City of Bentonville
Bentonville Utility Board Meeting
Tuesday, July 18th – 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 20th, 2023

New Business

1. Resolution – Garver – Lead & Copper Rule Revision – Beau Thompson (pages 2-27)
2. Electric Position Reclassification – Travis Matlock, PE (pages 28-30)
3. Electric Job Family Addition – Travis Matlock, PE (pages 31-32)
4. Adjournment

THE CITY OF BENTONVILLE

Agenda Item Form

Date of City Council Meeting	**7/25/2023**
Department	**Water Utilities**
Submitted by	**Beau Thompson, Preston Newbill**
Phone	**(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 to enter into a professional services agreement with Garver Engineering for professional services associated with the EPA's mandated Lead and Copper Rule Revision. The cost associated with the technical assistance is $95,630.00. This is a budgeted item for 2023. Garver Engineering was selected by utilizing the City's standard SOQ solicitation and selection process for the procurement of professional services in accordance with state law.

Estimated Cost	**95,630.00**
Is this Item Budgeted?	☑ Yes ☐ No

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

Memo

To: City Council, Mayor Orman

From: Beau Thompson

CC: Mike Bender

Date: July 14, 2023

Re: Garver Engineering agreement for Technical Assistance associated with Lead and Copper survey

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Resolution - Staff is requesting approval of a resolution authorizing the Mayor to enter into an amended professional services agreement with Garver Engineering in the amount of $95,630.00 for technical assistance associated with the EPA's Lead and Copper rule revision. This agreement includes tasks identified below that need to be completed to appropriately designate the service line material as lead or lead free. This is a mandated survey with a compliance date of October 16, 2024. The inventory will include private and public service line surveys. Funding for this engagement was budgeted in 2023. The amount of the contract is within the budgeted amount. This firm was selected following the City's standard SOQ solicitation and selection process for the procurement of professional services in accordance with state law.

Garver will perform or assist Bentonville Water Utilities with the following tasks associated with this engagement:

Task 1 – Project Management

Task 2 – Service Line Inventory

Task 3 – Field Investigation Support

Task 4 – Development of Sampling Plans

Task 5 – Public Outreach Materials

Thank you for your consideration of this request.

Agreement
For
Planning Services

City of Bentonville, Arkansas

Project No. 23W01291

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 select Garver to assist with preparations for compliance with the Lead and Copper Rule Revisions (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 C, 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 release Garver, Garver's subconsultants, and their Personnel from 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.

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. Construction Phase Services. Construction Phase Services are to be addressed via Amendment to this Agreement.

6.6. 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.

6.7. 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 D 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 D.

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. Not used.

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. Litigation Assistance. 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. Termination for Convenience. 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 – Form of Amendment
Exhibit D – Insurance

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: Water Team Leader

Date: 06/22/2023

Attest: ______________________

EXHIBIT A
(SCOPE OF SERVICES)

1.1 Garver shall provide the following Services:

1.1.1 Background

The Bentonville Water Utilities ("BWU") selected Garver to assist with preparations for compliance with the Lead and Copper Rule Revisions (LCRR). These services will be phased based on the regulatory timeframe, i.e., the LCRR compliance date of October 16, 2024, and will be responsive to regulatory changes introduced by the Lead and Copper Rule Improvements (LCRI), which is currently in development.

Generally, Garver will provide technical guidance to the BWU related to:

- Developing a service line inventory (SLI)
- Preparing sampling plans
- Conducting public education and outreach

1.1.2 Assumptions

In developing the scope of work and associated level of effort discussed in this proposal, Garver has made the assumptions outlined below:

- The project will be completed as a series of task orders.
- BWU intends to use the ESRI Lead Service Line Inventory Solution within BWU's existing ArcGIS Online Account and will provide Garver with appropriate account access and rights.
- BWU will deploy the ESRI Lead Service Line Inventory to BWU's existing ArcGIS Online Account.
- BWU staff will review data and fill out the ESRI Lead Service Line Inventory.
- BWU will procure tabular real estate records from Benton County and related parcel GIS data.
- BWU has information on 17,000 service lines in Microsoft Excel format.
- BWU will submit all required compliance documents to the Arkansas Department of Health (ADH).
- This project aims to minimize the number of service lines of unknown material, but the SLI submitted to the State may include unknowns and service lines with "likely" classifications.
- Total GIS support for Tasks I, II, & III is 120 hours.

1.1.3 Scope of Work

The following scope of work describes the services to be provided. Garver will prepare an overall project management plan (PM) and quality control/assurance plan to be used for all tasks. Garver will prepare and provide monthly progress/status reports, sufficient to support monthly billings. Monthly status reports will be submitted with monthly invoices and project updates.

1.3.1.1 Task I – Project Management

This task will include project administration and management including:

1. Coordination with team members and BWU staff.
2. Provide and coordinate project planning and scheduling.
3. Prepare and submit monthly progress updates and invoices.
4. Develop and implement a project management plan (PMP) and quality control plan (QCP) for the project.

1.3.1.2 Task II – Service Line Inventory Assistance (FY 2023)

1. Garver will attend one kick-off meeting to discuss project objectives, internal and external team, lines of communication, and schedule. Garver will prepare up to four progress reports.
2. Garver will submit a data request for SLI-related documents.
3. Garver will review BWU's records related to service line build dates and materials and recommend a strategy for completing a document based initial SLI, supplemented with data from field inspections completed by BWU staff during routine and emergency operations.
4. Garver will review BWU's initial SLI within the ESRI solution and make modifications to the data and/or data model to better conform to Arkansas Department of Health SLI reporting as needed based on the available documentation to be used for service line classifications. For modifications required, Garver will create and/or modify hosted feature layers, web maps, web apps, and/or field apps. BWU staff will fill out the inventory.
5. Garver will export BWU's initial SLI from the ESRI solution to the Arkansas Department of Health SLI spreadsheet template and review for compliance with LCRR requirements.
6. Up to three (3) Garver staff will participate in four (4) check-in meetings to discuss SLI development progress.
7. Garver will develop a technical memorandum (TM) to document the SLI development process and propose a plan for completing the SLI through targeted field investigations. Depending on the number of service lines of unknown materials, a predictive modeling approach may be recommended to provide "likely" service line materials classifications to inform budgeting. The TM will include a budgetary estimate for having a contractor conduct field investigations.
8. Garver will facilitate one (1) workshop to discuss the TM and receive BWU feedback on the approach for completing the SLI.

9. Garver will finalize the SLI TM and submit it to BWU.

Deliverables: Data request, Comments on available records and modifications to the deployed ESRI Solution; Draft SLI TM, Final SLI TM

1.3.1.3 Task III – Field Investigation Support (FY 2024)

1. Garver will provide training materials for BWU staff to use in training field crews to conduct field investigations to determine service line materials at selected sites.

2. Garver will provide guidance to BWU staff to develop a Survey123 (or similar) form for collecting field data and a QA/QC process to be used when incorporating field data into the SLI. Garver will provide BWU with the typical attributes list. BWU will utilize the deployed (and potentially BWU-modified) ESRI Solution to gather and record data in the field. Garver will add the finalized field data collection forms and QA/QC process to the SLI TM. All equipment, software, and licenses needed for the execution of Task III is the responsibility of BWU.

3. Garver will assist BWU in implementing any predictive modeling methods recommended in the SLI TM. Garver will update the SLI TM based on the results.

4. Garver will provide guidance to BWU staff to export the completed SLI to the State's required template. The export process will be documented in the updated SLI TM.

5. Garver will facilitate one (1) workshop to discuss the draft updates to the SLI TM and receive BWU feedback before submitting the final SLI TM.

Deliverables: Draft and Final Updated SLI TM

1.3.1.4 Task IV – Development of Sampling Plans (FY 2024)

1. Garver will submit a data request for BWU's existing sampling plans and protocols and list of schools and licensed childcare facilities served.

2. Garver will recommend updates to BWU's existing list of tap sampling and water quality parameter (WQP) sites based on the SLI, requirements of the LCRR, and proposed or final LCRI, if available.

3. Garver will review BWU's proposed sampling protocols for tap and WQP sampling for conformance with the requirements of the LCRR, and proposed or final LCRI, if available.

4. Garver will review BWU's existing list of schools and licensed childcare facilities served. Garver will develop a sampling plan, consisting of a sampling schedule, standard procedures for BWU to follow to update the list of schools and licensed childcare facilities served after the LCRR compliance date, and sampling protocols for implementation at schools and licensed child-care facilities in accordance with the requirements of the LCRR, and proposed or final LCRI, if available. Sampling protocols will include the number of samples required per facility and flow charts for selecting sampling points within each facility.

5. Garver will facilitate one (1) workshop to receive feedback on recommended sampling sites and discuss sampling protocols.

Deliverables: Data request, Draft and Final list of tap and WQP sampling sites, comments on tap and WQP sampling protocols, Draft and Final sampling plan and protocol for schools and licensed childcare facilities.

1.3.1.5 Task V – Public Outreach Materials (FY 2024)

1. Garver will provide resources from the United States Environmental Protection Agency (USEPA), Arkansas Department of Health (ADH), American Water Works Association (AWWA), and other sources for BWU to use during LCRR and LCRI-related public outreach activities.
2. Garver will attend one (1) public meeting as a LCRR/LCRI subject matter expert.

Deliverables: Public Outreach Resources

1.1.4 Extra Work

The following items are not included under this agreement but will be considered as extra work:

1. Physical inspection of service lines.
2. Developing a lead service line (LSL) replacement protocol
3. Sampling or water quality analyses.
4. Funding procurement assistance.
5. Estimation of labor costs for BWU staff.
6. Design services of any kind.
7. Digitization of handwritten data or other records.
8. Additional GIS support.
9. Budgeting for LCRR and LCRI costs in addition to items listed herein.
10. Submittals or deliverables in addition to those listed herein.

1.1.5 Schedule

Garver shall begin work under this Agreement within ten (10) calendar days of a Notice to Proceed and BWU developed documents and shall complete the work in accordance with the schedule below. As completion of the work is tied to the receipt of BWU-developed documents, the Notice to Proceed will be accompanied by BWU-developed documents that Garver is to review for Tasks I, II, III, and IV.

Task Description	Calendar Days
Task I – Project Management	240 days from Notice to Proceed
Task II – Service Line Inventory Assistance	120 days from Notice to Proceed
Task III – Field Investigation Support	120 days from Notice to Proceed
Task IV – Development of Sampling Plans	60 days from Notice to Proceed
Task V – Public Outreach Materials	60 days from Notice to Proceed

*Note: for planning purposes, 14 calendar days are assumed for a complete BWU response to a data request or comments related to a DRAFT submittal.

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

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.

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.

3. Obtain the necessary lands, easements and right-of-way for the construction of the work. All costs associated with securing the necessary land interests, including property acquisition and/or easement document preparation, surveys, appraisals, and abstract work, shall be borne by the Owner outside of this Agreement, except as otherwise described under Scope of Services.

4. 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.

5. Furnish Garver a current boundary survey with easements of record plotted for the project property.

6. Pay all plan review and advertising costs in connection with the project.

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

8. 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.
9. Furnishing Garver a current geotechnical report for the proposed site of construction. Garver will coordinate with the geotechnical consultant, Owner has contracted with, on Owner’s behalf for the project specific requested information.

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 I – Project Management	$10,958	RATE SCHEDULE
Task II – Service Line Inventory	$34,886	RATE SCHEDULE
Task III – Field Investigation	$17,484	RATE SCHEDULE
Task IV – Development of Sampling Plans	$20,548	RATE SCHEDULE
Task V – Public Outreach	$11,754	RATE SCHEDULE
TOTAL FEE	$95,630	

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 $95,630. The actual total fee may exceed this estimate. The agreed upon rates will be increased annually with the first increase effective on or about July 1, 2024. Notwithstanding the foregoing, Garver shall be entitled, in its sole discretion, to substitute a more qualified person (e.g., C-4) with a less qualified person (e.g., C-1); provided however, in such event Garver shall only be entitled to payment at the lesser rate.

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

1. Direct cost for travel, long distance and wireless communications, outside reproduction and presentation material preparation, and mail/courier expenses.
2. Direct cost-plus ten percent (10%) for subcontract/subconsultant fees.
3. Charges similar to commercial rates for reports, plan sheets, presentation materials, etc.
4. The amount allowed by the federal government for mileage with an additional $0.05 for survey trucks/vans.

<u>Additional Services (Extra Work).</u> For services not described or included in Scope of Services, 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, or in the event the Amendment is silent, for the additional time spent on the Project, 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 agreed upon rates will be increased annually with the first increase effective on or about [month day, year].

Garver shall provide Owner notice when Garver is within ten percent (10%) of the not-to-exceed amount. In which event, Owner may direct Garver to proceed with the Services up to the not-to-exceed budgetary threshold before ceasing performance of the Services or increase the not-to-exceed amount with notice to Garver. Underruns in any phase may be used to offset overruns in another phase as long as the overall Agreement amount is not exceeded. In no event shall the not-to-exceed amount be interpreted as a guarantee the Services can be performed for the not-to-exceed budgetary threshold.

AGREED UPON RATES (June 2023 to July 2024)

Classification	Rates
Engineers / Architects	
E-1	$ 130.00
E-2	$ 151.00
E-3	$ 182.00
E-4	$ 212.00
E-5	$ 259.00
E-6	$ 318.00
E-7	$ 431.00
Planners	
P-1	$ 156.00
P-2	$ 196.00
P-3	$ 244.00
P-4	$ 272.00
P-5	$ 314.00
Designers	
D-1	$ 122.00
D-2	$ 142.00
D-3	$ 169.00
D-4	$ 196.00
Technicians	
T-1	$ 95.00
T-2	$ 121.00
T-3	$ 147.00
T-4	$ 184.00
Surveyors	
S-1	$ 59.00
S-2	$ 77.00
S-3	$ 103.00
S-4	$ 149.00
S-5	$ 196.00
S-6	$ 223.00
2-Man Crew (Survey)	$ 224.00
3-Man Crew (Survey)	$ 283.00
2-Man Crew (GPS Survey)	$ 246.00
3-Man Crew (GPS Survey)	$ 304.00
Construction Observation	
C-1	$ 115.00
C-2	$ 148.00
C-3	$ 180.00
C-4	$ 221.00
C-5	$ 264.00

Classification	Rates
Resource Specialists	
RS-1	$ 104.00
RS-2	$ 144.00
RS-3	$ 204.00
RS-4	$ 267.00
RS-5	$ 334.00
RS-6	$ 410.00
RS-7	$ 467.00
Environmental Specialists	
ES-1	$ 104.00
ES-2	$ 138.00
ES-3	$ 167.00
ES-4	$ 207.00
ES-5	$ 260.00
ES-6	$ 317.00
ES-7	$ 407.00
ES-8	$ 460.00
Project Controls	
PC-1	$ 108.00
PC-2	$ 148.00
PC-3	$ 188.00
PC-4	$ 241.00
PC-5	$ 294.00
PC-6	$ 361.00
PC-7	$ 463.00
Administration / Management	
AM-1	$ 75.00
AM-2	$ 101.00
AM-3	$ 141.00
AM-4	$ 179.00
AM-5	$ 220.00
AM-6	$ 271.00
AM-7	$ 326.00
M-1	$ 521.00

EXHIBIT C
(FORM OF AMENDMENT)

AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
[Client Name]
Project No. [????????]

AMENDMENT NO. [?]

This Amendment No. [?], effective on the date last written below, shall amend the original contract between the [Client Name] (**"Owner**") and Garver, LLC (**"Garver"**), dated [Insert date] (the "**Agreement**").

This Amendment No. [?] adds/modifies the Services for the:

[Describe improvements and location]

The Agreement is hereby modified as follows:

SECTION [?] – [Insert section heading]

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.

[*Insert Signature Block with the Appropriate Parties*]

EXHIBIT D
(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
Excess of Umbrella Liability	
Per Occurrence	$1,000,000
General Aggregate	$1,000,000

Agenda Item Form

Date of City Council Meeting	**7/25/2023**
Department	**Electric**
Submitted by	**Travis Matlock, PE**
Phone	**479-271-5941**

Item Type: (*Check All That Apply)*

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

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

Reclassifing an Electric Technician II postion to a Journeyman Lineman position and associated budget adjustment.

Estimated Cost	**$15,117.44**
Is this Item Budgeted?	☑ Yes ☑ No

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

A budget adjustment is required to cover the additional costs.

M E M O R A N D U M

DATE: July 25, 2023

TO: **City Council, Mayor Orman**

FROM: Travis Matlock, Electric Utility Director

RE: **Position Reclassification**

BEUD recommends reclassifying 1 Electric Technician II position to a Journeyman Lineman position.

With an upcoming retirement, BEUD would like to reclassify the position so that a lineman can be hired. This current Electric Technician was a long-term employee working within the Service Dept. section. Changing this position to a lineman will allow BEUD to hire someone who can take on more responsibilities within the Service Dept., thus allowing BEUD to reorganize the Service Dept. and provide better service to the rate payers. This will also limit the need for contracting services in dealing with streetlights.

This will add $15,117.44 to the 2023 budget. A budget adjustment is required to cover the additional cost for the reclassification. With three (3) retirements in BEUD in 2023, BEUD salaries/wages took an unexpected hit.

Budget Adjustment Request

Date of City Council Meeting	7/25/2023
Department	Electric
Submitted by	Travis Matlock, PE
Phone	479-271-5941

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

Budget adjustment to move $15,117.44 from Utility Fund Reserves to Salaries/Wages, FICA & Medicare, and Retirement to cover the additional costs.

General Ledger Account Information*				
Org (Department)	Object	Account Description	Revenue + (-)	Expense + (-)
503010	41010	Full Time Salaries/Wages		$ 12,293.60
503010	41510	FICA & Medicare Expense		$ 940.46
503010	41810	Retirement - APERS		$ 1,883.38
		Totals	$ -	$ 15,117.44
		Net Impact on Fund Balance	$	(15,117.44)

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

Agenda Item Form

Date of City Council Meeting	**7/25/2023**
Department	**Electric**
Submitted by	**Travis Matlock, PE**
Phone	**479-271-5941**

Item Type: (*Check All That Apply)*

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

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

Addition of a Job Familiy to the Electric Department System Coordinator.

Estimated Cost	
Is this Item Budgeted?	☑ Yes ☐ No

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

M E M O R A N D U M

DATE: July 25, 2023

TO: **City Council, Mayor Orman**

FROM: Travis Matlock, Electric Utility Director

RE: **Job Family Addition**

BEUD recommends addition of a job family for the IT/Systems Coordinator.

When the IT/Systems Coordinator was approved with the 2023 budget, there was only one (1) position with no job family. As BEUD has received very few qualified applicants over the 7 months that the position has been open, it became apparent that a job family was need for training and growth. Creating this job family will allow BEUD to hire a candidate and begin the training that is required with the many BEUD IT-type systems.