

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is entered into between The City of Norman (OWNER) and Garver, LLC. (CONSULTANT) for the following reasons:

1. The OWNER intends to perform a bridge discovery whereby detailed cost estimates for bridge replacement or rehabilitation are compiled for twenty (20) bridge locations within the City limits; and,
2. The OWNER requires certain professional administrative, technical, and analytical services in connection with the PROJECT (the SERVICES); and,
3. The CONSULTANT is prepared to provide the SERVICES.

In consideration of the promises contained in this AGREEMENT, the OWNER and the CONSULTANT agree as follows:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this AGREEMENT shall be the 13th day of July, 2022.

ARTICLE 2 - GOVERNING LAW

This AGREEMENT shall be governed by the laws of the State of Oklahoma.

ARTICLE 3 - SCOPE OF SERVICES

The CONSULTANT shall provide the SERVICES described in **Attachment A, Scope of Services**.

ARTICLE 4 - SCHEDULE

The CONSULTANT shall exercise its reasonable efforts to perform the SERVICES described in **Attachment A, Scope of Services** to be completed by the 25th day of July, 2022, or 12 days from receipt of Notice to Proceed.

ARTICLE 5 - COMPENSATION

The OWNER shall pay the CONSULTANT in accordance with **Attachment B, Compensation**. Invoices shall be due and payable upon receipt. The OWNER shall give prompt written notice of any disputed amount and shall pay the remaining amount.

ARTICLE 6 - OWNER'S RESPONSIBILITIES

The OWNER shall be responsible for all matters described in **Attachment C, Owner's Responsibilities**. The OWNER hereby represents that it owns the intellectual property rights in any plans, documents or other materials provided by the OWNER to the CONSULTANT. If the OWNER does not own the intellectual property rights in such plans, documents or other materials, prior to providing same to the CONSULTANT, the OWNER shall obtain a license or right to use, including the right to sublicense to the CONSULTANT. The OWNER hereby grants the CONSULTANT the right to use the intellectual property associated with plans, documents or other materials it owns or has the right to use for the limited purpose of performing the SERVICES. The OWNER represents that the CONSULTANT's use of such documents will not infringe upon any third parties' rights.

ARTICLE 7 - STANDARD OF CARE

The same degree of care, skill, and diligence shall be exercised in the performance of the SERVICES as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances. No other warranty, express or implied, is included in this AGREEMENT or in any drawing, specification, report, opinion, or other instrument of service, in any form or media, produced in connection with the SERVICES.

ARTICLE 8 - INDEMNIFICATION AND LIABILITY

Indemnification. To the extent permitted by law, including the Constitution of the State of Oklahoma, the CONSULTANT and the OWNER each hereby agree to defend, indemnify, and hold harmless the other party, its officers, servants, and employees, from and against any and all liability, loss, damage, cost, and expense (including attorneys' fees and accountants' fees) caused by an error, omission, or negligent act of the indemnifying party in the performance of SERVICES under this AGREEMENT. The CONSULTANT and the OWNER each agree to promptly serve notice on the other party of any claims arising hereunder, and shall cooperate in the defense of any such claims. This indemnity is not limited except as provided by applicable Oklahoma law. The acceptance by OWNER or its representatives of any certification of insurance providing for coverage other than as required in this Agreement to be furnished by the CONSULTANT shall in no event be deemed a waiver of any of the provisions of this indemnity provision. None of the foregoing provisions shall deprive the OWNER of any action, right, or remedy otherwise available to the OWNER at common law.

Survival. The terms and conditions of this ARTICLE shall survive completion of the SERVICES, or any termination of this Agreement.

ARTICLE 9 - INSURANCE

During the performance of the SERVICES under this Agreement, the CONSULTANT shall maintain the following insurance:

1. General Liability Workmen's Compensation and Auto Liability insurance in accordance with the Political Subdivision Tort Claims Act of the State of Oklahoma.
2. Adequate worker's compensation insurance coverage to comply with State laws and employer's liability coverage in the minimum amount of \$100,000.
3. Comprehensive general liability insurance coverage with a minimum of \$100,000 per person and \$300,000 per accident for bodily injury or death and \$100,000 for property damage.
4. Comprehensive automobile liability insurance coverage with a minimum of \$50,000 per person and \$300,000 per accident for bodily injury or death and \$100,000 for property damage.

5. Professional Liability (errors and omissions) Insurance Certificate providing a minimum of \$100,000 policy value.

The CONSULTANT shall, upon written request, furnish the OWNER certificates of insurance which shall include a provision that such insurance shall not be canceled without at least thirty days' written notice to the OWNER. The OWNER shall require all project contractors to include the OWNER, the CONSULTANT, and its parent company, affiliated and subsidiary entities, directors, officers and employees, as additional insureds on their General and Automobile Liability insurance policies, and to indemnify both the OWNER and the CONSULTANT, each to the same extent.

ARTICLE 10 - LIMITATIONS OF RESPONSIBILITY

The CONSULTANT shall not be responsible for; (a) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the PROJECT that are outside of CONSULTANT's reasonable control and/or the **Scope of Services** set forth in **Attachment A**; (b) the failure of any contractor, subcontractor, vendor, or other PROJECT participant, not under contract to or otherwise under the control of the CONSULTANT, to fulfill contractual responsibilities to the OWNER or to comply with federal, state, or local laws, regulations, and codes; or (c) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to the CONSULTANT in **Attachment A, Scope of Services**. In the event the OWNER requests the CONSULTANT to execute any certificates or other documents, the proposed language of such certificates or documents shall be submitted to the CONSULTANT for review at least 15 days prior to the requested date of execution. The CONSULTANT shall not be required to execute any certificates or documents that in any way would, in CONSULTANT's sole judgment; (a) increase the CONSULTANT's legal or contractual obligations or risks beyond the terms of this AGREEMENT; (b) require knowledge, services or responsibilities beyond the scope of this AGREEMENT; or (c) result in the CONSULTANT having to certify, guarantee or warrant the existence of conditions which existence the CONSULTANT cannot reasonably ascertain.

ARTICLE 11 - OPINIONS OF COST AND SCHEDULE

Because the CONSULTANT has no control over the cost of labor, materials, or equipment furnished by others, or over the resources provided by others to meet project schedules, the CONSULTANT's opinion of probable costs and of project schedules shall be made on the basis of experience and qualifications as a practitioner of its profession. The CONSULTANT does not guarantee that proposals, bids, or actual project costs will not vary from the CONSULTANT's cost estimates or that actual schedules will not vary from the CONSULTANT's projected schedules.

ARTICLE 12 - REUSE OF DOCUMENTS

All documents, including, but not limited to, plans, drawings, and specifications prepared by the CONSULTANT as deliverables pursuant to the **Attachment A, Scope of Services** are instruments of service in respect to the PROJECT. They are not intended or represented to be suitable for reuse by the OWNER or others on modifications or extensions of the PROJECT or on any other project. Any reuse without prior written verification or adaptation by the CONSULTANT for the specific purpose intended will be at the OWNER's sole risk and without liability or legal exposure to the CONSULTANT. The OWNER shall indemnify and hold harmless the CONSULTANT and its

sub consultants against all judgments, losses, damages, injuries, and expenses, including reasonable attorneys' fees, arising out of or resulting from such reuse. Any verification or adaptation of documents will entitle the CONSULTANT to additional compensation at rates to be agreed upon by the OWNER and the CONSULTANT.

ARTICLE 13 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Except as otherwise provided herein, documents, drawings, and specifications prepared by the CONSULTANT and furnished to the OWNER as part of the SERVICES shall become the property of the OWNER; provided, however, that the CONSULTANT shall have the unrestricted right to their use. The CONSULTANT shall retain its copyright and ownership rights in its design, drawing details, specifications, data bases, computer software, and other proprietary property. Intellectual property developed, utilized, or modified in the performance of the SERVICES shall remain the property of the CONSULTANT.

ARTICLE 14 - TERMINATION AND SUSPENSION

This AGREEMENT may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this AGREEMENT; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party. The OWNER may terminate or suspend performance of this AGREEMENT for the OWNER's convenience upon written notice to the CONSULTANT. The CONSULTANT shall terminate or suspend performance of the SERVICES on a schedule acceptable to the OWNER, and the OWNER shall pay the CONSULTANT for all the SERVICES performed. Upon restart of suspended SERVICES, an equitable adjustment shall be made to the CONSULTANT's compensation and the project schedule.

ARTICLE 15 - DELAY IN PERFORMANCE

Neither the OWNER nor the CONSULTANT shall be considered in default of this AGREEMENT for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this AGREEMENT, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either the OWNER or the CONSULTANT under this AGREEMENT. The CONSULTANT shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances. Should such circumstances occur, the nonperforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this AGREEMENT.

ARTICLE 16 - NOTICES

Any notice required by this AGREEMENT shall be made in writing to the address specified below:

OWNER:

Darrel Pyle
City Manager
City of Norman
P.O. Box 370
Norman, OK 73070
(405) 366-5402 Phone

CONSULTANT:

Garver, LLC.
Bret Cabbiness, Senior Project Manager
1016 24th Avenue NW
Norman, Oklahoma 73069
1 (405) 329-2555

Nothing contained in this ARTICLE shall be construed to restrict the transmission of routine communications between representatives of the OWNER and the CONSULTANT.

ARTICLE 17 - DISPUTES

In the event of a dispute between the OWNER and the CONSULTANT arising out of or related to this AGREEMENT, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute, each party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation or mediation. Should such negotiation or mediation fail to resolve the dispute, either party may pursue available legal remedies.

ARTICLE 18 - EQUAL EMPLOYMENT OPPORTUNITY

The CONSULTANT hereby affirms its support of affirmative action and that it abides by the provisions of the "Equal Opportunity Clause" of Section 202 of Executive Order 11246 and other applicable laws and regulations, including the City of Norman's policies and provisions. The CONSULTANT affirms its policy to recruit and hire employees without regard to race, age, color, religion, sex, sexual preference/orientation, marital status, citizen status, national origin or ancestry, presence of a disability or status as a Veteran of the Vietnam era or any other legally protected status. It is the CONSULTANT's policy to treat employees equally with respect to compensation, advancement, promotions, transfers and all other terms and conditions of employment. The CONSULTANT further affirms completion of applicable governmental employer information reports including the EEO-1 and VETS-1 00 reports, and maintenance of a current Affirmative Action Plan as required by Federal regulations.

ARTICLE 19 - WAIVER

A waiver by either the OWNER or the CONSULTANT of any breach of this AGREEMENT shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

ARTICLE 20 - SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this AGREEMENT or the occurrence of any event rendering any portion or provision of this AGREEMENT void shall in no

way affect the validity or enforceability of any other portion or provision of this AGREEMENT. Any void provision shall be deemed severed from this AGREEMENT, and the balance of this AGREEMENT shall be construed and enforced as if it did not contain the particular portion or provision held to be void. The parties further agree to amend this AGREEMENT to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this ARTICLE shall not prevent this entire AGREEMENT from being void should a provision which is of the essence of this AGREEMENT be determined void.

ARTICLE 21 - INTEGRATION

This AGREEMENT, including **Attachments A, B, and C** incorporated by this reference, represents the entire and integrated AGREEMENT between the OWNER and the CONSULTANT. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this AGREEMENT.

ARTICLE 22 - SUCCESSORS AND ASSIGNS

The OWNER and the CONSULTANT each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners, to the other party to this AGREEMENT and to the successors, executors, administrators, permitted assigns, legal representatives, and partners of such other party in respect to all provisions of this AGREEMENT.

ARTICLE 23 - ASSIGNMENT

Neither the OWNER nor the CONSULTANT shall assign any rights or duties under this AGREEMENT without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, the CONSULTANT may assign its rights to payment without the OWNER's consent. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this AGREEMENT. Nothing contained in this ARTICLE shall prevent the CONSULTANT from engaging independent consultants, associates and subcontractors to assist in the performance of the SERVICES.

ARTICLE 24 - NO THIRD PARTY RIGHTS

The SERVICES provided for in this AGREEMENT are for the sole use and benefit of the OWNER and the CONSULTANT. Nothing in this AGREEMENT shall be construed to give any rights or benefits to anyone other than the OWNER and the CONSULTANT.

IN WITNESS WHEREOF, OWNER and Garver, LLC. have executed this AGREEMENT.

DATED this 13th day of July, 2022.

The City of Norman
(OWNER)

Signature

Name

Title

Date

Attest:

City Clerk



Garver, LLC.
(CONSULTANT)

Signature

Name

Title

Date July 13, 2022

Attest:

~~Secretary~~

Approved as to form and legality this 14 day of July 2022.

City Attorney

**ATTACHMENT A
SCOPE OF SERVICES**



1016 24th Avenue NW
Norman, OK 73069

TEL 405.329.2555
FAX 405.329.3555

www.GarverUSA.com

**SCOPE OF SERVICES
for
City of Norman, Oklahoma
2022 Bridge Investment Program Planning Grant Application**

The scope of work consists of the preparation of one (1) FY 2022 Bridge Investment Program (BIP) Planning Grant application according to the Notice of Funding Opportunity (NOFO) published by the Federal Highway Administration (FHWA) on June 10, 2022. The grant will be used for the planning of a future City of Norman bridge bond program.

The specific services to be provided are described below.

TASK 1 – STRATEGIC GUIDANCE/ COORDINATION AND MEETINGS

Garver will coordinate with City of Norman on the FHWA guidelines, application development, schedule, criteria, and overall strategy to produce the FY 2022 BIP application. This task will include weekly calls with City of Norman, including a kickoff meeting and status update meetings.

TASK 2 – COST ESTIMATE

Garver will coordinate with City of Norman staff to compile the appropriate cost estimate for the grant application. This estimate will be based on the “worst case” (i.e., most expensive) option for the development of a future bridge bond program that will replace or rehabilitate approximately twenty (20) bridges over a period of time yet to be determined.

The cost estimate will be used for the BIP planning grant application, to include previously incurred/encumbered planning activities, overall bond program planning, revenue forecasting, individual bridge project feasibility, bond program advertising and associated materials, stakeholder meetings and updating construction costs to include escalation.

It is anticipated the BIP grant will request funding of approximately \$400,000. City of Norman will provide information on matching funds, if any, and the source of those funds. Garver will create figures and tables as needed to summarize and present this information.

TASK 3 – DATA COLLECTION, COORDINATION AND TABLES

Garver will assemble the appropriate data to demonstrate the project’s qualifications as if the City of Norman were applying for future Bridge/Large Bridge Grants and meeting those project grant’s outcome criteria. This is anticipated to include, but is not limited to, reviewing data already collected and generated by the City of Norman, including bridge

inspection reports, detour routes, collision data, demographic information, and other relevant information. No demand modeling or other traffic analysis is included. Garver will create figures and tables as needed to summarize and present this information.

TASK 4 – GRAPHICS AND MAPS

Garver will choose a graphic and color scheme to maintain consistent and appealing look throughout the documents and will include identification of graphical call-out boxes to highlight specific notable facts and figures and appropriate photos and maps.

TASK 5 – BIP PLANNING GRANT APPLICATION

Garver will prepare one (1) FY 2022 BIP planning grant application for a future City of Norman bridge bond project. The narrative is limited to 25 pages (single spaced). The narrative will include the following sections, per the NOFO and Attachment #1, Planning Application Template:

- Table of Contents
- Basic Project Information
 - Project Name
 - Project Description
 - Transportation challenges
 - Project history including previously incurred costs
 - Activities to be supported by grant funding
 - Broader context of improvements by agency
 - Identification of NBI listings for possible projects of a bridge bond program
- Project Locations
- Urban/Rural Community
- Total Project Cost (planning and construction)
- Project Sponsor
- Co-Applicants
- Lead Applicant
- Prior grant funding applications/awards
- NBI Data
- Project Costs
 - Planning activities (not construction)
 - BIP request amount
 - Estimated other federal funding
 - Program
 - Amount
 - Estimated non-federal funding
 - Program
 - Amount
 - Total Planning project cost
- Planning Outcome Criteria
 - BIP Program Goals
 - Improve safety, efficiency, and reliability of movement of people and freight over bridges
 - Improve the condition of bridges in the US by

- Reducing bridges in poor condition (or in fair condition at risk of falling to poor condition within 3 years)
 - Reducing total person miles traveled over bridges in poor/fair condition
 - Reducing bridges that do not meet current geometric design standards or cannot meet load and traffic requirements typical of the transportation network
 - Reducing total person miles traveled over bridges that do not meet current design standards/load and traffic requirements
 - Leverage and encourage non-Federal contributions in planning/design/construction.
- Project Description
 - Bridge condition (documented information)
 - How the project will meet evaluation criteria for Bridge/Large Bridge Project.
 - State of Good Repair
 - Safety
 - Mobility/Economic Competitiveness
 - Climate Change, Resiliency, and the Environment
 - Quality of Life
 - Innovation
- Project Schedule
 - Current status of planning – all activities completed or underway, with detailed schedule (start and end dates) of all activities to be funded under planning grant.
 - Also, post-planning schedule with start/end dates of all major activities through completion.
- Project Budget (for planning)
 - Start and end dates for major activities, milestones, and deliverables
 - Detailed budget with total project cost
 - All funding sources and amounts
 - Other federal grant sources/requests
- Forms (SF-424, 424A, 424B, Lobbying form, SF-LLL)
 - To be provided by City of Norman

City of Norman will be responsible for the preparation of all required forms and the submission of the grant application through the grants.gov site.

TASK 6 – DELIVERABLES AND PROJECT MANAGEMENT

Deliverables for the grant application will be reviewed for Quality Assurance/Quality Control prior to submission and include one (1) complete draft BIP Planning Grant application. These draft items will be delivered in electronic format to City of Norman on or before July 20, 2022. Assuming comments are received by July 21, 2022, the final documents will be delivered in electronic format on or before July 24, 2022. Grants must be submitted on grants.gov by 11:59 PM EDT on July 25, 2022. Garver will manage all aspects of scope, schedule, and budget.

ITEMS TO BE PROVIDED BY CITY OF NORMAN:

- Historical data (reports, memos, spreadsheets, photographs, etc....) collected to date associated with a future bridge bond program
- List of any previously documented incurred costs
- Identification of matching funds amount, if any, and source
- Forms (SF-424, 424A, 424B, Lobbying form, SF-LLL)

ATTACHMENT B COMPENSATION

Proposed Estimate of Effort and Fees - Garver, LLC Attachment 1 - Fee Estimate

Labor Description	E-6	E-3	E-3	E-6	X-2	P-5	P-1	T-2	X-2		
	Sr. Project Manager II	Sr. Project Engineer	Sr. Project Engineer	Sr. Project Manager II	Administrative Support	Planner V	Planner I	Drafter	Graphic Designer		
Load Hourly Rate	\$272.00	\$152.00	\$152.00	\$272.00	\$130.80	\$268.00	\$131.00	\$100.00	\$84.00		
1 Strategic Guidance/Meetings	12	4	4	4	4	12				40	\$9,307.20
2 Cost Estimate	8	6		2						16	\$3,632.00
3 Data Collection, Coordination and Tables	2	6	10	4			16	16		54	\$7,760.00
4 Graphics and Maps	2	2	10	2		2	4	8	8	38	\$5,444.00
5 Grant Application	40		2	2	12	12			8	76	\$17,185.60
6 QA/QC and Project Management	4				2	4				10	\$2,421.60
Total Hours	68	18	26	14	18	30	20	24	16	234	\$45,750.40
	\$18,496.00	\$2,736.00	\$3,952.00	\$3,808.00	\$2,354.40	\$8,040.00	\$2,620.00	\$2,400.00	\$1,344.00		

Total **\$45,750**
ROUNDED **\$45,800**

**ATTACHMENT C
OWNER'S RESPONSIBILITIES**

ARTICLE 6 of the AGREEMENT is amended and supplemented to include the following agreement of the parties.

OWNER RESPONSIBILITIES

1. The OWNER shall furnish to the CONSULTANT all available information pertinent to the PROJECT including previous reports, construction plans and any other data relative to the PROJECT.
2. The OWNER shall be responsible for all permit fees.
3. The OWNER shall examine all studies, reports, sketches, estimates specifications, plan drawings, proposals and any other documents presented by the CONSULTANT and render in writing decisions pertaining thereto within a reasonable time so as not to delay the SERVICES of the CONSULTANT.
4. The OWNER shall designate in writing a person to act as its representative in respect to the work to be performed under this AGREEMENT, and such person shall have complete authority to transmit instructions, receive information, interpret, and define the OWNER's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered by this AGREEMENT.
5. The OWNER shall provide for meeting facilities (or arrange for meeting facilities) for all PROJECT meetings with OWNER or Public Meetings in connection with the PROJECT.