

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 scoping study whereby detailed hydrologic and hydraulic analysis for the purpose of flood mitigation is conducted on a watershed bounded by Robinson Street, 48th Avenue NW, West Main Street, and Lamp Post Road, and a project scoping report is the final deliverable for the project; 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 27th day of September, 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 23rd day of February, 2023, or 150 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:

- a) General Liability Insurance, with a limit of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
- b) Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- c) Workers' Compensation Insurance in accordance with statutory requirements and Employers' Liability Insurance, with a limit of \$500,000 for each occurrence.
- d) Professional Liability Insurance, with a limit of \$1,000,000 per claim and annual aggregate.

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.

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:

Jason Murphy
Stormwater Program Manager
City of Norman
P.O. Box 370
Norman, OK 73070
(405) 366-5455

CONSULTANT:

Garver, LLC.
Bret Cabiness, 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 resolution of the dispute as allowed by applicable law and regulation. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder.

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 ____th day of _____, 2022.

The City of Norman
(OWNER)

Signature _____

Name _____

Title _____

Date _____

Attest:

City Clerk

Garver, LLC.
(CONSULTANT)

Signature  _____

Name J. Bret Cabbiniss, PE _____

Title Sr. Project Manager _____

Date 9/16/22 _____

Attest:



Witness

Approved as to form and legality this 21 day of Sept 2022.



City Attorney