

ARKANSAS STATE HIGHWAY COMMISSION

DALTON A. "ALEC" FARMER, JR.
CHAIRMAN
JONESBORO



MARIE HOLDER
LITTLE ROCK

PHILIP TALDO
VICE CHAIRMAN
SPRINGDALE

DAVID M. HAAK
TEXARKANA

KEITH GIBSON
FORT SMITH

P.O. Box 2261 • Little Rock, Arkansas 72203-2261
Phone (501) 569-2000 • Voice/TTY 711 • Fax (501) 569-2400
www.ARDOT.gov • www.IDriveArkansas.com

LORIE H. TUDOR, P.E.
DIRECTOR

June 19, 2023

The Honorable Blake Johnson
The Honorable Ron McNair
ALC-Highway Commission Review and Advisory Subcommittee
1 Capitol Mall, Fifth Floor
Little Rock, AR 72201

Dear Senator Johnson and Representative McNair:

Reference is made to A.C.A. § 27-65-107 and to the Final Report to the Arkansas Legislative Council by the Highway Commission Review and Advisory Subcommittee's (HCRAS) Study (Study) of the Arkansas Department of Transportation (ARDOT) dated November 20, 2020.

Prior to ARDOT's execution of contracts \$50,000 or more to implement the Study's recommendations, the Highway Commission is required to give the HCRAS the opportunity to review. In addition, the HCRAS shall allow members of the public a reasonable length of time to comment on the contracts.

The enclosed contract is for carrying out Recommendation 3, Publish Status of Construction Projects and Maintenance Activities. This contract is for a Construction and Maintenance Activities Reporting System (CAMARS) to improve communication and reporting structure across Department projects statewide. The Department has selected Garver, LLC to provide this system for a cost of \$746,541.

The enclosed contract packet contains the following:


- Contract Summary with Garver, LLC;
- Summary of Arkansas Highway Commission Approval to Enter Contract Negotiations;
- ARDOT Recommendation Memo
- Contract and Grant Disclosure and Certification Form;
- Restriction of Boycott of Israel Certification;
- Illegal Immigrant Certification;
- Garver, LLC Equal Employment Opportunity Policy; and
- Redacted Garver, LLC Contract.

The Honorable Blake Johnson
The Honorable Ron McNair
June 19, 2023
Page 2

In accordance with A.C.A. § 27-65-107(a)(18)(c), this packet is being provided to HCRAS for review. We request any comments made from the members be submitted in writing to Gill.Rogers@ardot.gov by COB July 5. We will also publish this packet for public comment for 16 days beginning on June 19, 2023, and ending on July 5. To finalize the review, this contract along with comments received and responses prepared will be presented at the HCRAS July 2023 meeting.

If additional information is needed, please feel free to contact Gill Rogers, Governmental Relations Officer, at (501) 569-2108.

Sincerely,


Lorie H. Tudor, P.E.
Director

Enclosure

c: Highway Commission
Chief of Administration
Chief Engineer – Operations
Chief Engineer – Preconstruction
Assistant Chief – Administration
Assistant Chief Engineer - Construction
Assistant Chief Engineer – Maintenance
Assistant Chief Engineer – Program Delivery
Communications
Glen Grayham, Office of Internal Audit, Department of the Inspector General

Agency: Arkansas Highway Commission

Contractor: Garver, LLC

Location: North Little Rock, AR

Service Type: Technical & General Services (TGS)

Total Authorized: \$0.00 **Org. Term:** 07/31/2023 06/30/2024 **Procurement:** RFP

Total After Review: \$746,541.00 **Funding:**

Total Projected: \$746,541.00 **Guidehouse Recommendation Number:** 3

<u>Org/Amt:</u>	<u>Amount</u>	<u>Paid To Date</u>	<u>Objective</u>	<u>New Exp. Date</u>
	\$746,541.00			

The vendor is to provide a combination of remote and on-site consultation, configuration and training services designed to provide the Arkansas Department of Transportation (ARDOT) with a Construction and Maintenance Activity Reporting System (CAMARS). ARDOT plans to leverage existing platforms, databases, and tools to enhance the reporting of readily available information. CAMARS, an enterprise level approach to provide true real-time access to project status, will be delivered in three phases: projects in construction, currently programmed projects, and maintenance activities after the Maintenance Management System (MMS) is implemented under Guidehouse Recommendation number 7.

ARKANSAS STATE HIGHWAY COMMISSION

MINUTE ORDER

District: Statewide

Page 1 of 1 Page

County: Statewide

Category: Miscellaneous

WHEREAS, Act 298 of 2019 required the Arkansas Legislative Council to conduct a study of the processes and functioning of the Arkansas Department of Transportation to identify areas of potential improvement within the overall functioning of the Department; and

WHEREAS, the final report produced from the study was adopted by the Arkansas Legislative Council on November 20, 2020; and

WHEREAS, a recommendation contained within the final report identified an opportunity to improve existing communication with regard to construction projects and maintenance activities in order to enhance public visibility, project performance, and project delivery; and

WHEREAS, enhancement of the Department’s website to publish up to date information with regard to construction projects and maintenance activities will provide the desired improved communication.

NOW THEREFORE, the Director is authorized to issue a Request for Proposals to retain the services of a qualified consultant to enhance communication through the Department’s website with regard to construction projects and maintenance activities for the Department.

Approved:

[Handwritten signatures of committee members]

Chairman
Vice-Chairman
Member
Member
Member

Submitted By:

[Handwritten signature of Kevin Shawter]

Assistant Chief - Administration

Approved:

[Handwritten signature of Lorie H. Suder]

Director

Minute Order No. 2022-047

[Handwritten initials]

Date Passed APR 27 2022

AC-A

Form 19-456

Rev. 1/13/2016

Final Report to the Arkansas Legislative Council

Highway Commission Review and Advisory Subcommittee Study of the Arkansas Department of Transportation

The following is Recommendation #3 from the Final Report to the Arkansas Legislative Council which identifies the opportunity to improve communication regarding construction projects and maintenance activities.

Publish status of construction projects and maintenance activities

The Subcommittee recommends revising ARDOT's existing communication of construction project and maintenance activities to make communication less disjointed and difficult to navigate. Improving the communication and reporting structure can enhance public visibility into, and accountability for, project performance; enhance project delivery; and yield better data to inform planning and budget appropriations.

a. Implementation:

- (1) Inventory current reporting infrastructure;
- (2) Identify and implement short-term reporting enhancements; and
- (3) Lay the groundwork for long-term reporting improvements.

b. Considerations:

- (1) ARDOT does not need to build out an entire platform to rapidly enhance reporting of readily available project status data: leverage existing platforms and tools, such as IDriveArkansas and district office websites; and
- (2) An enterprise level approach will be required to provide true real-time access to project status.

Arkansas Department of Transportation

92nd General Assembly of 2019 - Act 298 Efficiency Review

March 23, 2022

The following information provides an update of the study performed as a result of Act 298 of 2019.

- Act 298 of the 92nd General Assembly of 2019 required the Arkansas Legislative Council to hire a consultant to conduct a study, without limitation, of the Department's processes, procedures, procurement procedures, projects, expenditures, and appeals process.
- The purpose of the study is to examine and identify areas of potential improvement within the overall functioning of the Department and to recommend legislation to the General Assembly in order to:
 - ✓ Maximize the Department's use of taxpayer dollars;
 - ✓ Improve the efficiency and overall functioning of the Department; and
 - ✓ Ensure responsiveness of the Department to the needs of the State of Arkansas and its citizens with regard to improvement of the state highways and roads.
- On August 23, 2019, the Arkansas Legislative Council entered into a contract with Guidehouse, LLP of McLean, Virginia to conduct the study.
- On September 18, 2019, Guidehouse held a kickoff meeting with the Highway Commission Review and Advisory Subcommittee (HCRAS).
- On September 24, 2019, Guidehouse submitted to the Department a comprehensive request for documents and data. This request is divided into several topical sections: Portfolio Planning, Procurement, Expenditures, Organizational Structure, People Capabilities, and Information Technology.
- On October 14-16, 2019, Guidehouse was on site to conduct a kickoff meeting along with interviewing several key Department staff.
- On November 18-22, 2019 and December 2-5, 2019, Guidehouse was on site to interviewing several key Department staff.
- On May 14, 2020, Guidehouse presented their findings to HCRAS. It identified 10 key takeaways across six focus areas.
- On June 17, 2020, Guidehouse presented their recommendations to HCRAS. There were 13 recommendations across six focus areas. The recommendations are listed below:
 - ✓ **Organizational Structure**
 - Finalize KPIs and implement performance management
 - Strengthen knowledge management in anticipation of increased retirement

- ✓ **Portfolio Planning**
 - Publish status of construction projects and maintenance activities
 - Implement a platform that tracks all stakeholder inquiries to resolution
 - ✓ **Procurement**
 - Implement efficiencies in procurement and purchasing
 - Implement construction contractor performance measurement
 - ✓ **Expenditures**
 - Implement project and portfolio planning frameworks
 - Implement leading practices in construction project design
 - ✓ **Information Technology**
 - Build an IT Governance Structure to guide ARDOT 's IT investments
 - Implement mid-term IT initiatives that can optimize business operations
 - Develop necessary pillars to establish IT as an effective business partner
 - ✓ **People Capabilities**
 - Ensure staff can develop in their careers at ARDOT
 - Align staff capabilities with current and future organizational needs
- On November 20, 2020, the final recommendations report was adopted by the Arkansas Legislative Council which contained the recommendations listed above.
 - During the development of the recommendations report, ARDOT was involved in 64 Interviews with 86 Key Subject Matter Experts and approximately 1,200 documents and data sets were submitted. ARDOT staff spent a total of 3,653 hours, which is equivalent to a full time employee working 1.8 years.
 - On November 17, 2021, ARDOT presented the rules that will be used to implement the recommendations to HCRAS. At this meeting, ARDOT requested and received permission to publish the rules for public comments.
 - During the public comment period, two comments were received which initiated a revision to the rule for implementation of a construction contractor performance measurement. The revision changes the makeup of the Contractor Performance Evaluation Committee to include two representatives from the highway contracting industry.
 - The revised rules were submitted to HCRAS at their April 21, 2022 meeting.

ARKANSAS HIGHWAY COMMISSION MEETING

December 7, 2022

10:00 a.m.

AGENDA ITEM NO. 6

Consultant Selection – Construction and Maintenance Activity Reporting System

BACKGROUND

Act 298 of 2019 required the Arkansas Legislative Council to conduct a study of the processes and functioning of the Arkansas Department of Transportation to identify areas of potential improvement within the overall functioning of the Department. The subcommittee recommended revising ARDOT's existing communication of construction project and maintenance activities to make communication less disjointed and easier to navigate.

The Arkansas Highway Commission adopted Minute Order 2022-047 in April 2022, which authorized the Director to issue a Request for Proposals (RFP) to retain the services of a qualified consultant to enhance communication through the Department's website with regard to construction projects and maintenance activities for the Department.

Proposals were received from five (5) firms in response to RFP No. 23-002R Construction Project and Maintenance Activity Reporting System, which was advertised for four (4) weeks beginning July 27, 2022. Those proposers were:

Baker Tilly US, LLP of Madison, Wisconsin
Cultivate Geospatial Solutions, LLC of Indianapolis, Indiana
Deloitte Consulting, LLP of Little Rock, Arkansas
Garver, LLC of North Little Rock, Arkansas
GeoDecisions (a division of Gannett Fleming, Inc.) of Camp Hill, Pennsylvania

Based on the Selection Committee's review, it is recommended that negotiations begin with the following proposer to provide implementation and annual maintenance services. A copy of the justification report and the authorizing Minute Order can be found on the following pages.

Garver, LLC of North Little Rock, Arkansas

RECOMMENDED ACTION

Motion that Garver, LLC, as recommended by the Evaluation Committee, be selected to provide implementation and annual maintenance services for a Construction Project and Maintenance Activity Reporting System.

ACTION TAKEN

*Commissioner Keith Gibson moved, Commissioner Marie Holder seconded, and the motion passed to accept the Staff's recommendation to enter into negotiations with the following firm to provide implementation and annual maintenance services for a Construction and Maintenance Activity Reporting System:

Garver, LLC – North Little Rock, Arkansas


**the aforementioned is an excerpt as recorded in the official Arkansas State Highway Commission meeting minutes of December 7, 2022*




INTEROFFICE MEMORANDUM

November 29, 2022

TO: Lorie H. Tudor P.E., Director

THROUGH: Randy Ort, Deputy Director and Chief Operating Officer 

FROM: Kevin Thornton, Assistant Chief - Administration 

SUBJECT: Consultant Selection

Act 298 of 2019 required the Arkansas Legislative Council to conduct a study of the processes and functioning of the Arkansas Department of Transportation to identify areas of potential improvement within the overall functioning of the Department. The subcommittee recommended revising ARDOT's existing communication of construction project and maintenance activities to make communication less disjointed and easier to navigate.

The Arkansas Highway Commission adopted Minute Order 2022-047 in April 2022, which authorized the Director to issue a Request for Proposals (RFP) to retain the services of a qualified consultant to enhance communication through the Department's website with regard to construction projects and maintenance activities for the Department.

Proposals were received from five (5) firms in response to RFP No. 23-002R Construction Project and Maintenance Activity Reporting System, which was advertised for four (4) weeks beginning July 27, 2022. Those proposers were:

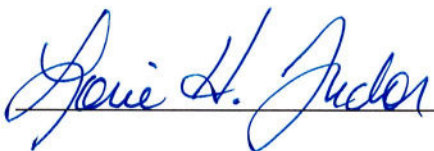
1. Baker Tilly US, LLP of Madison, Wisconsin
2. Cultivate Geospatial Solutions, LLC of Indianapolis, Indiana
3. Deloitte Consulting, LLP of Little Rock, Arkansas
4. Garver, LLC of North Little Rock, Arkansas
5. GeoDecisions (a division of Gannett Fleming, Inc.) of Camp Hill, Pennsylvania

The attached information is an evaluation of the technical proposals received. Based on the Selection Committee's review, it is recommended that negotiations begin with the following proposer to provide implementation and annual maintenance services:

Garver, LLC of North Little Rock, Arkansas

Your concurrence in this recommendation is requested.

Concur:

_____

Evaluation Committee:

Sharon Hawkins, Transportation Planning and Policy

Raymond Leung, Maintenance

Eric Simpson, Information Technology

Jamey Wilhite, Construction

Keli Wylie, Alternative Project Delivery - Chair

Attachment

KDT:klw

Evaluation of Proposals

RFP 23-002R Construction Project and Maintenance Activity Reporting System

Baker Tilly

- Above average staff
- Average general and professional reputation
- Did not demonstrate experience with projects of a similar nature
- Average sample dashboard
- Did not demonstrate previous work experience with ARDOT

Cultivate

- Above average staff
- Average general and professional reputation
- Above average experience with projects of a similar nature
- Average sample dashboard
- Demonstrated previous work experience with ARDOT

Deloitte

- Above average staff
- Average general and professional reputation
- Above average experience with projects of a similar nature
- Above average sample dashboard
- Did not demonstrate previous work experience with ARDOT

Garver

- Excellent staff
- Average general and professional reputation
- Above average experience with projects of a similar nature
- Above average sample dashboard
- Demonstrated excellent previous work experience with ARDOT

GeoDecisions

- Above average staff
- Average general and professional reputation
- Above average experience with projects of a similar nature
- Average sample dashboard
- Did not demonstrate previous work experience with ARDOT

CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM

Failure to complete all of the following information may result in a delay in obtaining a contract, lease, purchase agreement, or grant award with any Arkansas State Agency.

SUBCONTRACTOR: Yes No SUBCONTRACTOR NAME: _____

BIDDER INFORMATION: IS THIS FOR: Goods? Services? Both?

TAXPAYER ID NAME: **Garver, LLC**

YOUR LAST NAME: **Holder** FIRST NAME: **Jerry** M.I.: **D**

ADDRESS: **4701 Northshore Drive**

CITY: **North Little Rock** STATE: **AR** ZIP CODE: **72118** COUNTY: **Pulaski**

AS A CONDITION OF OBTAINING, EXTENDING, AMENDING, OR RENEWING A CONTRACT, LEASE, PURCHASE AGREEMENT, OR GRANT AWARD WITH ANY ARKANSAS STATE AGENCY, THE FOLLOWING INFORMATION MUST BE DISCLOSED:

FOR INDIVIDUALS*

Indicate below if: you, your spouse or the brother, sister, parent, or child of you or your spouse is a current or former: member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee:

Position Held	Mark (✓)		Name of Position of Job Held <small>(senator, representative, name of board/ commission, data entry, etc.)</small>	For How Long?		What is the person(s) name and how are they related to you? <small>(i.e., Jane Q. Public, spouse, John Q. Public, Jr., child, etc.)</small>	
	Current	Former		From MM/YY	To MM/YY	Person's Name(s)	Relation
General Assembly							
Constitutional Officer							
State Board or Commission Member							
State Employee							

None of the above applies

FOR AN ENTITY (BUSINESS)*

Indicate below if any of the following persons, current or former, hold any position of control or hold any ownership interest of 10% or greater in the entity: member of the General Assembly, Constitutional Officer, State Board or Commission Member, State Employee, or the spouse, brother, sister, parent, or child of a member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee. Position of control means the power to direct the purchasing policies or influence the management of the entity.

Position Held	Mark (✓)		Name of Position of Job Held <small>(senator, representative, name of board/ commission, data entry, etc.)</small>	For How Long?		What is the person(s) name and what is his/her % of ownership interest and/or what is his/her position of control?		
	Current	Former		From MM/YY	To MM/YY	Person's Name(s)	Ownership Interest (%)	Position of Control
General Assembly								
Constitutional Officer								
State Board or Commission Member								
State Employee								

None of the above applies

Contract and Grant Disclosure and Certification Form

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.


As an additional condition of obtaining, extending, amending, or renewing a contract with a state agency I agree as follows:

1. Prior to entering into any agreement with any subcontractor, prior or subsequent to the contract date, I will require the subcontractor to complete a **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM**. Subcontractor shall mean any person or entity with whom I enter an agreement whereby I assign or otherwise delegate to the person or entity, for consideration, all, or any part, of the performance required of me under the terms of my contract with the state agency.

2. I will include the following language as a part of any agreement with a subcontractor:

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this subcontract. The party who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the contractor.

3. No later than ten (10) days after entering into any agreement with a subcontractor, whether prior or subsequent to the contract date, I will mail a copy of the **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM** completed by the subcontractor and a statement containing the dollar amount of the subcontract to the state agency.

Signature		Title	Sr. Vice President, Treasurer	Date	09/06/2022
Vendor Contact Person	Jerry D. Holder, PE	Title	Sr. Vice President, Treasurer	Phone No.	501-537-3221

Agency Use Only			
Agency Name	Agency Contact Person	Contact Phone No.	Contract or Grant No.

RESTRICTION OF BOYCOTT OF ISRAEL CERTIFICATION

Pursuant to Arkansas Code Annotated § 25-1-503, a public entity **shall not** enter into a contract valued at \$1,000 or greater with a company unless the contract includes a written certification that the person or company is not currently engaged in and agrees for the duration of the contract not to engage in, a boycott of Israel.

By signing below, the Contractor agrees and certifies that they do not currently boycott Israel and will not boycott Israel during any time in which they are entering into, or while in contract, with any public entity as defined in § 25-1-503*. If at any time after signing this certification the contractor decides to engage in a boycott of Israel, the contractor must notify the contracting public entity in writing.

If a company does boycott Israel, see Arkansas Code Annotated § 25-1-503.

Name of public entity	Arkansas Department of Transportation
Description of product or service	Construction Project & Maintenance Activity Reporting System (RFP 23-002R)
Contractor name	Garver, LLC

Contractor Signature:  Date: 09/06/2022
Signature must be hand written, in ink

“Public Entity” means the State of Arkansas, or a political subdivision of the state, including all boards, commissions, agencies, institutions, authorities, and bodies politic and corporate of the state, created by or in accordance with state law or regulations, and does include colleges, universities, a statewide public employee retirement system, and institutions in Arkansas as well as units of local and municipal government.

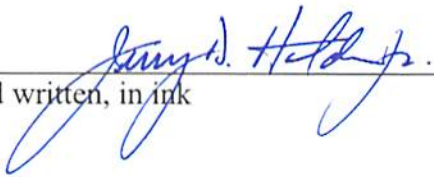
08102018

ILLEGAL IMMIGRANT CERTIFICATION

Pursuant to Arkansas Code Annotated § 19-11-105, Contractor(s) **shall** certify with OSP that they do not employ or contract with illegal immigrants.

By signing below, the Contractor agrees and certifies that they do not employ illegal immigrants and will not employ illegal immigrants during the remaining aggregate term of the contract.

Bid Number/Contract Number	RFP 23-002R
AASIS Number	N/A
Description	Construction Project & Maintenance Activity Reporting System
Contractor name	Garver, LLC

Contractor Signature: 
Signature must be hand written, in ink

Date: 09/06/2022

TSS Illegal Immigrant Contractor Disclosure Certification

TSS Illegal Immigrant Contractor Disclosure Certification View Submission Details

Vendor: Garver
Tax ID: 3400
Disclosure Statement: I certify that I **DO NOT** employ or contract with an illegal immigrant.
Contact E-mail: clgran@garverusa.com
Submitted on: 05-27-22

**Agreement
For
Professional Services
Arkansas Department of Transportation
Project No. 21T2010P**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made as of the Effective Date by and between the **Arkansas Department of Transportation** (hereinafter referred to as “**Owner**”), and **Garver, LLC** (hereinafter referred to as “**Garver**”). Owner and Garver may individually be referred to herein after as a “Party” and/or “Parties” respectively.

RECITALS

WHEREAS, Owner intends to develop Construction Reporting, Statewide Transportation Improvements, Planning Software, and Maintenance Reporting (the “**Project**”).

WHEREAS, Garver will provide professional Services related to the Project as further described herein.

NOW THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

In addition to other defined terms used throughout this Agreement, when used herein, the following capitalized terms have the meaning specified in this Section:

“**Effective Date**” means the date last set forth in the signature lines below.

“**Damages**” means any and all damages, liabilities, or costs (including reasonable attorneys’ fees recoverable under applicable law).

“**Hazardous Materials**” means any substance that, under applicable law, is considered to be hazardous or toxic or is or may be required to be remediated, including: (i) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, (ii) any chemicals, materials or substances which are now or hereafter become defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” or any words of similar import pursuant to applicable law; or (iii) any other chemical, material, substance or waste, exposure to which is now or hereafter prohibited, limited or regulated by any governmental instrumentality, or which may be the subject of liability for damages, costs or remediation.

“**Personnel**” means affiliates, directors, officers, partners, members, employees, and agents.

2. SCOPE OF SERVICES

2.1. Services. Owner hereby engages Garver to perform the scope of service described in Exhibit A attached hereto (“**Services**”). Execution of this Agreement by Owner constitutes Owner’s written authorization to proceed with the Services. In consideration for such Services, Owner agrees to pay Garver in accordance with Section 3 below.

3. PAYMENT

- 3.1. Fee. For the Services described under Section 2.1, Owner will pay Garver in accordance with this Section 3 and Exhibit B. Owner represents that funding sources are in place with the available funds necessary to pay Garver in accordance with the terms of this Agreement.
- 3.2. Invoicing Statements. Garver shall invoice Owner on a monthly basis. Such invoice shall include supporting documentation reasonably necessary for Owner to know with reasonable certainty the proportion of Services accomplished. The Owner's terms and conditions set forth in a purchase order (or any similar document) are expressly rejected.
- 3.3. Payment.
 - 3.3.1. Due Date. Owner shall pay Garver all undisputed amounts within thirty (30) days after receipt of an invoice. Owner shall provide notice in writing of any portion of an invoice that is disputed in good faith within fifteen (15) days of receipt of an invoice. Garver shall promptly work to resolve any and all items identified by Owner relating to the disputed invoice. All disputed portions shall be paid promptly upon resolution of the underlying dispute.
 - 3.3.2. If any undisputed payment due Garver under this Agreement is not received within forty-five (45) days from the date of an invoice, Garver may elect to suspend Services under this Agreement without penalty.
 - 3.3.3. Payments due and owing that are not received within thirty (30) days of an invoice date will be subject to interest at the lesser of a one percent (1%) monthly interest charge (compounded) or the highest interest rate permitted by applicable law.

4. AMENDMENTS

- 4.1. Amendments. Garver shall be entitled to an equitable adjustment in the cost and/or schedule for circumstances outside the reasonable control of Garver, including modifications in the scope of Services, applicable law, codes, or standards after the Effective Date ("Amendment"). As soon as reasonably possible, Garver shall forward a formal Amendment to Owner with backup supporting the Amendment. All Amendments should include, to the extent known and available under the circumstances, documentation sufficient to enable Owner to determine: (i) the factors necessitating the possibility of a change; (ii) the impact which the change is likely to have on the cost to perform the Services; and (iii) the impact which the change is likely to have on the schedule. All Amendments shall be effective only after being signed by the designated representatives of both Parties. Garver shall have no obligation to perform any additional services created by such Amendment until a mutually agreeable Amendment is executed by both Parties.

5. OWNER'S RESPONSIBILITIES

- 5.1. In connection with the Project, Owner's responsibilities shall include the following:
 - 5.1.1. Those responsibilities set forth in Exhibit A.
 - 5.1.2. Owner shall be responsible for all requirements and instructions that it furnishes to Garver pursuant to this Agreement, and for the accuracy and completeness of all

programs, reports, data, and other information furnished by Owner to Garver pursuant to this Agreement. Garver may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing Services under this Agreement, subject to any express limitations or reservations applicable to the furnished items as further set forth in Exhibit A.

5.1.3. Owner shall give prompt written notice to Garver whenever Owner observes or otherwise becomes aware of the presence at the Project site of any Hazardous Materials or any relevant, material defect, or nonconformance in: (i) the Services; (ii) the performance by any contractor providing or otherwise performing construction services related to the Project; or (iii) Owner's performance of its responsibilities under this Agreement.

6. GENERAL REQUIREMENTS

6.1. Standards of Performance.

6.1.1. Industry Practice. Garver shall perform any and all Services required herein in accordance with generally accepted practices and standards employed by the applicable United States professional services industries as of the Effective Date practicing under similar conditions and locale. Such generally accepted practices and standards are not intended to be limited to the optimum practices, methods, techniques, or standards to the exclusion of all others, but rather to a spectrum of reasonable and prudent practices employed by the United States professional services industry.

6.1.2. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Garver's services. Garver shall promptly correct deficiencies in technical accuracy without the need for an Amendment unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

6.1.3. On-site Services. Garver and its representatives shall comply with Owner's and its separate contractor's Project-specific safety programs, which have been provided to Garver in writing in advance of any site visits.

6.1.4. Relied Upon Information. Garver may use or rely upon design elements and information ordinarily or customarily furnished by others including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

6.1.5. [Not Used].

6.1.6. In no event is Garver acting as a "municipal advisor" as set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission. Garver's Services expressly do not include providing advice pertaining to insurance, legal, finance, surety-bonding, or similar services.

6.2. Instruments of Service.

6.2.1. Deliverables. All reports, specifications, record drawings, models, data, and all other information provided by Garver or its subconsultants, which is required to be delivered to Owner under Exhibit A (the “**Deliverables**”), shall become the property of Owner subject to the terms and conditions stated herein. Notwithstanding anything in this Agreement to the contrary, Garver shall have no obligation to deliver the Deliverables to Owner until payment has been received for the same.

6.2.2. Electronic Media. Owner hereby agrees that all electronic media, including CADD files (“**Electronic Media**”), are tools used solely for the preparation of the Deliverables. Upon Owner’s written request, Garver will furnish to Owner copies of Electronic Media to the extent included as part of the Services. In the event of an inconsistency or conflict in the content between the Deliverables and the Electronic Media, however, the Deliverables shall take precedence in all respects. Electronic Media is furnished without guarantee of compatibility with the Owner’s software or hardware. Because Electronic Media can be altered, either intentionally or unintentionally, by transcription, machine error, environmental factors, or by operators, it is agreed that, to the extent permitted by applicable law, Owner shall indemnify and hold Garver, Garver’s subconsultants, and their Personnel harmless from and against any and all claims, liabilities, damages, losses, and costs, including, but not limited to, costs of defense arising out of changes or modifications to the Electronic Media form in Owner’s possession or released to others by Owner. Garver’s sole responsibility and liability for Electronic Media is to furnish a replacement for any non-functioning Electronic Media for reasons solely attributable to Garver within thirty (30) days after delivery to Owner. Notwithstanding the foregoing, Section 6.8 shall take precedence as it relates to the Software Services, if any.

6.2.3. Property Rights. All intellectual property rights of a Party, including copyright, patent, and reuse (“**Intellectual Property**”), shall remain the Intellectual Property of that Party. Garver shall obtain all necessary Intellectual Property from any necessary third parties in order to execute the Services. Any Intellectual Property of Garver or any third party embedded in the Deliverables shall remain so imbedded and may not be separated therefrom.

6.2.4. License. Except for Intellectual Property which is used to provide the Software Services (if any) to Owner, 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. To the extent permitted by applicable law, Owner shall indemnify and hold Garver, Garver’s subconsultants, and their Personnel harmless from and against any and all claims, liabilities, damages, losses, and costs, including but not limited to costs of defense arising out of Owner’s use of the Intellectual Property contrary to the rights permitted herein.

6.3. Opinions of Cost. [Not Used].

6.4. Underground Utilities. [Not Used].

6.5. Design without Construction Phase Services. [Not Used].

6.6. Hazardous Materials. Nothing in this Agreement shall be construed or interpreted as requiring Garver to assume any role in the identification, evaluation, treatment, storage, disposal, or transportation of any Hazardous Materials. Notwithstanding any other provision to the contrary in this Agreement and to the fullest extent permitted by law, Owner shall indemnify and hold Garver and Garver's subconsultants, and their Personnel harmless from and against any and all losses which arise out of the performance of the Services and relating to the regulation and/or protection of the environment including without limitation, losses incurred in connection with characterization, handling, transportation, storage, removal, remediation, disturbance, or disposal of Hazardous Material, whether above or below ground.

6.7. Confidentiality. Subject to the Freedom of Information Act and its exemptions, Owner and Garver shall consider: (i) all information provided by the other Party that (a) is marked as "Confidential Information" or "Proprietary Information," (b) is identified as confidential pursuant to this Section 6.7 in writing promptly after being disclosed verbally, or (c) reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure; and (ii) all documents resulting from Garver's performance of Services to be confidential information (collectively "**Confidential Information**"). The Party receiving the Confidential Information will use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the other Party for any purpose not contemplated by this Agreement. The Party receiving the Confidential Information will use the same degree of care that it uses to protect its own confidential information of a like nature, but not less than a reasonable degree of care, to limit access to Confidential Information of other Party to those of its employees and contractors who need such access for purposes contemplated under this Agreement and who are legally or contractually bound to protect the Confidential Information as provided in this Section. 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. The Party receiving the Confidential Information may disclose Confidential Information to the extent required by law or court order. The Party receiving the Confidential Information will, if legally permitted, notify the other Party in advance of any such disclosure and cooperate reasonably with such Party in seeking available protection for the Confidential Information. 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. Notwithstanding the foregoing, the confidentiality obligations for Confidential Information of Garver which pertains to the Software Services shall not expire. Nothing herein shall be interpreted as prohibiting Garver from disclosing general information regarding the Project for future marketing purposes.

6.8. Software Services. The Services include the Internet-based Software Services specified in the Exhibit A attached to this Agreement. This Agreement governs the provision of the

Software Services by Garver and the access to, and usage of Software Services by Owner. Sections 6.8.1 through 6.8.7 below apply specifically to the Software Services.

6.8.1. Use of Software Services.

6.8.1.1. Owner Owned Data. All electronic data and information authorized by Owner to be uploaded by the Software Services (“**Owner Data**”) remains the property of Owner, as between Garver and Owner. Owner grants Garver the right to use the Owner Data solely for purposes of performing under this Agreement. Owner may export its Owner Data as allowed by functionality within the Software Services.

6.8.1.2. Owner Responsibilities. Owner (i) will keep its passwords secure and confidential and use industry-standard password management practices; (ii) is primarily responsible for Owner Data and all activity in its Software Services accounts; (iii) will use commercially reasonable efforts to prevent unauthorized access to its account and notify Garver promptly of any such unauthorized access; and (iv) may use the Software Services only in accordance with the Software Services’ technical documentation and applicable law.

6.8.1.3. Garver Support. Garver will provide Owner support for the Software Services under the terms of Garver’s Owner Support Policy (“**Support**”), which is attached hereto as Exhibit G. Garver will provide Owner with thirty (30) days’ advanced written notice prior to making any change to Garver’s Owner Support Policy.

6.8.2. Warranty.

6.8.2.1. Warranty. Garver warrants to Owner that the Software Services will perform as described in the Software Services’ technical documentation. Owner’s exclusive remedy and Garver’s sole obligation for Garver’s breach of the warranty as described in the “Termination for Material Breach” and “Effect of Termination” sections below.

6.8.2.2. DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL SOFTWARE SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE,” AND GARVER DISCLAIMS IN THEIR ENTIRETY ALL WARRANTIES, WHETHER STATUTORY, EXPRESS, OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. GARVER DOES NOT WARRANT OR GUARANTEE THAT SOFTWARE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR INVULNERABLE. THE SOFTWARE SERVICES MAY INCLUDE GATEWAYS, LINKS OR OTHER FUNCTIONALITY THAT ALLOWS OWNER TO ACCESS THIRD-PARTY SERVICES, CONTENT, AND MATERIAL. GARVER DOES NOT SUPPLY AND IS NOT RESPONSIBLE FOR ANY THIRD-PARTY SERVICES, CONTENT, OR MATERIAL, WHICH MAY BE SUBJECT TO THEIR OWN LICENSE, END-USER AGREEMENTS, PRIVACY AND SECURITY POLICIES AND TERMS OF USE. ALL THIRD-PARTY SERVICES, CONTENT, AND MATERIALS ARE PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT WARRANTIES OF ANY KIND FROM GARVER.

6.8.2.3. OWNER ACKNOWLEDGES AND AGREES THAT GARVER DOES NOT OPERATE OR CONTROL THE INTERNET AND THAT (i) VIRUSES, WORMS, TROJAN HORSES, OR OTHER UNDESIREABLE DATA OR SOFTWARE; OR (ii)

UNAUTHORIZED THIRD PARTIES (e.g. HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE OWNER'S DATA, WEBSITES, COMPUTERS OR NETWORKS. GARVER WILL NOT BE LIABLE FOR SUCH ACTIVITIES NOR WILL SUCH ACTIVITIES CONSTITUTE A BREACH BY GARVER OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

6.8.3. Data Security. Garver will (i) implement and maintain appropriate security measures, including, without limitation, technical, physical, administrative and organizational controls, designed to maintain the confidentiality, security, and integrity of Owner's Confidential Information, including Owner Data; (ii) implement and maintain systems and procedures for detecting, preventing and responding to attacks, intrusions, and system failures, and regularly test and monitor the effectiveness of such systems and procedures (including through vulnerability scans and penetration testing); (iii) designate employees to coordinate implementation and maintenance of its security; and (iv) identify internal and external risks to the security, confidentiality, and integrity of Owner Data that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of Owner's Confidential Information, including Owner Data, and assess the sufficiency of systems and procedures in place to control these risks (collectively, "Security Measures"). More information on Garver's security practices and policies is set forth in Exhibit I attached hereto.

6.8.4. Data Breach. If Garver becomes aware that Owner Data was accessed or disclosed in breach of this Agreement, Garver will so notify Owner without undue delay, promptly act to mitigate the breach and preserve forensic evidence, and provide information to Owner regarding the nature and scope of the breach.

6.8.5. Garver Property.

6.8.5.1. Reservation of Rights. Garver and its licensors are and remain the sole owners of the Software Services and their underlying software, including all intellectual property rights therein. Owner may not remove or modify any proprietary marking or restrictive legend in the Software Services. Garver reserves all rights not expressly granted in this Agreement.

6.8.5.2. Hosting. To the extent set forth in the Services, Garver shall host the Software Services for the benefit of the Owner on servers owned, controlled, leased, or otherwise licensed by Garver. In such event, Owner is solely responsible for connection of Owner's system to a telecommunication service that provides Internet access for purposes of Garver's access and use of the Software Services.

6.8.5.3. Restrictions. Owner may not (i) sell, resell, rent, transfer, assign, or lease the Software Services or use them in a service provider capacity, (ii) use the Software Services in a manner that violates applicable law, rules, regulations and/or ordinances, (iii) to store or transmit infringing, unsolicited marketing emails, libelous, unlawful or tortious material, or to store or transmit material in violation of third-party rights, (iv) interfere with or disrupt the integrity or performance of the Software Services, (v) attempt to gain unauthorized access to the Software Services or their related systems or networks, (vi) reverse engineer, disassemble, or decompile the Software Services except as otherwise required by law, (vii) allow others to use the Software Services for the benefit of any third party, or (viii) access the Software Services to build a competitive service or product, or copy any feature, function or graphic for competitive purposes. Garver may suspend Software

Services to Owner if Garver believes in good faith that Owner's use of the Software Services poses an imminent threat to the security, availability, or legality of the Software Services; in such event, Garver will work with Owner to address the issue and restore Software Services as quickly as possible.

6.8.5.4. Statistical Information. Garver may compile statistical information related to the performance of the Software Services, and may make such information publicly available so long as such information is aggregated and anonymized and provides no means to identify or re-identify Owner, any individual or any Owner Confidential Information, including any Owner Data. Garver retains all intellectual property rights in such information.

6.8.6. Liability Limits. In addition to the liability limits otherwise provided for in this Agreement, the following provisions shall apply to the Software Services.

6.8.6.1. TOTAL LIMIT ON LIABILITY. TO THE MAXIMUM EXTENT ALLOWED BY LAW, EACH PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THE SOFTWARE SERVICES (WHETHER IN CONTRACT, TORT OR OTHERWISE) SHALL BE LIMITED TO DIRECT DAMAGES ACTUALLY INCURRED AND SHALL NOT EXCEED THE AMOUNT PAID BY OWNER TO GARVER FOR THE SOFTWARE SERVICES ONLY WITHIN THE 12-MONTH PERIOD BEFORE THE EVENT THAT GAVE RISE TO THE LIABILITY. NOTHING IN THIS "LIABILITY LIMIT" SECTION WILL LIMIT OWNER'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.

6.8.6.2. EXCEPTIONS. THE LIMITATIONS OF LIABILITY SET FORTH IN SECTION 6.8.6 DO NOT APPLY TO A CLAIM BY A (I) PARTY BASED ON GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD OF THE OTHER PARTY, OR (II) THIRD PARTY INVOLVING AN INTELLECTUAL PROPERTY RIGHT UNDER THE INDEMNIFICATION OBLIGATIONS OF SECTION 9.1, OR (III) PARTY BASED ON BREACH OF AN OBLIGATION UNDER SECTION 6.7, PROVIDED IN NO EVENT WILL A PARTY'S TOTAL AGGREGATE LIABILITY FOR (II) AND (III) EXCEED THREE (3) TIMES THE ANNUAL FEE PAID BY OWNER TO GARVER FOR THE SOFTWARE SERVICES ONLY IN THE 12 MONTHS BEFORE THE EVENT THAT GAVE RISE TO THE CLAIM.

6.8.7. Third-Party Claims for Infringement. Should the Software Services become, or be likely to become in Garver's reasonable opinion, the subject of any claim that infringes, violates, or constitutes a wrongful use of intellectual property rights, Garver will, at its option: (i) procure for Owner the necessary rights to continue to use the infringing material, or (ii) replace or modify the potentially infringing material to make them non-infringing, but functionally equivalent. If Garver determines that none of these options are reasonably available, then Garver may terminate the Software Services and refund any prepaid and unused fees. *Exclusions*. Garver has no obligation to the extent a claim arises from: Garver's compliance with Owner's specifications; a combination of the Software Services with other technology or aspects where the infringement would not occur but for the combination; Owner Data; or technology or aspects not provided by Garver. THIS SECTION CONTAINS OWNER'S EXCLUSIVE REMEDIES AND GARVER'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT.

7. INSURANCE

7.1. Insurance.

7.1.1. Garver shall procure and maintain insurance as set forth in Exhibit C until completion of the Service. Upon request, Garver shall name Owner as an additional insured on Garver's General Liability policy to the extent of Garver's indemnity obligations provided in Section 9 of this Agreement.

7.1.2. Upon request, Garver shall furnish Owner a certificate of insurance evidencing the insurance coverages required in Exhibit C.

8. DOCUMENTS [Not Used]

9. INDEMNIFICATION / WAIVERS

9.1. Indemnification.

9.1.1. Garver Indemnity. Subject to the limitations of liability set forth in Sections 6.8.6 and 9.2, Garver agrees to indemnify and hold Owner, and Owner's Personnel harmless from 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.

9.1.2. Owner Indemnity. Subject to the limitations of liability set forth in Sections 6.8.6 and 9.2, Owner agrees to indemnify and hold Garver and Garver's subconsultants and their Personnel harmless from Damages due to bodily injury (including death) or third-party tangible property damage to the extent caused by the negligent acts, errors, or omissions of Owner or any other party for whom Owner is legally liable, in the performance of Owner's obligations under this Agreement.

9.1.3. In the event claims or Damages are found to be caused by the joint or concurrent negligence of Garver and the Owner, they shall be borne by each Party in proportion to its own negligence.

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

9.2.1. The Parties agree that any claim or suit for Damages made or filed against the other Party will be made or filed solely against Garver or Owner respectively, or their successors or assigns, and that no Personnel shall be personally liable for Damages under any circumstances. In no way does Owner waive its sovereign immunity by any provision in this Agreement and any such claims will be under the absolute jurisdiction of the Arkansas Claims Commission pursuant to Ark. Code Ann. § 19-10-204.

9.2.2. Mutual Waiver. To the fullest extent permitted by law, neither Owner, Garver, nor their respective Personnel shall be liable for any consequential, special, incidental, indirect, punitive, or exemplary damages, or damages arising from or in connection with loss of use, loss of revenue or profit (actual or anticipated), loss by reason of shutdown or non-operation, increased cost of construction, cost of capital, cost of replacement power or customer claims, and Owner hereby releases Garver, and Garver releases Owner, from any such liability.

9.2.3. Limitation. In recognition of the relative risks and benefits of the Project to both the Owner and Garver, Owner hereby agrees that Garver's and its Personnel's total liability under the Agreement for all services other than the Software Services (if any) shall be limited to one hundred percent (100%) of Garver's fee set forth in Exhibit B (excluding fees for the Software Services). The liability limit as it relates to the Software Services is set forth in Section 6.8.6 above.

9.2.4. No Other Warranties. No other warranties or causes of action of any kind, whether statutory, express or implied (including all warranties of merchantability and fitness for a particular purpose and all warranties arising from course of dealing or usage of trade) shall apply. Owner's exclusive remedies and Garver's only obligations arising out of or in connection with defective Services (patent, latent or otherwise), whether based in contract, in tort (including negligence and strict liability), or otherwise, shall be those stated in the Agreement.

9.2.5. The limitations set forth in Section 9.2 apply regardless of whether the claim is based in contract, tort, or negligence including gross negligence, strict liability, warranty, indemnity, error and omission, or any other cause whatsoever.

10. Litigation Assistance

10.1. Litigation Assistance. This Agreement does not include costs of Garver for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by Owner, unless litigation assistance has been expressly included as part of Services. In the event Owner requests such services of Garver, this Agreement shall be amended in writing by both Owner and Garver to account for the additional services and resulting cost in accordance with Section 4.

11. TERMINATION

11.1. Termination for Convenience. Owner shall have the right at its sole discretion to terminate this Agreement for convenience at any time upon giving Garver ten (10) days' written notice. In the event of a termination for convenience, Garver shall bring any ongoing Services to an orderly cessation. Owner shall compensate Garver in accordance with Exhibit B for: (i) all Services performed and reasonable costs incurred by Garver on or before Garver's receipt of the termination notice, including all outstanding and unpaid invoices, and (ii) all costs reasonably incurred to bring such Services to an orderly cessation.

11.2. Termination for Cause. This Agreement may be terminated by either Party in the event of failure by the other Party to perform any material obligation in accordance with the terms hereof. Prior to termination of this Agreement for cause, the terminating Party shall provide at least seven (7) business days written notice and a reasonable opportunity to cure to the non-performing Party. In all events of termination for cause due to an event of default by the Owner, Owner shall pay Garver for all Services properly performed prior to such termination in accordance with the terms, conditions and rates set forth in this Agreement.

11.3. Termination/Suspension of Software Services (if any).

Notwithstanding Sections 11.1 and 11.2, the following Sections apply to the Software Services:

11.3.1. Term of this Agreement. The term of this Agreement as it relates to the Software Services begins on the Effective Date and continues until terminated in writing by a Party as provided herein.

11.3.2. [Reserved].

11.3.3. Termination for Material Breach. If either Party is in material breach of this Agreement, the other Party may terminate this Agreement at the end of a written thirty (30) day notice/cure period, if the breach has not been cured.

11.3.4. Return of Owner Data. Within fifteen (15) days after termination, upon written request, Garver will make the Software Services available for Owner to export Owner Data. After such fifteen (15) day period, Garver has no obligation to maintain the Owner Data and may destroy the Owner Data after termination unless otherwise required by law.

11.3.5. Effect of Termination. If this Agreement is terminated for Garver's breach, Garver will refund Owner fees prepaid for the remainder of the term after the termination effective date. If this Agreement is terminated for Owner's breach, Owner will pay any unpaid fees through expiration of the term as may be extended. Upon request following any termination of this Agreement, each Party will destroy or return all the other Party's property that it holds, subject to the "Return of Owner Data" section above. The foregoing remedies are in addition to, and not in limitation of, any other remedy or right available to the non-breaching Party at law or in equity.

11.3.6. Suspension of Access to Hosted Services. Garver may suspend Owner's access to the hosted Software Services (in whole or in part) for any of the following reasons: (i) Owner is past due in making any payments due hereunder, (ii) to prevent damage to or degradation of the hosted Software Services systems; (iii) to comply with any law, court order, or other governmental request; (iv) to otherwise protect the Software Services from potential legal liability, (v) if Owner violates the terms of the Agreement and fails to remedy such breach within the time set forth herein. Garver shall use reasonable efforts to notify Owner before or promptly following suspension of access to the hosted Software Services.

11.4. Termination in the Event of Bankruptcy. Either Party may terminate this Agreement immediately upon notice to the other Party, and without incurring any liability, if the non-terminating Party has: (i) been adjudicated bankrupt; (ii) filed a voluntary petition in bankruptcy or had an involuntary petition filed against it in bankruptcy; (iii) made an assignment for the benefit of creditors; (iv) had a trustee or receiver appointed for it; (v) becomes insolvent; or (vi) any part of its property is put under receivership.

12. MISCELLANEOUS

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

12.2. Successors and Assigns. Owner and Garver each bind themselves and their successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; neither Owner nor Garver shall assign, sublet, or transfer their interest in this

Agreement without the written consent of the other, which shall not be unreasonably withheld or delayed.

- 12.3. Independent Contractor. Garver is and at all times shall be deemed an independent contractor in the performance of the Services under this Agreement.
- 12.4. No Third-Party Beneficiaries. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than Owner and Garver. This Agreement does not contemplate any third-party beneficiaries.
- 12.5. Entire Agreement. This Agreement constitutes the entire agreement between Owner and Garver and supersedes all prior written or oral understandings and shall be interpreted as having been drafted by both Parties. This Agreement may be amended, supplemented, or modified only in writing by and executed by both Parties.
- 12.6. Severance. The illegality, unenforceability, or occurrence of any other event rendering a portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision of this Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.
- 12.7. Export Compliance. The Software Services and Confidential Information may be subject to export laws and regulations of the United States, including but not limited to, U.S. Department of Commerce, the U.S. Department of Treasury Office of Foreign Asset Controls, and other jurisdictions. Each Party represents that it is not named on any U.S. government denied-party list, including but not limited to the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders. Neither Party will permit its personnel or representatives to access any Software Service in a U.S.-embargoed country or in violation of any applicable export law or regulation.
- 12.8. Anti-Corruption. The Parties shall comply with all applicable laws relating to anti-bribery and anti-corruption. Each Party represents that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate this restriction provided other restrictions may apply.
- 12.9. No Additional Terms. Garver rejects additional or conflicting terms of any Owner form-purchasing document.
- 12.10. Survival of Terms. Any terms that by their nature survive termination of this Agreement for a party to assert its rights and receive the protections of this Agreement, will survive (including, without limitation, the confidentiality and ownership terms within this Agreement). The UN Convention on Contracts for the International Sale of Goods does not apply.
- 12.11. Feedback. If Owner provides feedback or suggestions about the Software Services, then Garver (and those it allows to use its technology) may use such information without obligation to Owner.
- 12.12. Notices. Notices under this Agreement will be written and be effective on (i) personal delivery, (ii) confirmed delivery by nationally recognized courier service, or (iii), except for notices of breach or an indemnifiable claim, the day sent by email.

Notices to Owner will be addressed to,
Arkansas Department of Transportation
P.O. Box 2261
Little Rock, AR 72203-2261
Attn: Ms. Keli Wylie, PE

Notices to Garver will be addressed to,
Garver, LLC
4701 Northshore Drive
North Little Rock, AR 72118
Attn: Jerry D. Holder, Jr., PE

12.13. Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together constitute one Agreement. Delivery of an executed counterpart of this Agreement by fax or transmitted electronically in legible form, shall be equally effective as delivery of a manually executed counterpart of this Agreement.

13. EXHIBITS

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

Exhibit A – Scope of Services
Exhibit B – Compensation Schedule
Exhibit C – Insurance
Exhibit D – [Not Used]
Exhibit E – [Not Used]
Exhibit F – [Not Used]
Exhibit G – [REDACTED]
Exhibit H – [Not Used]
Exhibit I – [REDACTED]

If there is an express conflict between the provisions of this Agreement and any Exhibit hereto, the terms of this Agreement shall take precedence over the conflicting provisions of the Exhibit.

Owner and Garver, by signing this Agreement, acknowledges that they have independently assured themselves and confirms that they individually have examined all Exhibits, and agrees that all of the aforesaid Exhibits shall be considered a part of this Agreement and agrees to be bound to the terms, provisions, and other requirements thereof, unless specifically excluded.

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

[Signature Page to Follow]

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

Arkansas Department of Transportation

Garver, LLC

By: _____
Signature

By: 

Signature

Name: _____
Printed Name

Name: Jerry D. Holder, Jr., PE
Printed Name

Title: _____

Title: Senior Vice President

Date: _____

Date: 04-10-2023

Attest: _____

Attest: 

**EXHIBIT A
(SCOPE OF SERVICES)**

I. Phase 1 Scope: Construction Project Reporting

This document outlines the work to be completed as required by the RFP. Garver will collect/ validate and process the data required to develop a two-page report on Construction projects. The report will include all active projects in construction within the state of Arkansas. The first page of the report will be the summary, this will have an interactive map of the projects within the state, filters to isolate groups of projects, links to GovQA and email signup for updates, the second report will be a project overview similar to the Highway Commission Review and Advisory report. Both Reports will be accessible through the IDrive website currently hosted by ArDOT.

A. Summary Report Requirements

- Interactive Arkansas state map, including county boundaries and all routes maintained by ARDOT.
- Project number, location, and overview, overview Contractor information
- Beginning/estimated completion dates.
- Project performance, including construction progress and schedule graphics.
- Travel impacts/news release link
- Recent/upcoming activities
- Links to project cameras
- Link for Sign-up for email project updates
- Link for GovQA
- Bid information, including award amount.
- Filter by:
 - ArDOT District
 - project amount,
 - county,
 - route,
 - contractor,
 - estimated completion date,
 - type of work,
 - state legislation and federal congressional districts

B. Project Report Requirements

- Recent/upcoming activities
- Project number, location, and overview, overview Contractor information
- Interactive Arkansas state map, including county boundaries where the project exist
- Contractor Performance
- Estimated Completion Date
- Time – Calendar Days
- Change Order information (Additional Days)
- Cost Data (Contract, Current Contract, Paid, Remaining)
- Funding
- ArDOT District

- Owner to provide geometry representing linear project limits in a GIS format for both annual refresh cycles and additional project additions. Attributes will include one or more unique IDs allowing for data lookup against non-GIS tabular data.
- Front-end documents of STIP (Introduction, Glossary, etc.)

III. Phase 3 Scope: Maintenance Activity Reporting

Scope of this report is to make the public aware of maintenance activities that are occurring on the State maintained roads/highways within the state of Arkansas. The report will be accessible on the IDRIVE website for public accessibility.

A. Summary Report Requirements

- Interactive Arkansas state map, including county boundaries and all routes maintained by ARDOT.
- Travel impacts/news release link
- Recent/upcoming activities
- Links to project cameras
- Filter by:
 - ArDOT District
 - project amount,
 - county,
 - route,
 - Estimated Completion Date,
 - type of work,
 - congressional district, and/or legislator.

B. Project Report Requirements

- Recent/upcoming activities
- Estimated Completion Date
- Time – Calendar Days, Weeks or Month
- ArDOT District
- county,
- route,
- type of work,
- congressional district, and/or legislator
- Notes/Summary narrative of ongoing issues

C. Data Access Requirements

The list of required systems is not limited to the following:

- IDrive Arkansas website
- MMIS system
- GIS system (Arnold)

**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
Phase 1 (Construction Reporting)	██████████ (Not-to-Exceed)	MARKUP
Phase 2 (██████████ Software) *	██████████	LUMP SUM
Phase 3 (Maintenance Reporting) **	██████████ (Not-to-Exceed)	MARKUP
TOTAL FEE	██████████	

* The lump sum amount to be paid under this Agreement is ██████████ for year one for the Phase 2 Services described above. Maintenance for years two and three will be ██████████, which is included in the fee amount above. For informational purposes, a breakdown is included in this Exhibit B.

For the Phase 1 and Phase 3 Services, the Owner will pay Garver at the unburdened hourly payroll rate of each of Garver's personnel during the performance of these Services, plus payroll and general overhead costs of ██████████ of the unburdened hourly rate, plus direct and reimbursable expenses normal and necessary for the completion of the Services. 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.

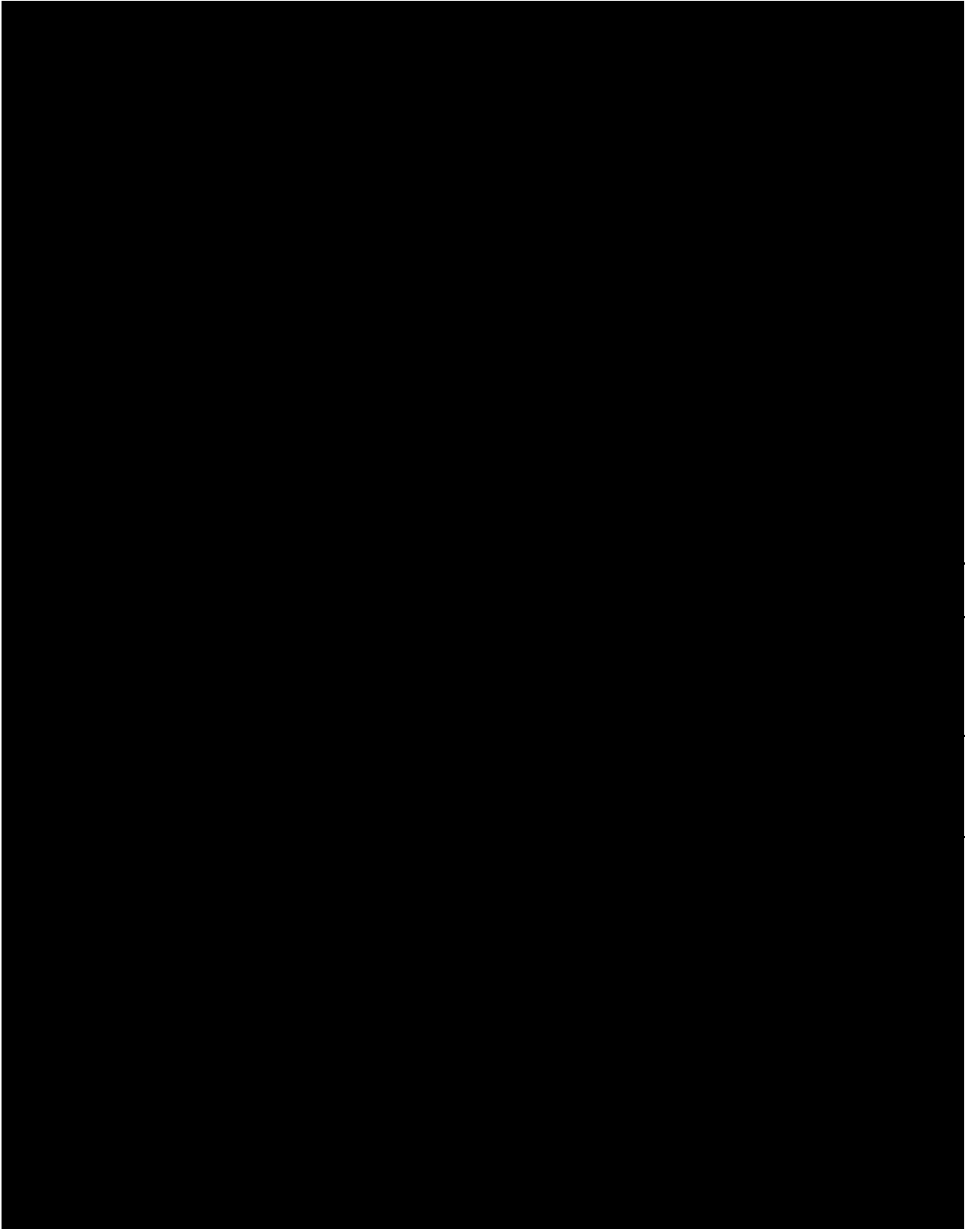
** The Department is currently developing an MMS system Garver will link into. Since the MMS is not finalized at the time of this contract, this fee for Phase 3 is an estimate based on our best information about the implementation of the MMS.

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/burden for each of the classifications included, plus reimbursable expenses, including but not limited to, printing, courier services, reproduction, travel, etc.

**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 Each Occurrence	\$1,000,000
Aggregate	\$2,000,000
Professional Liability Each Claim Made	\$1,000,000
Annual Aggregate	\$2,000,000
Excess of Umbrella Liability Per Occurrence	\$1,000,000
General Aggregate	\$1,000,000



pany

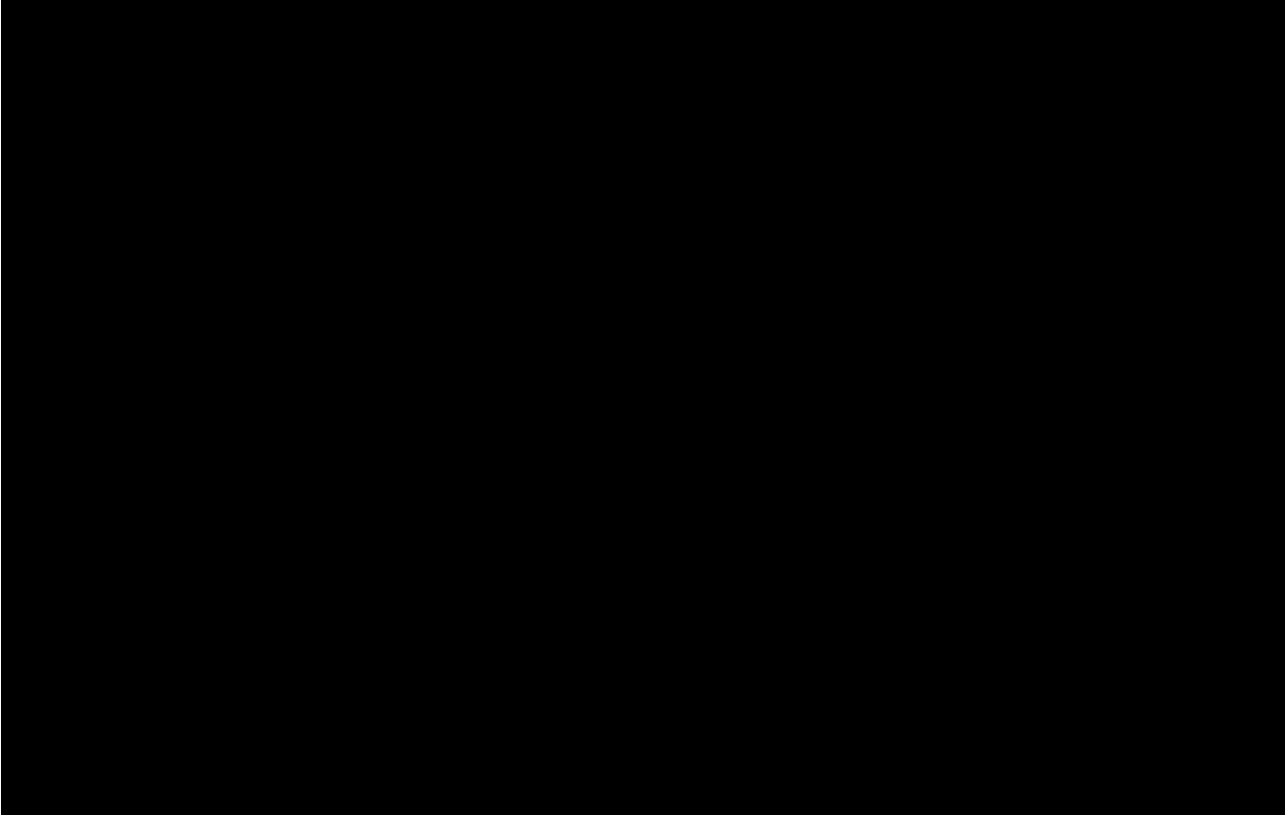
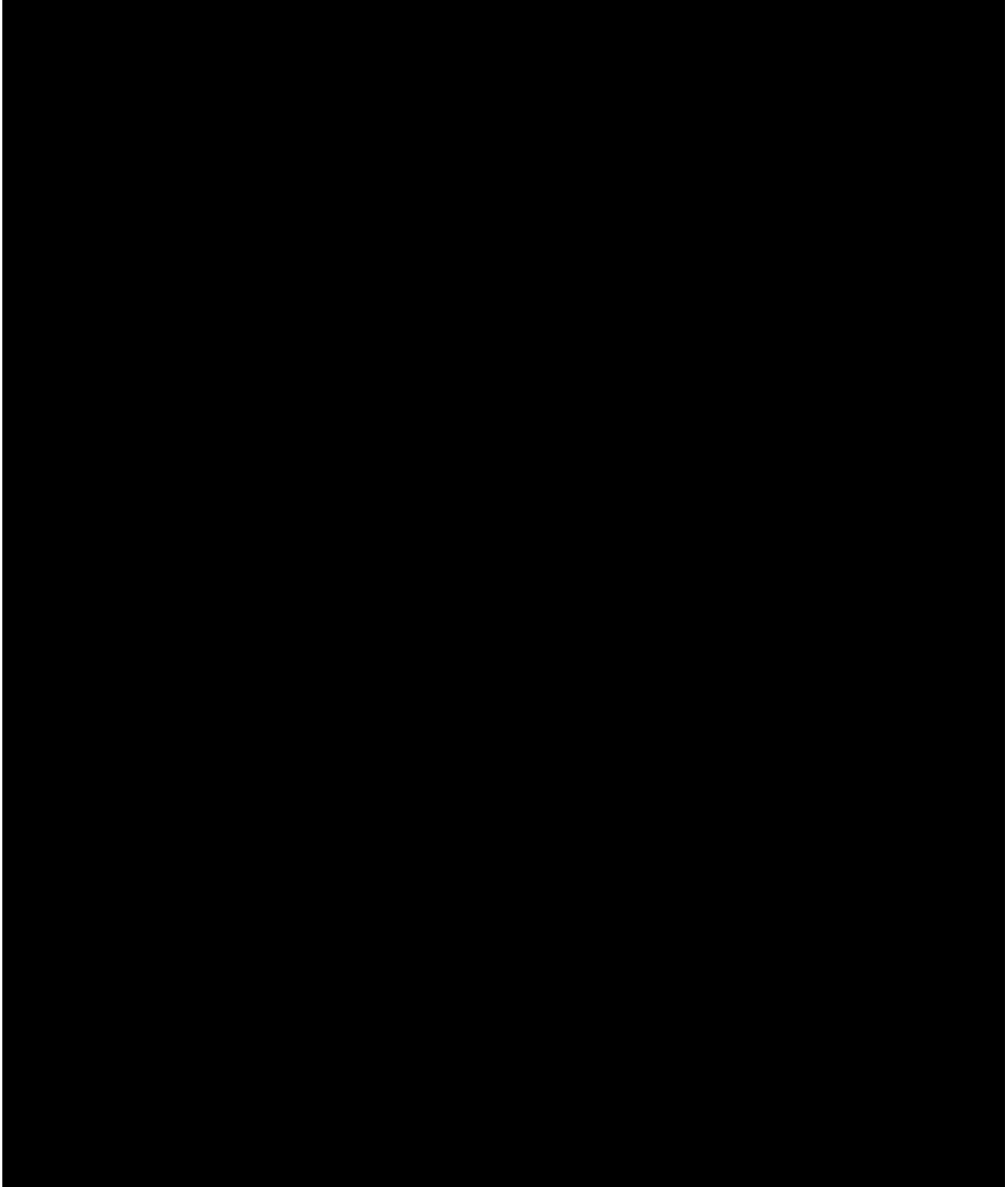
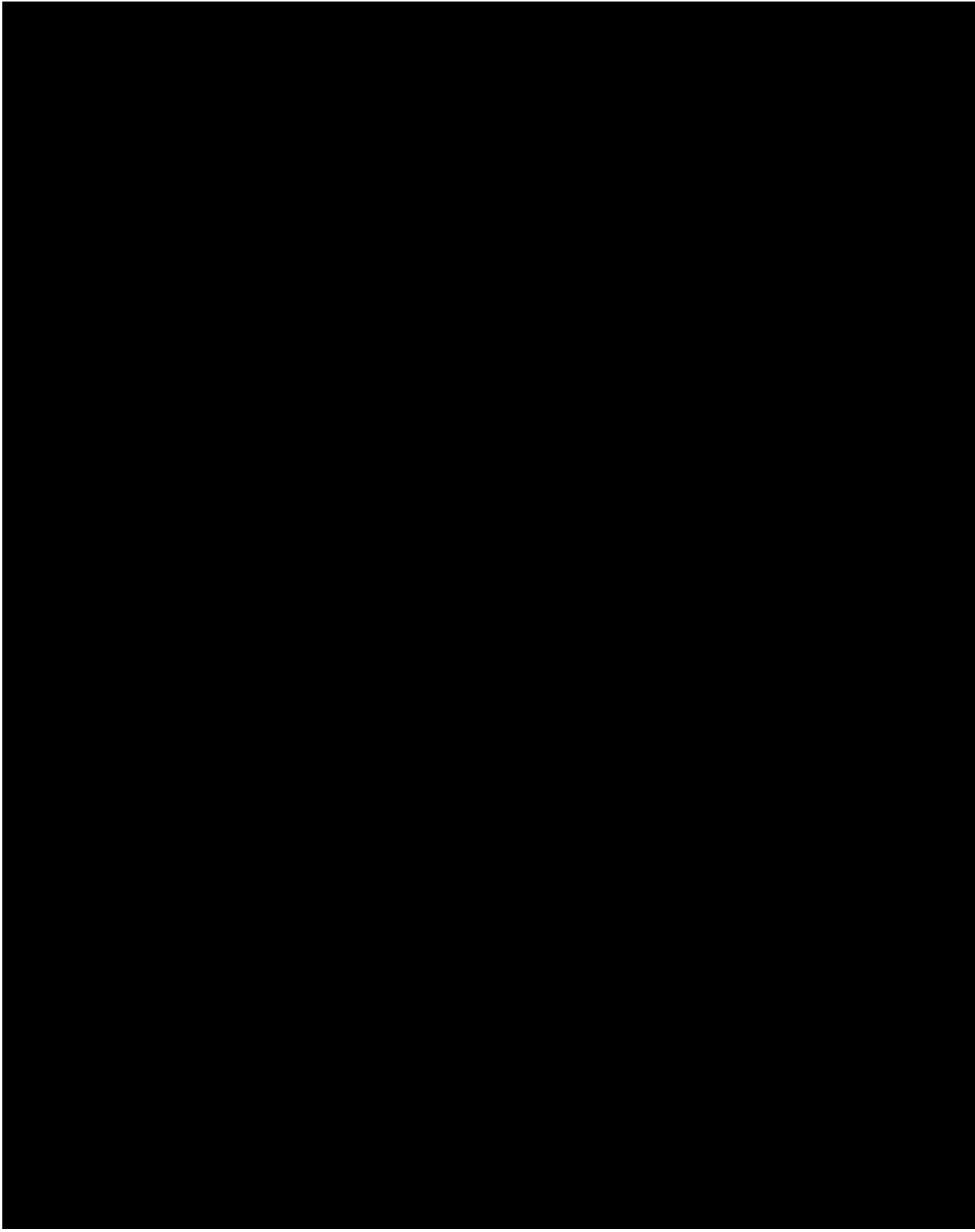


EXHIBIT I





ATTACHMENT A

ELIGIBLE BIDDER CERTIFICATION

The Bidder represents and warrants for itself, its employees and its subcontractors and certifies they:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this Bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph two (2) of this Certification;
4. Have not within a one-year period preceding this application/Bid had one or more public transactions (Federal, State, or local) terminated for cause or default; and

The Bidder represents, warrants and acknowledges the understanding that restrictions placed on the employment of labor or on the scale of pay for the work on a contract will be the requirements of the Fair Labor Standards Act (Federal Wage-Hour Law) of 1938, 28 USC §201 et seq., and other applicable labor laws.

The person executing this Certification further represents, warrants and affirms the truthfulness and accuracy of the contents of the statements submitted on or with this Certification and understands that the provisions of 31 USC §3801 et seq. are applicable thereto.

Garver, LLC

BIDDER NAME

BY:


Signature

TITLE: **Sr. Vice President**

RESTRICTION OF BOYCOTT OF ISRAEL CERTIFICATION

Pursuant to Arkansas Code Annotated § 25-1-503, a public entity **shall not** enter into a contract valued at \$1,000 or greater with a company unless the contract includes a written certification that the person or company is not currently engaged in and agrees for the duration of the contract not to engage in, a boycott of Israel.

By signing below, the Contractor agrees and certifies that they do not currently boycott Israel and will not boycott Israel during any time in which they are entering into, or while in contract, with any public entity as defined in § 25-1-503*. If at any time after signing this certification the contractor decides to engage in a boycott of Israel, the contractor must notify the contracting public entity in writing.

If a company does boycott Israel, see Arkansas Code Annotated § 25-1-503.

Name of public entity	Arkansas Department of Transportation
Description of product or service	Construction Project & Maintenance Activity Reporting System (RFP 23-002R)
Contractor name	Garver, LLC

Contractor Signature: _____ Date: 09/06/2022
Signature must be hand written, in ink

“Public Entity” means the State of Arkansas, or a political subdivision of the state, including all boards, commissions, agencies, institutions, authorities, and bodies politic and corporate of the state, created by or in accordance with state law or regulations, and does include colleges, universities, a statewide public employee retirement system, and institutions in Arkansas as well as units of local and municipal government.

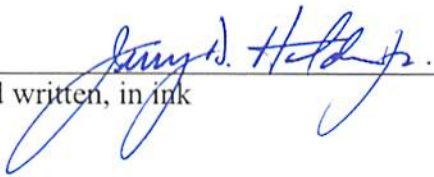
08102018

ILLEGAL IMMIGRANT CERTIFICATION

Pursuant to Arkansas Code Annotated § 19-11-105, Contractor(s) **shall** certify with OSP that they do not employ or contract with illegal immigrants.

By signing below, the Contractor agrees and certifies that they do not employ illegal immigrants and will not employ illegal immigrants during the remaining aggregate term of the contract.

Bid Number/Contract Number	RFP 23-002R
AASIS Number	N/A
Description	Construction Project & Maintenance Activity Reporting System
Contractor name	Garver, LLC

Contractor Signature: 
Signature must be hand written, in ink

Date: 09/06/2022

TSS Illegal Immigrant Contractor Disclosure Certification

TSS Illegal Immigrant Contractor Disclosure Certification View Submission Details

Vendor: Garver
Tax ID: 3400
Disclosure Statement: I certify that I **DO NOT** employ or contract with an illegal immigrant.
Contact E-mail: clgran@garverusa.com
Submitted on: 05-27-22

CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM

Failure to complete all of the following information may result in a delay in obtaining a contract, lease, purchase agreement, or grant award with any Arkansas State Agency.

SUBCONTRACTOR: Yes No SUBCONTRACTOR NAME: _____

BIDDER INFORMATION: IS THIS FOR: Goods? Services? Both?

TAXPAYER ID NAME: **Garver, LLC**

YOUR LAST NAME: **Holder** FIRST NAME: **Jerry** M.I.: **D**

ADDRESS: **4701 Northshore Drive**

CITY: **North Little Rock** STATE: **AR** ZIP CODE: **72118** COUNTY: **Pulaski**

AS A CONDITION OF OBTAINING, EXTENDING, AMENDING, OR RENEWING A CONTRACT, LEASE, PURCHASE AGREEMENT, OR GRANT AWARD WITH ANY ARKANSAS STATE AGENCY, THE FOLLOWING INFORMATION MUST BE DISCLOSED:

FOR INDIVIDUALS*

Indicate below if: you, your spouse or the brother, sister, parent, or child of you or your spouse is a current or former: member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee:

Position Held	Mark (✓)		Name of Position of Job Held <small>(senator, representative, name of board/ commission, data entry, etc.)</small>	For How Long?		What is the person(s) name and how are they related to you? <small>(i.e., Jane Q. Public, spouse, John Q. Public, Jr., child, etc.)</small>	
	Current	Former		From MM/YY	To MM/YY	Person's Name(s)	Relation
General Assembly							
Constitutional Officer							
State Board or Commission Member							
State Employee							

None of the above applies

FOR AN ENTITY (BUSINESS)*

Indicate below if any of the following persons, current or former, hold any position of control or hold any ownership interest of 10% or greater in the entity: member of the General Assembly, Constitutional Officer, State Board or Commission Member, State Employee, or the spouse, brother, sister, parent, or child of a member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee. Position of control means the power to direct the purchasing policies or influence the management of the entity.

Position Held	Mark (✓)		Name of Position of Job Held <small>(senator, representative, name of board/ commission, data entry, etc.)</small>	For How Long?		What is the person(s) name and what is his/her % of ownership interest and/or what is his/her position of control?		
	Current	Former		From MM/YY	To MM/YY	Person's Name(s)	Ownership Interest (%)	Position of Control
General Assembly								
Constitutional Officer								
State Board or Commission Member								
State Employee								

None of the above applies

Contract and Grant Disclosure and Certification Form

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.


As an additional condition of obtaining, extending, amending, or renewing a contract with a state agency I agree as follows:

1. Prior to entering into any agreement with any subcontractor, prior or subsequent to the contract date, I will require the subcontractor to complete a **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM**. Subcontractor shall mean any person or entity with whom I enter an agreement whereby I assign or otherwise delegate to the person or entity, for consideration, all, or any part, of the performance required of me under the terms of my contract with the state agency.

2. I will include the following language as a part of any agreement with a subcontractor:

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this subcontract. The party who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the contractor.

3. No later than ten (10) days after entering into any agreement with a subcontractor, whether prior or subsequent to the contract date, I will mail a copy of the **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM** completed by the subcontractor and a statement containing the dollar amount of the subcontract to the state agency.

Signature		Title	Sr. Vice President, Treasurer	Date	09/06/2022
Vendor Contact Person	Jerry D. Holder, PE	Title	Sr. Vice President, Treasurer	Phone No.	501-537-3221

Agency Use Only			
Agency Name	Agency Contact Person	Contact Phone No.	Contract or Grant No.

HUMAN RESOURCES POLICY HR 1.01

Equal Opportunity

Garver provides equal employment opportunities to all employees and applicants for employment without regard to race, color, religion, sex, national origin, pregnancy, age, physical or mental disability, medical condition, genetic information, or any other protected status or characteristic under applicable federal, state, or local laws.

Equal employment opportunity applies to all terms and conditions of employment, including hiring, placement, promotion, termination, layoff, recall, transfer, leave of absence, compensation, and training.

Additional information about Garver's policies and procedures regarding equal employment can be found in the Affirmative Action Plan.

Applicants and employees will not be subjected to harassment, intimidation, or any type of retaliation because they have:

- Filed a complaint;
- Assisted or participated in an investigation, compliance review, or any other activity related to the administration of any federal, state, or local law requiring equal employment opportunity;
- Opposed any act or practice made unlawful by any federal, state, or local law requiring equal opportunity; or
- Exercised any other legal right protected by federal, state, or local law requiring equal opportunity.