As to Customers, upon the Customers' failure to promptly pay any amount due hereunder within ten (10) Calendar Days following written notice of delinquency;

8.1.2. As to a Party, if such Party ceases to maintain any Governmental Approval (including any Commission acceptance or approval) necessary for such Party's performance of this Agreement or the contemplated ownership or operation of the Project facilities;

8.1.3. As to a Party, if such Party fails to fully cure its breach of any other obligation under this Agreement within twenty (20) Calendar Days following written notification of such breach or such longer period, not to exceed a total cure period of one hundred eighty (180) Calendar Days, as may be reasonably necessary to cure such breach, provided that such Party has commenced and is diligently pursuing such cure; or

8.1.4. As to a Party if it becomes Insolvent.

8.2. Termination. If an Event of Default in any material respect occurs as to a Party, the other Party will have the right to terminate this Agreement on ten (10) Calendar Days written notice to the defaulting Party, provided that this Agreement shall not be terminated if the Event of Default is cured within such ten (10)-Calendar Day period.

8.3. Other remedies.

8.3.1. If an Event of Default in any material respect occurs and while it persists with respect to a Party, the other Party may suspend performance of its obligations with respect to the Work under this Agreement (other than its obligations to pay money) without prejudice to any other remedy that it may have under this Agreement or Applicable Law.

8.3.2. Whether or not a Party suspends performance of its obligations under, or terminates, this Agreement as a result of an Event of Default, such Party will have the right to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity due to such Event of Default, subject to the limitations of Article 6.

9. CONFIDENTIALITY

9.1. Confidential Information. For purposes of this Agreement, a Party's "Confidential Information" consists of information possessed by that Party which is confidential and commercially valuable and which is specifically identified to the other Party as "confidential". For purposes of this Agreement, a Party (the "Receiving Party") will be deemed to have received Confidential Information of the other Party (the "Disclosing Party") if such Confidential Information is by any means disclosed or delivered to the Receiving Party or any of its or its Affiliates' equity owners, governing persons, officers, employees, advisors, attorneys, agents, or prospective or actual lenders or investors (its "Representatives"). Confidential Information will not include any information which the Receiving Party can demonstrate (a) has become available to the public through no breach of this Agreement; (b) was previously known by the Receiving Party without any obligation to hold it in confidence; (c) was received on a non-confidential basis from a third party free to disclose such information without restriction; or (d) was independently developed by the Receiving Party without the use of Confidential Information of the Disclosing Party.

9.2. Disclosure. Each Party hereto agrees that it shall hold in strict confidence and shall not disclose or use any Confidential Information belonging to the Disclosing Party for the period ending eighteen (18) months after the date of receipt of the Confidential Information. The Receiving Party may disclose Confidential Information to its Representatives for purposes of pursuing the Work and meeting its obligations and exercising its rights hereunder, provided that the Representatives shall be informed of the confidentiality obligations provided herein. Each Party agrees to be responsible for any breach of the confidentiality obligations under this Agreement by its Representatives.

9.3. Exclusions. Notwithstanding anything to the contrary in this Article 9, Confidential Information will not include information that: (a) has become part of the public domain other than by acts or omissions of the Receiving Party or its Representatives, (b) to Receiving Party's knowledge, has been furnished or made known to the Receiving Party by third Persons (other than those acting on behalf of the Disclosing Party) as a matter of legal right and without relevant restriction on disclosure or use, (c) was in the Receiving Party's possession prior to disclosure by the Disclosing Party and was not previously acquired by the Receiving Party or its Representatives directly or indirectly from the Disclosing Party, or (d) is independently developed by Representatives of the Receiving Party without access to Confidential Information.

9.4. Required Disclosures. If a Receiving Party is required pursuant to Applicable Law or otherwise becomes legally compelled to disclose any of the Confidential Information or the fact that the Confidential Information has been made available to it, such Receiving Party shall (unless prohibited by Applicable Law from doing so) promptly notify the Disclosing Party in order that the Disclosing Party may seek a protective order or such other remedy as the Disclosing Party may consider appropriate in the circumstances. In any event, the Receiving Party may disclose only that portion of the Confidential Information which such Receiving Party is legally required to disclose in the judgment of the Receiving Party's legal counsel without any liability to the Disclosing Party hereunder and such disclosure shall not be a breach of this Article 9.

9.5. Return or Destruction. The Receiving Party, upon written request from the Disclosing Party, shall promptly return or destroy all Confidential Information in its possession and the Receiving Party shall destroy its Evaluation Materials. If requested by the Disclosing Party, the Receiving Party shall provide the Disclosing Party with a certification that all Confidential Information and Evaluation Material have either been returned or destroyed, as applicable. The return or destruction of the Confidential Information shall not extinguish any rights or obligations under this Agreement with respect to the Confidential Information. Notwithstanding the foregoing, the Receiving Party shall not be required to purge any historical backup media and may retain one or more copies of the Confidential Information solely for archival purposes and as required by Applicable Law.

9.6. Survival. The provisions of this Article 9 shall survive a termination of this Agreement.

10. SCOPE; RELATIONSHIP TO OTHER AGREEMENTS

10.1. Scope of Agreement. This Agreement provides for the Parties to construct facilities to implement a delivery point. This Agreement does not provide for any other services and neither AEP nor Customers agree hereunder to provide any other services.

10.2. Conflicts. In the event of a conflict between this Agreement and the NITSA, the terms of this Agreement shall govern.

10.3. Agreement Updates. After completion of the Project, the Parties agree to amend the NITSA as needed to reflect the activities performed under this Agreement with respect to the Delivery Point.

11. GENERAL

11.1. Regulatory Authorities. This Agreement is made subject to the jurisdiction of any Governmental Authority having jurisdiction in the premises. Nothing contained in this Agreement shall be construed as affecting in any way the right of a Party, as the case may be, to unilaterally file with the Commission an application for a change in rates, charges, classification, service or any rule, regulation or contract relating thereto under Section 205 or 206 of the Federal Power Act and pursuant to the Commission's Rules and Regulations promulgated thereunder.

11.2. Notices. Any notice that is required or permitted under this Agreement may be given by personal delivery to the Party entitled thereto, by e-mail (with confirmation of receipt), by any courier service which guarantees overnight, receipted delivery, or by U.S. Certified or registered mail, return receipt requested, addressed to the Party entitled thereto, at the following addresses. Any Party may change its address or email for notice by written notice to the other Parties in accordance with this Section. Such change will not necessitate a filing under Section 205 of the Federal Power Act.

If to Customer: American Electric Power Service Corporation
Vice President Market Operations
1 Riverside Plaza
Columbus, OH 43215
e-mail: blhairgrove@aep.com

with copy to: City of Bentonville
Position/Title
Address
City State Zip
Email:

If to AEP: Director, System Interconnections
American Electric Power Service Corporation
212 East 6th Street
Tulsa, OK 74119
e-mail: rlpennybaker@aep.com
spprequest@aep.com

with copy to: John W. Seidensticker
Senior Counsel
American Electric Power Service Corporation
1 Riverside Plaza
Columbus, OH 43215
e-mail: jwseidensticker@aep.com
legalnoticesinterconnections@aep.com

11.3. Interest on Overdue Amounts. Except as otherwise provided in Section 4.1.4, any amount due to a Party under this Agreement will earn interest accruing daily from the deadline for payment thereof until paid at the lesser of (i) an annual rate equal to the Prime Rate from time to time plus 2 percentage points, or (ii) the maximum rate allowed by Applicable Law. This provision will not be interpreted to preclude AEP from also including in its reimbursable costs an amount to compensate AEP for the time value of advances made by it.

11.4. Assignment. Except as otherwise provided in this Agreement, no Party may assign any of its rights or delegate any of its duties under this Agreement to any person without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. No assignment of this Agreement shall relieve the assignor of any obligation, duty or liability arising hereunder prior to such assignment. No Party's obligations shall be enlarged, in whole or in part, by reason of an assignment of this Agreement.

11.5. Merger and Integration; Binding on Successors; No Third Party Beneficiaries. This Agreement sets out the entire understanding of the Parties with respect to the matters it purports to cover and supersedes all prior communications, agreements, and understandings, whether written or oral, concerning such matters. No Party will be liable or bound to any Party in any manner by any warranties, representations, or covenants other than those set forth in or incorporated into this Agreement. The terms and conditions of this Agreement will inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties. Nothing in this Agreement, express or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

11.6. Forbearance and Waiver. Except where a specific time period is provided hereunder for the exercise of a right or remedy, any Party's forbearance in the exercise or enforcement of any right or remedy under this Agreement will not constitute a waiver thereof, and a waiver under one circumstance will not constitute a waiver under any other circumstance.

11.7. Partial Invalidity. Any invalidity, illegality, or unenforceability of any provision of this Agreement in any jurisdiction will not invalidate or render illegal or unenforceable the remaining provisions hereof in such jurisdiction and will not invalidate or render illegal or unenforceable such provision in any other jurisdiction.

11.8. Governing Law. The interpretation, enforcement and performance of this Agreement shall be governed by federal law where applicable, and when not in conflict with or preempted by federal law, the laws of the state in which the Delivery Point is located as specified in Schedule 3.1, without regard to the laws of such jurisdiction applicable to conflict of laws.

11.9. Multiple Counterparts. This Agreement may be executed by the Parties in multiple original counterparts, and each such counterpart will constitute an original hereof, but all of which together will constitute one instrument. An executed copy of this Agreement, and any amendments hereto, to the extent signed and delivered by means of an attachment to an electronic mail message in "pdf" or similar format, shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof.

11.10. No Partnership. Nothing contained herein shall be deemed to create an association, joint venture, partnership, or principal/agent relationship between the Parties hereto or impose any partnership obligation or liability on either Party. No Party shall have any right, power or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.

[The next page is the signature page.]

Executed to be effective as provided above:

Southwestern Electric Power Company	City of Bentonville, Arkansas by American Electric Power Service Corporation as agent for Southwestern Electric Power Company, as agent for City of Bentonville, Arkansas
By: ______________________	By: ______________________
Name: Robert W. Bradish	Name: ______________________
Title: Vice President	Title: ______________________

EXHIBIT 1.1

DEFINITIONS

Terms defined in this Exhibit 1.1 will have the meanings set forth in this Exhibit.

	TERM	DEFINITION
1.	AEP	As defined in the first paragraph.
2.	AEP Tariff	Open Access Transmission Service Tariff of the American Electric Power System, on file with and accepted by the Commission.
3.	Agreement	As defined in the first paragraph.
4.	Applicable Law	Any statute, law, ordinance, executive order, rule, or regulation (including a regulation that has been formally promulgated in a rule making proceeding but, pending final adoption, is in proposed or temporary form having force of law); guideline, or notice having force of law; or approval, permit, license, franchise, judgment, order, decree, injunction, or writ of any Governmental Authority applicable to a specified Person or specified property, as in effect from time to time. Applicable Law will include the requirements of NERC.
5.	Calendar Day	Any day whatsoever, including any weekday, Saturday, Sunday or holiday. However, should the last day of a period of time or number of Calendar Days computed as Calendar Days in accordance with this Agreement be a Saturday, Sunday or holiday, then the next day which is not a Saturday, Sunday or holiday is the last Calendar Day in such period.
6.	CIAC	As defined in Section 4.3.1.
7.	Commission	Federal Energy Regulatory Commission.
8.	Confidential Information	As defined in Section 9.1.

	TERM	DEFINITION
9.	Connection Requirements	American Electric Power document entitled, “Requirements for Connection of New Facilities or Changes to Existing Facilities Connected to the AEP Transmission System” as may be amended from time to time.
10.	Customers	As defined in the first paragraph.
11.	Delivery Point	Facilities that connect the Customers’ (or its members’) power delivery facilities to the AEP power delivery facilities.
12.	Direct Assignment Facilities	As defined in Section **Error! Reference source not found.**.
13.	Disclosing Party	As defined in Section 9.1.
14.	Effective Date	As defined in Section 3.4.
15.	Evaluation Materials	Notes, reports, or other documents that reflect, interpret, evaluate, include or are derived from a Party’s Confidential Information.
16.	Event of Default	As defined in Section 8.1.
17.	Execution Date	As defined in the first paragraph.
18.	Federal Power Act	16 U.S.C. §791a *et. seq.*
19.	Force Majeure	As defined in the first sentence of Section 10.1 of the AEP Tariff.

	TERM	DEFINITION
20.	Good Utility Practice	Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good utility practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the region.
21.	Governmental Approvals	Permits, consents, licenses, franchises, certificates, authorizations, registrations, or waivers, extensions, renewals, or variances relating thereto, in each case issued by any Governmental Authority, and filings with or notices to any Governmental Authority.
22.	Governmental Authority	Any federal, state, foreign, tribal, local, or municipal governmental body; and any governmental, regulatory, or administrative agency, commission, body, agency, instrumentality, or other authority exercising or entitled to exercise any executive, judicial, legislative, administrative, regulatory, or taxing authority or power, including any court or other tribunal. Governmental Authority will include NERC.
23.	Governmental Authority	Any federal, state, foreign, tribal, local, or municipal governmental body; and any governmental, regulatory, or administrative agency, commission, body, agency, instrumentality, or other authority exercising or entitled to exercise any executive, judicial, legislative, administrative, regulatory, or taxing authority or power, including any court or other tribunal. Governmental Authority will include NERC.
24.	Indemnified Claim	As defined in Section 5.2.
25.	Indemnified Person	As defined in Section 5.1.

TERM		DEFINITION
26.	Indemnifying Party	As defined in Section 5.1.
27.	Insolvent	A Person is "Insolvent" if such Person admits in writing its insolvency or bankruptcy, or commences a voluntary (or becomes subject to an involuntary) case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency, or other similar law, or consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, or sequestrator (or other similar official) of such Person or of any substantial part of its property, or makes an assignment for the benefit of creditors, or fails generally to pay its debts as such debts become due, or takes corporate action in furtherance of any of the foregoing.
28.	IRS	As defined in Section 4.3.1.
29.	Loss	As defined in Section 5.1.
30.	NERC	North American Electric Reliability Corporation or its successor.
31.	NITSA	As defined in Recital C.
32.	NOA	As defined in Recital C.
33.	Party or Parties	As defined in the first paragraph.
34.	Person	Any individual, corporation, partnership, limited liability company, other business organization of any kind, association, trust, or governmental entity, agency, or instrumentality.
35.	Prime Rate	A floating rate equal to the prime commercial lending rate from time to time as indicated in rates published in the *Wall Street Journal* or, if no such rate is published in the *Wall Street Journal*, in another public source reasonably designated by the creditor Party.
36.	Project	As defined in Recital A.

	TERM	DEFINITION
37.	Projected In-Service Date	As defined in Section 3.3..
38.	PSO	As defined in the first paragraph.
39.	Receiving Party	As defined in Section 9.1.
40.	Representatives	As defined in Section 9.1.
41.	State	As defined in Section 4.3.1.

SCHEDULE A

SUBSTATION I PROJECT

1. Description of Project

SWEPCO will install 12.47 kV meter transformers and a meter on the low side of the Customer's transformer at Substation I served by SWEPCO's Greenhouse Road substation on SWEPCO's Flint Creek to East Centerton 161 kV transmission line. SWEPCO's CTs/PTs will be installed on the Customer's stand/structure at Customer's Substation I.

Customer to install new 161 circuit breaker and 18/24/30 MVA 161/12.47 kV transformer at Customer's Substation I. Customer will provide stand/structure for SWEPCO to install CTs/PTs at Substation I.

2. Delivery Point Location

The Delivery Point will be located in Benton County, Arkansas.

3. Projected In-Service Date

The Projected In-Service Date for the Delivery Point is eight-and-a-half (8.5) months after the Effective Date, provided that the last two months of construction are not during AEP's peak load season (June-September).

4. Metering

SWEPCO will install 12.47 kV meter transformers in Substation I. Customer will provide space for SWEPCO to install a meter and meter transformer.

5. Charges

5.1. After the Direct Assignment Facilities are placed in service, AEP shall determine the total actual installed cost of such facilities. AEP shall issue an invoice to Customer for the actual cost of such Direct Assignment Facilities including applicable gross-up for taxes. Customer agrees to pay such invoice within thirty (30) Calendar Days of receipt.

5.2. Customer shall pay a monthly charge for the Direct Assignment Facilities ("Monthly Facilities Charge") in accordance with Section 8 of Attachment 1 of the NITSA. The Monthly Facilities Charge will cover the meter installation work identified and ongoing operation, maintenance, administrative and general expenses and taxes for the Direct Assignment Facilities. The Monthly Facilities Charge shall be calculated based on the actual costs incurred by AEP and shall take into account the payment made by Customer pursuant to Section **Error! Reference source not found.** above, and will thus be a net charge. The net Monthly Facilities Charge shall be effective the first day of the calendar month following the in-service date of the Direct Assignment Facilities, but will not be invoiced until the actual costs of the Direct Assignment Facilities are known and FERC has accepted the revisions to the Customer NITSA discussed below.

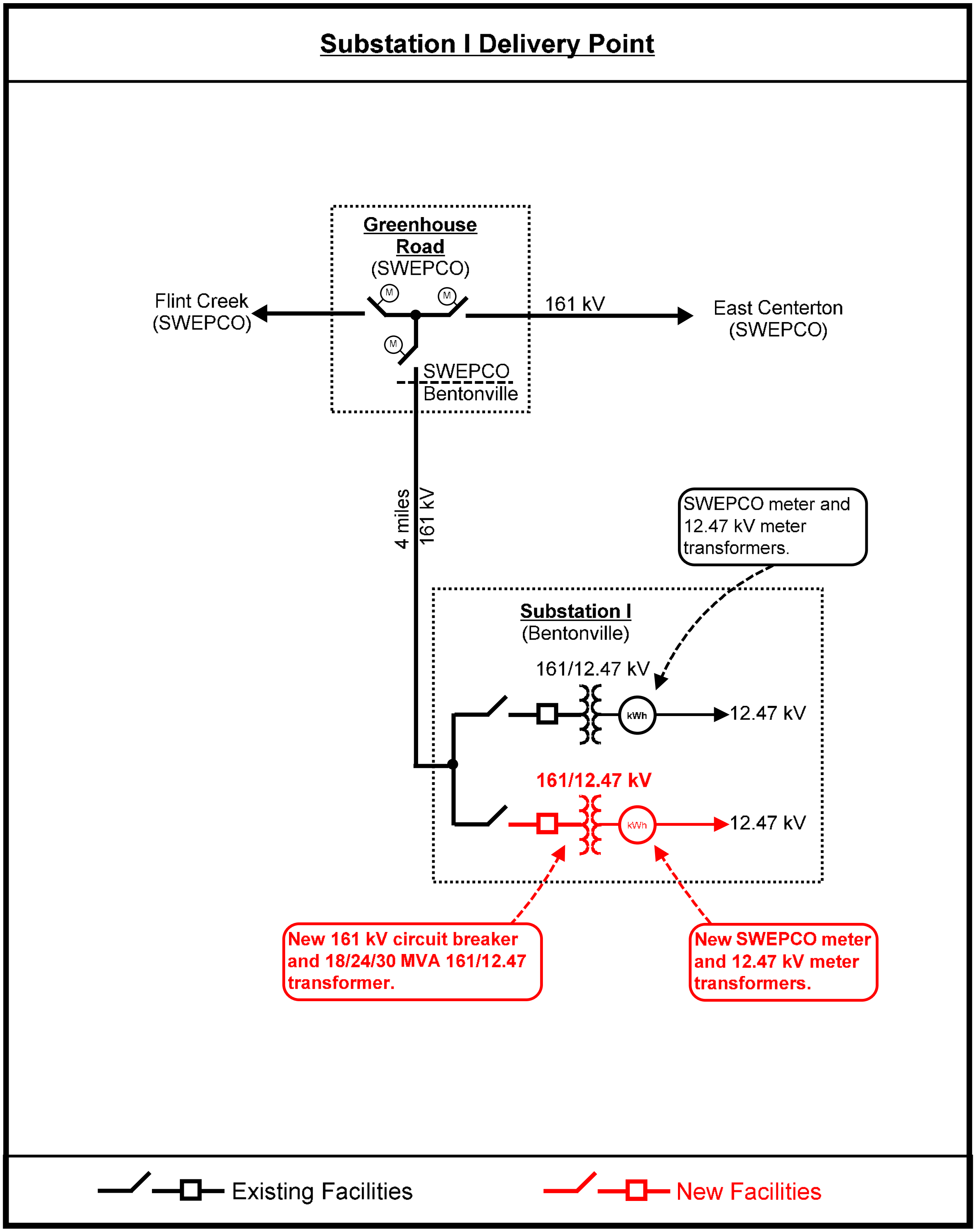
The accumulated amount of net Monthly Facilities Charges (i.e., starting with the first day of the calendar month following the in-service date of the Direct Assignment Facilities and ending with the last day of the month of the proposed effective date of the updated Customer NITSA ("Accumulated Monthly Facilities Charges") will be submitted in a future FERC filing made by SPP to update the Customer NITSA to reflect the addition of the Delivery Point and revise Appendix 4 to Attachment 1. Within thirty (30) Calendar Days of FERC accepting the updated Customer NITSA, AEP will invoice Customer for, and Customer shall have thirty (30) Calendar Days to pay, the Accumulated Monthly Facilities Charges together with the net Monthly Facilities Charge for the month starting after the month in which the proposed effective date of the updated NITSA falls, assuming the proposed effective date is the actual effective date of the Customer NITSA update. If the proposed effective date of the updated Customer NITSA, is not the same date as the actual effective date of the updated Customer NITSA, AEP will make any necessary filing to reflect the intent of this paragraph to collect the accumulated amount of net Monthly Facilities Charges.

6. Scope of Work

PROJECT FACILITIES CONSTRUCTED BY AEP				
Element of the Work	**Party to Own, Operate and Maintain the Project Facilities Resulting from this Element**	**Party Responsible for Costs of this Element (Subject to the Provisions of Section 4.1.5 and** Error! Reference source not found.**)**	**Estimated Cost**	**Estimated Amount Directly Assigned to Customer**
a. SWEPCO will install a meter in Customer's Substation I, and CTs/PTs on Customer's installed stand/structure.	AEP	Customer	$50,000	$50,000
b.				
c.				
d.				
TOTAL COST FOR PROJECT FACILITIES CONSTRUCTED BY AEP			$50,000	$50,000

PROJECT FACILITIES CONSTRUCTED BY CUSTOMER			
Element of the Work	**Party to Own, Operate and Maintain the Project Facilities Resulting from this Element**	**Party Responsible for Costs of this Element (Subject to the Provisions of Section** Error! Reference source not found.**)**	
a. Install new 161 kV circuit breaker and 18/24/30 MVA 161/12.47 kV transformer.	Customer	Customer	
b. Install stand/structure for SWEPCO to install CTs/PTs.	Customer	Customer	
c.			

FIGURE 1


Substation I Delivery Point
Greenhouse Road
(SWEPCO)
Flint Creek
(SWEPCO)
161 kV
East Centerton
(SWEPCO)
M
M
M
SWEPCO
Bentonville
4 miles
161 kV
SWEPCO meter and 12.47 kV meter transformers.
Substation I
(Bentonville)
161/12.47 kV
kWh
12.47 kV
161/12.47 kV
kWh
12.47 kV
New 161 kV circuit breaker and 18/24/30 MVA 161/12.47 transformer.
New SWEPCO meter and 12.47 kV meter transformers.
Existing Facilities
New Facilities