

ORDINANCE NO. 4151

AN ORDINANCE APPROVING AN ENGINEER SERVICES AGREEMENT BETWEEN THE CITY OF CLINTON (CITY) AND GARVER, LLC (GARVER) FOR WASTEWATER RELATED PROJECTS.

WHEREAS, the City solicited Statements of Qualifications from engineering firms for wastewater related projects; and


WHEREAS, Garver was selected as the preferred engineering firm;

NOW, THEREFORE BE IT HEREBY ORDAINED by the City Council of Clinton, Missouri as follows:

1. The Engineer Services Agreement with Garver (attached) is hereby approved.
2. The Mayor is authorized to execute the Engineer Services Agreement on behalf of the City of Clinton.

This ordinance shall become effective immediately upon its passage and approval as provided by law.

Read both times and passed this 19th day of March, 2024.



Carla Moberly, Presiding Officer

ATTEST:


Ayes 6 - Gene Henry, Cameron Jackson, Austin Jones, Shelley Nelson,
Stacia Wilson

Nays 0

Absent 2 – Roger House (present via phone), Martha Nichols and
Debbie Smith



Wendee Seaton, City Clerk



Carla Moberly, Mayor



ENGINEER SERVICES AGREEMENT

THIS AGREEMENT dated this 20th day of March, 2024, by and between the City of Clinton, (herein "City") and Garver, LLC, (herein "Engineer").

IN CONSIDERATION OF the performance of the services rendered under this Agreement and payment for such services, the parties agree to the following:

1. **Services** - As authorized by the City in writing, the Engineer shall provide the City professional services for the benefit of the City as set forth in specific Proposals and Scopes of Work submitted by Engineer and accepted by City, and the Engineer shall provide the City, as applicable, with the services, reports, studies, surveys, plans, specifications, and other work outlined. Engineer agrees to provide all such services in a timely manner as established by the City in writing for each assigned project, or in the absence of the designation, within a reasonable time after receipt of City directives. Time is of material consideration under this Agreement. Engineer agrees to provide services by and through qualified personnel under according to the ordinary and reasonable technical skill that is ordinarily used by a member of the profession in similar circumstances. Services shall be provided based only upon the Scope of Services described or by any additional proposals provided to the Engineer by the City or City's representative, or a written proposal for services which is approved by the City in writing. No work shall be performed nor shall compensation be paid for Engineer work performed without a City approved written proposal for professional services. Proposals for additional services shall be in written form and shall be specifically responsive to the criteria provided by the City. All work performed by the Engineer, based upon City approved proposals submitted by the Engineer, shall be subject to the terms and conditions of this agreement unless otherwise specifically agreed upon by the City and Engineer in writing. All proposals for work submitted by the Engineer to the City for work shall at a minimum contain the following:
 - 1.1 **Scope of Services** - Each proposal for services shall contain a detailed description of work to be performed by the Engineer. When the City provides the Engineer with a written and/or graphic request for proposal, the Engineer's proposal shall be responsive to the request with the same or greater level of specificity required by the request for proposal. The Engineer shall specifically identify services which are included as basic services and those services which are excluded from basic services in the proposal. Services which the Engineer does not identify as excluded from basic services under the proposal and which are necessary for successful completion of the work in the reasonable judgment of the City shall be presumed to be a part of basic services under the proposal. If a request for proposal requires the Engineer to provide optional services, the Engineer's proposal shall respond to the options requested, or provide reasons why the Engineer cannot provide or respond to the request for optional services.
 - 1.2 **Creation of Contract Documents** – Engineer shall not without the express written permission of the City draft and/or create any contract documents, except for technical specifications and plans, for any project that Engineer is assigned. Engineer shall not be compensated for any contract documents drafted or created which are in violation of this provision. In the event that Engineer is asked to draft and/or create contract documents by the City, then said contract documents must be in compliance with the City's then existing contract standards for public projects and no compensation shall be provided to Engineer for contract documents which fail to meet the City's standards according to the industry standard of care.
 - 1.3 **Time for Completion** - Each proposal for services shall contain a detailed description of the estimated time to complete each task or item of work to be performed by the Engineer under the proposal. When the City provides the Engineer with a written and/or graphic request for proposal, the Engineer's proposal shall be responsive to any request for estimated or maximum completion times for work with the same or greater level of specificity required by the request for proposal unless

otherwise specified in a specific proposal. Engineer shall allow at least five weeks in its schedule for City to complete review of Engineer's work. Review shall be as follows: at 25% completion, one week, at 50% completion, two weeks and at 95% completion, three weeks.

- 1.4 **Compensation** - Each proposal for services shall state the basis of compensation on either: (1) an hourly fee plus expense basis with a statement of a maximum compensation to be charged, or, (2) a lump sum payment of compensation for all work to be performed, or, (3) a payment based upon unit prices. Proposals for compensation for an hourly fee plus expense basis shall provide detailed time and expense estimates to support a maximum contract amount to be charged and shall be consistent with the hourly rates, unit prices and reimbursement rates made a part of this agreement by reference in paragraph two (2) below. When the City or City's representative requests the Engineer to provide work on an hourly fee plus expense basis, the Engineer's proposal shall be responsive to the request and shall not propose payment on another basis unless otherwise authorized. Unit price proposals shall identify and estimate the quantity of units as a part of the proposal when they can be identified and estimated, or as necessary in response to a particular request for proposal requesting such information. Each proposal for services shall also state a proposed payment schedule at a frequency no greater than monthly in such amounts as are consistent with amount of work to be performed and billed. Reimbursable expenses proposed shall be specifically identified and estimated as a part of the proposal with a statement of the maximum amount to be charged unless the City's request for proposal specifies otherwise.
 - 1.5 **Signatures** - Engineer proposals for services under this agreement shall be signed and dated by the Engineer or an authorized representative of the Engineer (as applicable), and shall be considered binding offers to contract open for acceptance by the City for an indefinite duration unless limited in the proposal or withdrawn prior to acceptance by the City. All proposals for services under this agreement shall be on forms approved by the City; use of the signature block shown in this agreement on a proposal for services shall be considered an adequate signature block. In the absence of a City provided form, the signature block shall contain a signature line for the City of Clinton by its City Administrator and a signature line for attestation by the City Clerk. In addition, the signature block shall contain a line for insertion of the date the proposal is approved by the City.
2. **Compensation** - In consideration for the Engineer's provision of services under this agreement, the City agrees to compensate the Engineer for services rendered in accordance with the hourly rates, unit prices and reimbursement rates for expenses set forth in the proposal for the project for which compensation is sought. No increases in the rates and charges set forth in the proposal shall be permitted without the written authorization of the City. Payments shall be made within thirty (30) days of receipt of invoice by the City. Invoices shall be submitted periodically as mutually agreed upon by the City and Engineer, or in the absence of such agreement, upon completion of the work constituting the task or project for which services are provided. Invoices for services on an hourly fee plus expense basis shall individually describe the task or project by name, show hours expended by classes of personnel in increments of not less than one-half hour and rates applied, as well as describe work performed during the invoice period; reimbursable expenses shall be itemized. Invoices for services performed on a unit price basis shall identify the task or project by name, identify and quantify units charged for services during the invoice period. Invoices for services on a lump sum basis shall identify the task or project by name and the invoiced amount. Periodic invoices shall not exceed the amounts permitted in the Engineer's proposal approved by the City. When periodic requests for payment are made, they shall only reflect charges for work already complete. City may retain five percent (5%) of any partial payment pending final completion of the contract services to correct any deficiencies in performance. The City reserves the right to withhold payment for inadequately documented invoices until documented as required herein. The City further reserves the right to withhold payments for unperformed work or work not performed on a timely basis in accordance with the Engineer's proposal when delays in performance of services are not attributable to the City nor any other cause outside of the control of Engineer, or as a result of a billing dispute between

the City and Engineer. No penalty shall be assessed to City for such amounts withheld until after any dispute is resolved in Engineer's favor. Notwithstanding any provision to the contrary, Engineer shall be entitled to an equitable adjustment in the Agreement price and project schedule for impacts to the services provided under this agreement resulting from events beyond Engineer's control.

3. **City Responsibilities** - City agrees to furnish Engineer with all current and available information for each task or project assigned to Engineer, along with any information necessitated by changes in work or services initiated by the City which may affect services rendered hereunder. Engineer shall notify City of all information it may require from City or other Engineers and Contractors of City sufficiently in advance so as to avoid delay of the work to be completed by Engineer. The Engineer shall be entitled to rely upon the accuracy and completeness of such information, and the Engineer may use such information in performing services under this agreement.
4. **Coordination of Work and Work Product** - Engineer shall coordinate all work with the City's designated representative for each task or project assigned to Engineer and submit to the City's representative all work product in written or graphic form (and in electronic form if requested) as applicable or required. Subject to the Engineer's right to ownership under Section 17, all reports, surveys, test data, memoranda, samples, plans, specifications, and other documents or materials required as deliverables to be submitted by or to the City under this agreement shall also be considered the property of the City. When available and requested by the City, work product shall be provided in electronic form at actual cost in media compatible for use with City software and equipment, and Adobe .pdf format shall be acceptable.
5. **Protection of Work, Property and Persons** - To the extent Engineer's work will require any field work, testing, sampling or otherwise, during any active construction or excavation activities, the requirements of this Section shall apply to Engineer's personnel on site. The Engineer will be responsible for initiating, maintaining and supervising all reasonable safety precautions and programs in connection with their services provided under this Agreement. The Engineer will take all reasonably necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all of its employees providing work under this Agreement and other persons who may be affected thereby, all the provided services and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Engineer shall comply with all pertinent provisions of the Occupational Safety and Health Administration (OSHA), any State Safety and Health agency requirements, and City's Construction Safety Plan. Notwithstanding anything to the contrary herein, Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the construction contract documents applicable to the contractor's work, even when Engineer is performing construction phase services.
 - 5.1. The Engineer will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. The Engineer will erect and maintain, as required by the conditions and progress of the services, all necessary safeguards for safety and protection of its employees while said employees are providing on-site services under this Agreement. The Engineer will notify City of known adjacent utilities when Engineer's work may affect them. The Engineer will remedy all damage, injury or loss to any property to the extent caused by the Engineer. Except to the extent expressly included as part of the services in the applicable proposal, Engineer will not provide research regarding utilities or survey utilities located and marked by their owners. Furthermore, since many utility companies typically will not locate and mark their underground facilities prior to notice of excavation, Engineer is not responsible for knowing whether underground utilities are present or knowing the exact location of such utilities for design and cost estimating purposes. In no event is Engineer responsible for damage to underground utilities, unmarked or improperly marked, caused by geotechnical conditions, potholing, construction, or other contractors or subcontractors working under a subcontract to this Agreement.

- 5.2 All Engineers entering into contracts for public works shall require all employees on the work site to complete ten hours of training pursuant to Section 292.675 RSMo within sixty days of beginning work on the project.

Any Engineer violating the training requirements of Section 292.675 RSMo shall forfeit as a penalty to the public body on whose behalf the contract is made the sum of

\$2,500.00 plus \$100.00 for each violating employee, per day. These penalties shall accrue on expiration of the time limits set forth in Sections 292.675.2 and 292.675.3 RSMo.

All sums due for such forfeiture and penalty shall be withheld from payments owed under the Contract. No payment otherwise due shall be made during any term of uncorrected violations of Section 292.675 RSMo and no interest or penalties shall accrue on any such unmade payment.

- 5.3 The Engineer is aware of the provisions of the Overhead Power Line Safety Act, 319.075 to 319.090 RSMo, and agrees to comply with the provisions thereof to the extent Engineer's employees are included in activities related to construction. Engineer understands that it is their duty to notify any utility operating high voltage overhead lines and make appropriate arrangements with said utility if the performance of Engineer's field work would cause any activity by Engineer within ten feet of any high voltage overhead line. To the fullest extent permitted by law, Engineer shall indemnify, hold harmless and defend the City, its officers, agents, and employees from and against all third-party claims, damages, losses and expenses (including but not limited to reasonable attorney's fees) attributable to bodily injury (including death) or tangible property damage to the extent caused by any negligent act or failure to act of Engineer, of any Subcontractor (meaning anyone, including but not limited to Engineers having a contract with Engineer or a subcontract for part of the services), of anyone directly or indirectly employed by Engineer or by any Subcontractor, or of anyone for whose acts the Engineer or its Subcontractor may be liable, in connection with any claims arising under the Overhead Power Line Safety Act.

6. **General Insurance Requirements** - Engineer shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of, or result from the Engineer's work, whether such execution be by the Engineer, any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone whose acts any of them may be liable:

6.1 **Workers Compensation** - Claims under workmen's compensation, disability benefit and other similar employee benefit acts in amounts required by law. In case any class of employees engaged in hazardous work under this Agreement is not protected under the workmen's compensation statute, the Engineer shall provide adequate and suitable insurance for the protection of its employees not otherwise protected.

6.2 **Bodily Injury** - Claims for damages because of bodily injury, occupational sickness or disease, or death of employees in the amounts required by law.

6.3 **Personal Injury** - Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Engineer, or (2) by any other person.

6.4 **Third Person Bodily Injury** - Claims for damages because of bodily injury, sickness or disease, or death of any person other than employees in the amount of at least \$505,520.00 per person and \$3,370,137.00 per occurrence, or such amounts as are annually listed as the governmental sovereign immunity waiver in section 537.610 RSMo, as annually adjusted.

6.5 **Automobile Coverage** - Claims for damages because of injuries to persons and property arising out of the operation of the following in the execution of projects:

- a. Engineer's own automobiles and trucks,
- b. Hired automobiles and trucks, and

c. Automobiles and trucks now owned by the Engineer.

The insurance shall cover the use of the above mentioned automobiles and trucks during the term of this Agreement. The minimum amounts of such insurance shall be the same as required for Public Liability and Property Damage Insurance.

6.6 **Professional Liability** - Claims for damages resulting from errors or omissions of the Engineer or its employees in the amount of at least \$1,000,000.00 per claim or \$2,000,000.00 aggregate.

6.7 **Public Liability and Property Damage** - Claims for damages because of damage to any property, building, or structure on or adjacent to the City's premises, or the injury to or destruction of property resulting from the Engineer's services in the amount of at least \$505,520.00 per person and \$3,370,137.00 per occurrence, or such amounts as are annually listed as the governmental sovereign immunity waiver in section 537.610 RSMo, as annually adjusted.

Certificates of Insurance acceptable to the City shall be filed with the City prior to the commencement of any work assigned under this Agreement. These certificates shall contain a provision that coverage afforded under the policies will not be cancelled unless at least fifteen (15) days prior WRITTEN NOTICE has been given to the City, and shall name the City as an additional insured by endorsement on all policies excepting Professional Liability and Workers Compensation.

7. **Indemnification** - Failure of Engineer to obtain or maintain such insurance during this contract, or to provide proper proofs thereof upon request of the City, shall not diminish, waive or otherwise reduce the Engineer's obligations to maintain such insurance coverage and Engineer shall indemnify and hold the City and all its personnel harmless from and against any and all third-party tort claims, damages, losses and expenses, including reasonable attorney's fees and litigation costs, for bodily injury (including death) and tangible property damage to the extent caused from the negligent performance of services, provided that any such claim, damage, loss or expenses, is caused by the negligent act, omission and or liability of the Engineer, its agents or employees under this agreement. Further, Engineer shall hold City harmless from any fines or fees assessed by third-party governmental agencies due to failure by Engineer to complete their work in compliance with all applicable local, state and federal regulations.
8. **Delegation and Subcontracting** - Unless otherwise proposed and approved in the Engineer's proposal for services, the Engineer shall not delegate or subcontract any work to be performed by the Engineer under this agreement to any other person, business or entity without the express advance written approval of the City for such delegation or subcontract work.
9. **Records and Samples** - To the extent not otherwise transferred to the City's possession, Engineer agrees to retain and provide the City with reasonable access, upon prior advanced written notice, to all work product, records, papers and other documents involving transactions and work related to or performed under this agreement for a period of three (3) years after this agreement expires. When services involve testing or sampling, Engineer agrees to either retain all test products or samples collected by or submitted to Engineer, or return same to the City as mutually agreed upon. In absence of agreement, Engineer shall not dispose of test samples or products without notice to or consent by the City or the City's representative. Notwithstanding any provision to the contrary, in no event shall Engineer's proprietary information be subject to audit, including the makeup of lump sum or other fixed prices (e.g., agreed upon unit or hour rates), unless required by applicable law.
10. **Additional Services** - No compensation shall be paid for any service rendered by the Engineer considered an additional service beyond the scope of services approved by the City unless rendition of that service and expense thereof has been authorized in writing by the City in advance of performance of such service. Any additional services performed by the Engineer prior to such authorization by the City shall be deemed a part of basic services for work performed under a City approved proposal for services governed by this agreement, whether enumerated in this agreement or not, for which the Engineer shall be entitled to no additional compensation.

11. **City Authorization** -When the term City is used in this agreement, it shall mean the government of the City of Clinton, Missouri or the City of Clinton City Council, as the context requires. Authorization by the City shall mean written instruction from the City Council or the City Administrator, or their designee. It is further understood and agreed that no person or party is authorized to bind the City to any proposed agreement for services under the auspices of this agreement without having obtained the prior approval of the City of Clinton City Council or City Administrator, or their designee. In this regard, it is understood and agreed that the Engineer shall not be entitled to rely upon verbal representations by any agent or employee of the City in deviation to the terms and conditions of this agreement, or as authorization for compensation for services except as may be approved by the City Council or City Administrator in writing. When the term City's representative is used, it shall mean the City Administrator or their designee as specified in writing.
12. **Period of Services and Termination** – The period of performance under this agreement shall be as specified in the proposal. The City may and reserves the right to terminate this agreement at any time with or without cause by giving the Engineer written notice of termination. Upon receipt of such notice, Engineer shall discontinue all services in connection with the performance of services authorized under this agreement or City approved proposal for services and City shall upon invoice remit payment for all authorized services completed up to the date of termination notice. Upon payment of this invoice, the Engineer shall deliver any and all work product including drawings, plans, and specifications, or other documents, prepared as instruments of service, whether complete or in progress. It is further agreed that if services are terminated the Engineer shall be compensated for all services rendered through the date of termination not to exceed the amount authorized for services through the date of termination as well as documented and reasonable project closeout costs and demobilization fees. If the City questions the extent of work on a final invoice, the Engineer shall give the City the opportunity to review and evaluate all work upon which the invoice is based in the offices of the Engineer prior to payment. This agreement or work performed under the provisions of this agreement may also be terminated by the Engineer upon not less than seven days written notice in the event the City shall substantially fail to perform in accordance with the terms and conditions of this agreement, through no fault of the Engineer. In the event of termination by the Engineer, the other provisions concerning termination contained in this paragraph shall be applicable.
13. **Governing Law** - This agreement shall be governed by the laws of the state of Missouri and it is agreed that this agreement is made in Henry County, Missouri and that Henry County, Missouri is proper venue for any action pertaining to the interpretation or enforcement of any provision within or services performed under this agreement. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY AND ALL RIGHT TO TRIAL BY JURY.
14. **Certification of Lawful Presence / Work Authorization** - Engineer will complete the required certifications of lawful presence and, if the contract is to exceed \$5,000.00, shall complete and return the Work Authorization Certification attached hereto. Engineer shall indemnify and hold harmless the City and its officials, agents and employees from all costs and liabilities assessed by third-party governmental agencies as a result of Engineer's failure, or failure of its employees, agents or Subcontractors, to comply with Section 285.530 RSMo regarding unauthorized aliens, Section 208.009 RSMo regarding contracts with public entities, Section 292.675 RSMo regarding OSHA training for Public Works, to the extent the same are applicable during the term of this Agreement. Attached hereto are certifications of compliance required.
15. **Nature of Relationship** - Engineer herein is an independent party and shall not act as an agent for the City, nor shall Engineer be deemed to be an employee of the City for any purposes whatsoever. The Engineer shall not enter into any agreement or incur any obligations on the City's behalf or commit the City in any manner.
16. **Miscellaneous** - This agreement constitutes the entire agreement of the parties superseding all prior negotiations, written or verbal, and may only be amended by signed writing executed by the parties through their authorized representatives hereunder.

17. **Ownership of Plans and Documents - Records.** In addition to City's ownership rights under Section 4, the field notes, design notes, original drawings of the construction plans, and logs of any wells drilled, as instruments of service, are and shall remain, the property of the Engineer; however, the City shall be furnished, at no additional cost, one set of reproducible Mylars of the original drawings of the work. Mylars shall be polyester with clear matte on both sides. The Engineer shall also deliver all electronic information on CD in Adobe ".pdf" format. Any documents submitted in AutoCAD format shall have Engineer's seal removed. City shall assume all liability for reuse of AutoCAD documents and all other deliverables of Engineer, other than by Engineer, or except as specifically authorized by Engineer.

The City shall make copies, for the use of the Engineer, of all of its maps, records, laboratory tests, or other data pertinent to the work to be performed by the Engineer pursuant to this Agreement, and also make available any other maps, records, or other materials available to the City from any other maps, records, or other materials available to the City from any other public agency or body. The Engineer shall have no liability for defects in the services attributable to the Engineer's reliance upon or use of data, design criteria, as-built drawings, or other information furnished by the City or third parties retained by the City.

The Engineer shall furnish to the City, copies of all maps, records, field notes, and soil tests which were developed in the course of work for the City and for which compensation has been received by the Engineer.

Notwithstanding any other provision to the contrary, any and all underlying intellectual property, if any (unless provided by the City), shall remain the property of Engineer such that Engineer may continue to perform its business in the normal course.

18. **Conflict of Interest** - Engineer hereby covenants that at the time of the submission of any proposal and the execution of this Agreement it has no other contractual or employment relationships which would create any actual or perceived conflict of interest with the City. The Engineer further agrees that during the term of this Agreement neither the Engineer nor any of its employees shall acquire any other contractual relationships which create such a conflict. Engineer shall complete the required Conflict of Interest Form attached hereto and shall have an affirmative duty to update said form if there are any changes to the answers provided therein during the term of this Agreement.

IN WITNESS WHEREOF, the parties have executed this agreement by their duly authorized signatories effective the date and year first-above written.

GARVER, LLC

CITY OF CLINTON, MISSOURI

BY: Mary Mack

Carla Moberly
Carla Moberly, Mayor

DATE: March 20, 2024

DATE: 03/20/2024

ATTEST:

Terry Leeds
BY:

Wendee Seaton
Wendee Seaton, City Clerk

