



STAFF REPORT

DATE: February 22, 2022
TO: Ty Lasher, City Manager
FROM: Anne Stephens, Public Works Director/City Engineer
RE: 47th Street Reconstruction – Construction Observation Services

Proposal Focus:

Our Mission

- Attractive growth and safe living – Encourage attractive neighborhoods and new developments.

Our Values

- Working Together – Departments working together as one team. Staff working with residents, HOA's and neighborhoods. Citizens working with each other.

Current Situation:

Council accepted the bid from Kansas Paving to reconstruct 47th Street at their February 1st City Council meeting. Construction observation services are recommended to provide oversight during construction to ensure that the construction occurs in accordance with Bel Aire specifications and construction standards. City staff typically provides construction observation services on projects that are funded through the Capital Improvement Reserve Fund. However, staff is currently consumed with a myriad of other projects and does not have adequate time to devote to properly observing this project. Staff recommends hiring a consultant to perform the construction observation on the 47th Street Reconstruction project.

Goals:

- To grow the City in an attractive, safe manner that is consistent with City standards.

Discussion:

The City is currently working with Garver on multiple construction observation projects. Their communication with both the Contractor, the City and interested citizens sets them apart from other firms. Staff reached out to Garver and requested a bid for construction observation services to assist in overseeing this project and ensuring that it gets constructed in accordance with City standards.

Financials:

The cost of the construction observation services will be paid for from the Capital Improvement Reserve Fund.

Recommendation:

Staff recommends that the City Council accept contract for the Construction Observation Services from **Garver** for construction observation in the amount of \$19,537.50, hourly, not-to exceed for the 47th Street Reconstruction.



1995 Midfield Road
Wichita, KS 67209

TEL 316.264.8008

www.GarverUSA.com

February 18, 2022

Anne Stephens, PE
City Engineer/Public Works Director
City of Bel Aire
7651 E. Central Park Avenue
Bel Aire, KS 67226

Re: Construction Observation RFP – 47th Street Reconstruction – Farmstead to 47th Gravel

Ms. Stephens:

Thank you for the opportunity to submit our proposal to perform Construction Observation on 47th Street. Garver would be honored to represent the City on a project that means so much to its Citizens.

The following proposal outlines our Contract as well as the Hourly - Not-to-Exceed budget that we put together. We contacted Terry Hacker, Kansas Paving, to get a feel for his plan of attack to complete this project. With that information we put together a competitive fee that we believe represents the work that will be performed to complete this project. Since we have Observers working in the area currently, we can adapt to the flexibility of this project and be present when needed. Our cloud-based documentation fits projects of all sizes making our time on site more valuable than our competition.

Garver appreciates every opportunity to work in Bel Aire and to continue growing the relationship we have built over the years.

Please call me if you have any questions.

Sincerely,

GARVER

Dakota Zimmerman, P.E.
Project Manager



PROFESSIONAL SERVICES AGREEMENT

Project No. 22C07002 – 47th Street Replacement – Farmstead to 47th Gravel

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made this ____ day of _____, 20__ (“**Effective Date**”) by and between the **City of Bel Aire, Kansas** (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.

1. SCOPE OF SERVICES

- 1.1. Services. Owner hereby engages Garver to perform the following 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.

2. PAYMENT

- 2.1. Fee. For the Services described under Section 1.1, Owner will pay Garver on a monthly basis in accordance with this Section and Exhibit B. Owner shall pay Garver all undisputed amounts within thirty (30) days of receipt of an invoice. 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. AMENDMENTS

- 3.1. 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**”). 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.

4. OWNER'S RESPONSIBILITIES

- 4.1. 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. GENERAL

- 5.1. Standards of Performance. 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. 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 documents applicable to the contractor's work even when Garver is performing construction phase services.

5.2. Instruments of Service. 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. All property rights of a Party, including copyright, patent, and reuse ("**Intellectual Property**"), shall remain the Intellectual Property of that Party. Any Intellectual Property of Garver, or any third party embedded in the Deliverables, shall remain so imbedded and may not be separated therefrom. 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.

5.3. 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 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.

6. INSURANCE

6.1. Insurance. Garver shall procure and maintain insurance as set forth in Exhibit C until completion of the Service. Garver shall name Owner as an additional insured on Garver's General Liability policy to the extent of its indemnity obligations provided in this Agreement. Upon request, Garver shall furnish Owner a certificate of insurance evidencing the insurance coverages required in Exhibit C.

7. INDEMNIFICATION / WAIVERS

7.1. Indemnification. Subject to the limitations of liability set forth in Section 7.2, Garver agrees to indemnify and hold Owner and its personnel harmless from tort 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.

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



7.2.1. 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.

7.2.2. 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.

7.2.3. 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.

7.3. The limitations set forth in Section 7.2 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.

8. DISPUTE RESOLUTION

8.1. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY AND ALL RIGHT TO TRIAL BY JURY.

9. TERMINATION

9.1. Termination. This Agreement may be terminated seven (7) days after written notice and a reasonable opportunity to cure by either Party in the event of failure by the other Party to perform any material obligation in accordance with the terms hereof.

10. MISCELLANEOUS

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

10.2. 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.

10.3. 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.

11. EXHIBITS



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

- Exhibit A – Services
- Exhibit B – Compensation Schedule
- Exhibit C – 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, acknowledge 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.

Signature Page to Follow



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

City of Bel Aire, Kansas

Garver, LLC

By: _____
Signature

By: Christopher Bohm
Signature

Name: _____
Printed Name

Name: Christopher Bohm
Printed Name

Title: _____

Title: Project Manager

Date: _____

Date: 02/18/2022



EXHIBIT A (SERVICES)

Garver shall provide the following Services:

Construction Observation Services:

- Part-Time Construction Observation Services for the removal of existing paving & crushed rock base installation.
- Full-Time Construction Observation Services for the subgrade preparation, installation of the mainline paving, & other concrete work.
- Services shall include SWPPP inspections, weekly reports, daily construction diaries, construction quantity verification, pay application generation & review, and change order log.
- Garver representation for the Public Notification Meeting held at the beginning of the project as well as an initial site walk thru with the selected Contractor & City.

For clarification, the proposed scope of services does not include:

- Design Engineering
- Preparation of a Stormwater Pollution Prevention Plan
- Answering RFI's, submitting plan changes or reviewing shop drawings.
- No as-built survey will be required.
- Construction staking is the responsibility of the Contractor.



**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
Construction Phase Services	\$19,537.50	RATE SCHEDULE
TOTAL FEE	\$ 19,537.50	

The hourly-not to exceed amount to be paid under this Agreement is \$19,537.50. For informational purposes, a breakdown of Garver's estimated costs is included in this Exhibit B with approximate current hourly rates for each employee classification.

Any unused portion of the fee, due to delays beyond Garver's control, will be increased six percent (4%) annually with the first increase effective on or about July 1st, 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, long distance and wireless communications, outside reproduction and presentation material preparation, and mail/courier expenses.
2. Direct cost-plus 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.
5. \$20.00 per hour for GPS survey equipment use.

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, 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 rates shown below in this Exhibit will be increased annually with the first increase effective on or about July 1st, 2022.



**EXHIBIT B
(COMPENSATION SCHEDULE)**

**City of Bel Aire, KS
47th Street Reconstruction CE&I**

CONSTRUCTION PHASE SERVICES

WORK TASK DESCRIPTION	E-2	C-1	- Select Category -	- Select Category -	- Select Category -	- Select Category -	- Select Category -
	\$130.00	\$100.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	hr	hr	hr	hr	hr	hr	hr
Construction Phase Services (PT = 5 hrs/day 1. FT = 10 hrs/day)							
Project Setup/Public Notification Meeting/Initial Site walk thru	6	10					
Part Time Observation - Pavement & C&G Removal & Rock Base Placement (15 Working Days)		75					
Full Time Observation - Concrete Pour Days (5 Working Days)		50					
Monthly Pay Requests		2					
SWPPP/Neighborhood Coordination	4	30					
Prepare Change Orders	2						
Final Project Inspection and Punchlist	2	5					
Subtotal - Construction Phase Services (PT = 5 hrs/day FT = 10 hrs/day)	14	172	0	0	0	0	0
Hours	14	172	0	0	0	0	0
Salary Costs	\$1,820.00	\$17,200.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
SUBTOTAL - SALARIES:		\$19,020.00					
<u>DIRECT NON-LABOR EXPENSES</u>							
Survey Supplies	\$0.00						
Aerial Photography	\$0.00						
GPS Equipment	\$0.00						
Travel Costs @ \$0.58/mile	\$517.50						
SUBTOTAL - DIRECT NON-LABOR EXPENSES:		\$517.50					
SUBTOTAL:		\$19,537.50					
SUBCONSULTANTS FEE:		\$0.00					
TOTAL FEE:		\$19,537.50					



**EXHIBIT B
(COMPENSATION SCHEDULE)**

Garver Hourly Rate Schedule July 2021 – June 2022

Engineers / Architects	
E-1.....	\$ 115.00
E-2.....	\$ 130.00
E-3.....	\$ 161.00
E-4.....	\$ 188.00
E-5.....	\$ 229.00
E-6.....	\$ 282.00
E-7.....	\$ 336.00
Planners / Environmental Specialist	
P-1.....	\$ 138.00
P-2.....	\$ 173.00
P-3.....	\$ 206.00
P-4.....	\$ 241.00
P-5.....	\$ 278.00
P-6.....	\$ 318.00
P-7.....	\$ 370.00
Designers	
D-1.....	\$ 107.00
D-2.....	\$ 126.00
D-3.....	\$ 150.00
D-4.....	\$ 174.00
Technicians	
T-1.....	\$ 98.00
T-2.....	\$ 127.00
T-3.....	\$ 140.00
Surveyors	
S-1.....	\$ 63.00
S-2.....	\$ 75.00
S-3.....	\$ 114.00
S-4.....	\$ 129.00
S-5.....	\$ 170.00
S-6.....	\$ 193.00
2-Man Crew (Survey).....	\$ 234.00
3-Man Crew (Survey).....	\$ 280.00
2-Man Crew (GPS Survey).....	\$ 256.00
3-Man Crew (GPS Survey).....	\$ 302.00
Construction Observation	
C-1.....	\$ 100.00
C-2.....	\$ 128.00
C-3.....	\$ 159.00
C-4.....	\$ 192.00
Management/Administration	
M-1.....	\$ 370.00
X-1.....	\$ 64.00
X-2.....	\$ 86.00
X-3.....	\$ 125.00
X-4.....	\$ 156.00
X-5.....	\$ 195.00
X-6.....	\$ 240.00
X-7.....	\$ 290.00



**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	
Per Occurrence	\$1,000,000
Aggregate	\$2,000,000
Professional Liability	
Per Claim	\$1,000,000
Annual Aggregate	\$2,000,000