

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A MULTI-YEAR AGREEMENT WITH GARVER, LLC FOR PROFESSIONAL SERVICES FOR THE NORTH LITTLE ROCK ELECTRIC DEPARTMENT; AND FOR OTHER PURPOSES.**

WHEREAS, Ark. Code Ann. § 19-11-801 *et seq.* allows City to procure legal, architectural, engineering, construction management, and land surveying professional services without formal bidding procedures; and

WHEREAS, Garver, LLC, 4701 Northshore Drive, North Little Rock, 72118, is one of the nation’s leading engineering, planning, and environmental services firms; and

WHEREAS, the North Little Rock Electric Department (NLRED) wishes to enter into a multiyear contract with Garver, LLC to provide professional services for an initial term of three (3) years, with the option to continue for two (2) periods of one (1) year each (see Master Agreement for Professional Services (“Agreement”) attached hereto as Exhibit A); and

WHEREAS, Garver, LLC will perform the services and receive payment from the NLRED on a work assignment basis; and

WHEREAS, it is in the best interests for the City to enter into the Agreement with Garver, LLC for the NLRED.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Mayor and City Clerk are hereby authorized to enter into the Agreement with Garver, LLC (substantially similar to Exhibit A) for no more than (5) years.

SECTION 2: That the cost of the work assignments per the Agreement shall be included in the yearly Electric Department Budget.

SECTION 3: That the provisions of this Resolution are hereby declared to be severable, and if any section, phrase or provision shall be declared or held invalid, such invalidity shall not affect the remainder of the sections, phrases or provisions.

SECTION 4: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED:

\_\_\_\_\_

APPROVED:

\_\_\_\_\_

Mayor Terry C. Hartwick

SPONSOR:

TERRY C. Hartwick  
Mayor Terry C. Hartwick *by AP*

ATTEST:

\_\_\_\_\_

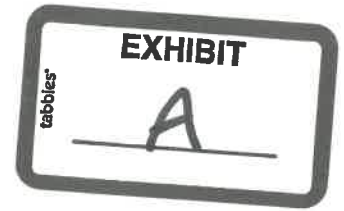
Diane Whitbey, City Clerk

APPROVED AS TO FORM:

Amy Beckman Fields  
Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/kt

FILED	<u>10.43</u>	A.M.	_____	P.M.
By	<u>A Fields, City Atty</u>			
DATE	<u>2/20/24</u>			
<b>Diane Whitbey, City Clerk and Collector</b>				
<b>North Little Rock, Arkansas</b>				
RECEIVED BY	<u>B Tomlin</u>			



## **MASTER AGREEMENT FOR PROFESSIONAL SERVICES CITY OF NORTH LITTLE ROCK, ARKANSAS**

**THIS MASTER AGREEMENT FOR PROFESSIONAL SERVICES** is made by and between the **City of North Little Rock, Arkansas** hereinafter referred to as “CITY,” and **GARVER, LLC**, hereinafter referred to as “GARVER,” the Effective Date being the date signed by the City.

GARVER will provide professional services to North Little Rock Electric Department as described herein.

The CITY and GARVER in consideration of the mutual covenants in this Agreement agree in respect of the performance of professional services by GARVER and the payment for those services by the CITY as set forth below. Execution of the Agreement by GARVER and the CITY constitutes the CITY’s written authorization to GARVER to proceed on the date signed by the CITY with the services described herein. This Agreement supersedes all prior written or oral understandings associated with services to be rendered, including any teaming agreements.

### **SECTION 1 - EMPLOYMENT OF GARVER AND TERM**

The CITY agrees to engage GARVER, and GARVER agrees to perform professional services in connection with the proposed improvements as stated in the sections to follow for an Initial Term of three (3) years from the Effective Date, upon approval by the North Little Rock City Council. The Agreement may be renewed for not more than two (2) one (1) year periods (each, a “Renewal Term,” may be referred to as “Term”) upon written notice by the City sixty (60) days prior to the expiration of the applicable Term. GARVER shall notify CITY at least sixty (60) days prior to the expiration of the Initial Term, and any Renewal Terms. If GARVER does not give CITY such notice within the time provided, the Agreement shall expire at the end of the term. These services will conform to the requirements and standards of the CITY and conform to the standards of practice ordinarily used by members of GARVER’s profession practicing under similar conditions. For having rendered such services, the CITY agrees to pay GARVER compensation as stated in the sections to follow.

### **SECTION 2 - SCOPE OF SERVICES**

GARVER will perform professional services as requested by the CITY not to exceed Thirty Five Thousand and 00/100 DOLLARS (\$35,000.00) per work assignment. Any work assignment exceeding \$35,000 shall require a separate agreement. The terms of each work assignment or

project will be defined and agreed upon by the CITY and GARVER and represented in the form of a written Work Order.

### **SECTION 3 – PAYMENT**

For the work described under SECTION 2 - SCOPE OF SERVICES, the CITY will pay GARVER on either a lump sum or hourly basis as described in each Work Order. The CITY represents that funding sources are in place with the available funds necessary to pay GARVER.

If any payment due GARVER under this Agreement is not received within 60 days from date of invoice, GARVER may elect to suspend services under this Agreement without penalty or liquidated damages assessed from the CITY.

The CITY will pay GARVER, for time spent on the project, at the rates shown in Appendix B for each classification of GARVER's personnel (may include contract staff classified at GARVER's discretion) plus reimbursable expenses, as defined herein.

Reimbursable expenses are as follows:

- (1) direct cost for postage and delivery expenses (including overnight or priority shipping, and courier service when directly related to performance of the Scope of Services;
- (2) the amount allowed by the federal government for mileage including an additional \$ 0.05 for survey trucks/vans;
- (3) out of state travel expenses when authorized by the City;
- (4) outside commercial printing or reproductions when service cannot be rendered in-house;
- (5) direct cost for subcontract/subconsultant fees;
- (6) charges similar to commercial rates for reports, plan sheets, presentation materials, etc.
- (7) Additional items, if applicable to performance of Scope of Services, and approved in writing by the City.

Reimbursable expenses do not include:

- (1) mileage to and from a project site at any time;
- (2) any other connected travel expenses such as meals, lodging, and parking (except for out-of-state travel when specifically requested by the City;
- (3) facsimile communications;
- (4) long distance and wireless communications;
- (5) in-house computer, CADD or other digital format time or equipment expense;
- (6) in-house printing or reproductions.

These expenses are considered normal overhead costs covered in the contract agreement, and are not reimbursable expenses. The rates shown in Appendix B may be increased annually, upon prior approval of the City.

The CITY will pay GARVER on a monthly basis, based upon statements submitted by GARVER to the CITY for the scope of services described in this Agreement. Payments not received within 60 days of invoice date will be subject to a one percent monthly simple interest charge.

Additional Services (Extra Work). For work not described or included in Section 2 – Scope of Services but requested by the CITY in writing, the CITY will pay GARVER, for time spent on the project, at the rates shown in Appendix B for each classification of GARVER’s personnel (may include contract staff classified at GARVER’s discretion) plus reimbursable expenses, as defined herein. The rates shown in Appendix B may be increased annually, upon prior approval of the City.

#### **SECTION 4 - CITY'S RESPONSIBILITIES**

In connection with the project, the CITY's responsibilities shall include, but not be limited to, the following:

1. Giving thorough consideration to all documents presented by GARVER and informing GARVER of all decisions within a reasonable time so as not to delay the work of GARVER.
2. Making provision for the employees of GARVER to enter public and private lands as required for GARVER to perform necessary preliminary surveys and other investigations.
3. Obtaining 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 CITY outside of this Agreement, except as otherwise described in Section 2 – Scope of Services.
4. Furnishing 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 the CITY. Such documents or data will be returned upon completion of the work or at the request of the CITY.
5. Furnishing GARVER a current boundary survey with easements of record plotted for the project property.
6. Paying all plan review and advertising costs in connection with the project.
7. Providing legal, accounting, and insurance counseling services necessary for the project and such auditing services as the CITY may require.
8. Furnishing 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. Giving prompt written notice to GARVER whenever the CITY observes or otherwise becomes aware of any defect in the project or other events which may substantially alter GARVER’s performance under this Agreement.
10. CITY will not hire any of GARVER’s employees during performance of this Agreement and for a period of one year beyond completion of this Agreement.

11. Furnishing GARVER a current geotechnical report for the proposed site of construction. GARVER will coordinate with the geotechnical consultant, the CITY has contracted with, on the CITY's behalf for the information that is needed for this project.

## **SECTION 5 – MISCELLANEOUS**

### **5.1 Instruments of Service**

GARVER's instruments of service provided by this Agreement consist of the printed hard copy reports, drawings, and specifications issued for the Assignment or Project; whereas electronic media, including CADD files, are tools for their preparation. As a convenience to the CITY, GARVER will furnish to the CITY both printed hard copies and electronic media. In the event of a conflict in their content, however, the printed hard copies shall take precedence over the electronic media.

GARVER's electronic media are furnished without guarantee of compatibility with the CITY's software or hardware, and GARVER's sole responsibility for the electronic media is to furnish a replacement for defective disks within thirty (30) days after delivery to the CITY.

GARVER retains ownership of the printed hard copy drawings and specifications and the electronic media. The CITY is granted a license for their use, but only in the operation and maintenance of the Project or Assignment for which they were provided. Use of these materials 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 consultants. The CITY shall indemnify, defend, save harmless GARVER, GARVER's consultants, and the officers and employees of any of them from and against any and all claims, liabilities, damages, losses, and costs, including but not limited to costs of defense, arising out of the CITY's use of these materials for modification, extension, or expansion of this Project or on any other project not under the direction of GARVER.

Because data stored in electronic media form can be altered, either intentionally or unintentionally, by transcription, machine error, environmental factors, or by operators, it is agreed that the CITY shall release GARVER, GARVER's consultants, and the officers and employees of any of them from and against any and all claims, liabilities, damages, losses, and costs arising out of changes or modifications to the data in electronic media form in the CITY's possession and will not provide to third parties for use absent such third parties agreeing in writing to release GARVER, GARVER's consultants, and the officers and employees of any of them for use of the electronic media and printed hard copy drawings and specifications outside the license granted by this 5.1.

### **5.2 Opinions of Cost**

Since GARVER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, GARVER's Estimates of Project Costs and Construction Costs provided for herein are to be made on the basis of GARVER's experience and qualifications and represent

GARVER's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but GARVER cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from estimates prepared by GARVER. The CITY understands that the Estimates of Project Costs and Construction Costs developed by GARVER do not establish a limit for the construction contract amount. GARVER, however, understands that the CITY expects GARVER to make a good faith effort to estimate costs in accordance with industry practices. If the actual amount of the low construction bid exceeds the construction budget established by the CITY (consistent with GARVER's recommendations), GARVER, upon request by the City, and at the City's cost, shall make appropriate recommendations to the CITY of more cost-effective ways to construct the Project and of any related compromises to quality of construction.

### 5.3 Underground Utilities

GARVER will not, unless defined within a Work Order, provide research regarding utilities and survey utilities located and marked by their CITYs as provided for in this Agreement. The parties agree that in no event is GARVER responsible for damage to underground utilities that are unmarked or improperly marked by Arkonecall.com, caused by the negligence of geotechnical, potholing, construction, or other subconsultants hired by GARVER working under a subcontract to this Agreement.

### 5.4 Insurance

GARVER currently has in force and agrees to maintain in force for the life of this Agreement, the following minimum schedule of insurance:

Workers Compensation	Statutory Limit
Automobile (Combined Property Damage and Bodily Injury)	\$500,000
General Liability (Combined Property Damage and Bodily Injury) Per Occurrence	\$1,000,000.00
Professional Liability	\$2,000,000.00

### 5.5 Records

GARVER will retain all pertinent records for a period of two years beyond completion of the project. CITY may have access to such records during normal business hours.

### 5.6 Indemnity Provision

Subject to the limitation on liability set forth in Section 5.8, GARVER agrees to indemnify the CITY for damages, liabilities, or costs (including reasonable attorneys' fees recoverable under applicable law) to the extent the damages and costs are found to be caused by the negligent acts, errors, or omissions of GARVER, its subconsultants, or any other party for whom GARVER is legally liable, in the performance of their professional services under this Agreement.

The CITY agrees to release GARVER from damages, liabilities, or costs (including reasonable attorneys' fees recoverable under applicable law) to the extent the damages and costs are found to be caused by the negligent acts, errors, or omissions of the CITY, its agents, or any other party for whom the CITY is legally liable, in the performance of their professional services under this Agreement.

CITY agrees that any claim or suit for damages made or filed against GARVER by CITY will be made or filed solely against GARVER or its successors or assigns and that no member or employee of GARVER shall be personally liable to CITY for damages under any circumstances.

### **5.7 Design without Construction Phase Services**

Unless otherwise stipulated in Work Orders, it is understood and agreed that GARVER's Scope of Services under this Agreement does not include project observation or review of the Contractor's performance or any other construction phase services, and that such services will be provided by the CITY. Where GARVER does not provide construction phase services, the CITY assumes all responsibility for interpretation of the Construction Contract Documents and for construction observation and supervision and waives any claims against GARVER that may be in any way connected thereto.

In addition, the CITY agrees, to the fullest extent permitted by law, to release GARVER from any loss, claim or cost, including reasonable attorneys' fees and costs of defense, arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Construction Contract Documents to reflect changed field or other conditions, except for claims arising from GARVER's negligence, in whole or in part, or willful misconduct of GARVER.

If the CITY requests in writing that GARVER provide any specific construction phase services and if GARVER agrees in writing to provide such services, then they shall be compensated for the work as Additional Services.

### **5.8 Limitation of Liability**

In recognition of the relative risks and benefits of the project to both the CITY and GARVER, the risks have been allocated such that the CITY agrees, to the fullest extent permitted by law, to limit



the liability of GARVER and its subconsultants to the CITY on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims for expenses from any cause or causes, to the limits of its commercial liability and professional liability insurance proceeds under policies provided, pursuant to paragraph 5.4. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contractor warranty, and indemnity obligations.

Notwithstanding any other provision to the contrary in this Agreement or a Work Authorization and to the fullest extent permitted by law, neither CITY nor GARVER will be liable for consequential, incidental, special, punitive or any similar damages of any kind whether arising in contract, in tort, or by operation of law.

### **5.8.1 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 substance or waste. GARVER's Work does not include any services related to unknown or undisclosed Constituents of Concern, as defined herein, and the City releases GARVER from liability in regards to identification, evaluation, treatment, storage, disposal, or transportation of any hazardous substance or waste in performing the Work. If GARVER or any subcontractor or subconsultant hired by GARVER encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, then GARVER shall suspend performance of Work on the portion of the Project affected thereby until the City retains appropriate specialist consultants or contractors to identify, abate and/or remove the Constituent of Concern and warrant that the portion of the Project affected is in full compliance with applicable laws and regulations, or terminate this Agreement for cause if it is not practical to continue providing Services.

Constituent of Concern is defined as, any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

### **5.9 Mediation**

The CITY and GARVER agree that all oral discussions resulting from this clause are confidential. As they may apply to the presiding rules of evidence, negotiations pursuant to this clause shall not

imply admission of responsibility or guilt for the aggravating action, but shall be regarded as compromise, resolution attempts, and settlement negotiations.

The CITY and GARVER agree to, through good faith efforts, first attempt to resolve all conflicts that arise out of or related to this Agreement, through direct discussions involving senior and/or executive management representatives from their respective organizations. It is a requirement of this clause for this condition to be attempted prior to the use of other dispute resolution processes. If the respective representatives are unable to develop a compromise resolving the dispute, such that it is satisfactory to both parties within thirty (30) calendar days after a party delivers a written notice of such dispute, then further mediation processes shall begin, as described herein. If direct discussions fail to resolve the dispute, the CITY and GARVER further agree to pursue non-binding mediation unless the parties mutually agree otherwise.

The CITY and GARVER further agree to use their reasonable best efforts to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants and in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

#### **5.10 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 the CITY, unless Litigation Assistance has been expressly included as part of the work defined in Section 2 - Scope of Services. In the event the CITY requests such services of GARVER, this Agreement shall be amended in writing by both the CITY and GARVER or a separate written agreement will be negotiated between the parties.

### **SECTION 6 - CONTROL OF SERVICES**

This is an Arkansas Agreement and in the event of a dispute concerning a question of fact in connection with the provisions of this Agreement which cannot be disposed of by mutual agreement between the CITY and GARVER, the matter shall be resolved in accordance with the Laws of the State of Arkansas.

This Agreement may be terminated by either party by seven (7) days written notice in the event of substantial failure to perform in accordance with the terms hereof by the one (1) party through no fault of the other party or for the convenience of the CITY, which includes the non-appropriation of funds, upon delivery of written notice to GARVER. If this Agreement is so terminated, GARVER shall be paid for the time and materials expended to accomplish the services performed to date, as provided in SECTION 3 - PAYMENT; however, GARVER may be required to furnish an accounting of all costs.

## **SECTION 7 - SUCCESSORS AND ASSIGNS**

The CITY 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 the CITY nor GARVER shall assign, sublet, or transfer their interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

## **SECTION 8 – MISCELLANEOUS TERMS**

### **8.1 Choice of Law and Venue.**

The parties hereto agree that this Contract shall be construed under Arkansas law, excluding its conflict of laws rules. The parties further agree that proper jurisdiction and venue for any cause of action arising from this Contract shall be vested in either the U.S. District Court for the Eastern District of Arkansas or the Circuit Court of Pulaski County, Arkansas.

### **8.2 Non-Waiver**

No delay or failure to exercise any right under this Agreement shall impair any such right or be construed to be a waiver thereof. No waiver shall be effective unless in writing signed by the party waiving. A waiver of a right on one occasion shall not be deemed to be a waiver of such right on any other occasion. A waiver of a right on one occasion shall not be deemed to be a waiver of any other right on that occasion.

### **8.3 No Assignment**

The Project to be performed pursuant to this Agreement is personal in nature, and Contractor may not, voluntarily or by operation of law, assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the City.

### **8.4 Merger**

This Agreement constitutes the full understanding of the parties, a complete allocation of risks between them and a complete and exclusive statement of the terms and conditions of their agreement, related to the Work provided hereunder. All prior agreements, negotiations, dealings and understandings, whether written or oral, regarding the subject matter hereof, are superseded by and merged into this Agreement.

### **8.5 Data Transmission**

City and GARVER may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphic, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

## 8.6 Modification

No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary the terms or conditions of the Agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification shall be effected by the acknowledgment or acceptance of any forms containing terms or conditions or variance with or in addition to those set forth in this Agreement.

## 8.7 Severability

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

## 8.8 No Presumption against Drafter

Each of the parties hereto has jointly participated in the negotiation and drafting of this Agreement. In the event an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by each of the parties hereto and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any provisions of this Agreement.

## 8.9 Counterpart Execution

This Agreement may be executed in two or more counterparts, each of which is deemed as original but all constitute one and the same instrument. An original signature transmitted by facsimile or other electronic means shall be deemed to be original.

8.10 Filing – This document shall be filed in the official records of the City Clerk of the City of North Little Rock, Arkansas. Either party may additionally file this document in any other governmental office deemed appropriate; however, the parties waive all claims and defenses in law or equity based upon such additional filing.

## **SECTION 9 – APPENDICES AND EXHIBITS**

9.1 The following Appendices and/or Exhibits are attached to and made a part of this Agreement:

### 9.1.1 Appendix B – Hourly Rate Schedule

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

IN WITNESS WHEREOF, CITY and GARVER have executed this Agreement effective as of the date signed by the City.

**CITY OF NORTH LITTLE ROCK**

**GARVER, LLC**

By: \_\_\_\_\_

Terry C. Hartwick

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Attest:

Attest:

\_\_\_\_\_  
**DIANE WHITBEY, CITY CLERK**

Approved as to Form

City of North Little Rock

*Amy Beckman Fields*  
**City Attorney**

By: \_\_\_\_\_

Deputy City Attorney

\_\_\_\_\_ Date