



**Agreement
For
Professional Services
Clinton Sewer Relocations along I-40 near
Exit 65
Project No. 22W02360**



Contents

RECITALS	1
1. DEFINITIONS	1
2. SCOPE OF SERVICES	1
3. PAYMENT	2
4. AMENDMENTS	2
5. OWNER'S RESPONSIBILITIES	2
6. GENERAL REQUIREMENTS	3
7. INSURANCE.....	6
8. DOCUMENTS.....	7
9. INDEMNIFICATION / WAIVERS	7
10. DISPUTE RESOLUTION	8
11. TERMINATION	9
12. MISCELLANEOUS	9
13. EXHIBITS	10



THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made as of the Effective Date by and between the **City of Clinton** (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 replace, rehabilitate, or extend sanitary sewer lines located throughout the City (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 B 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 C. 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 Item 8.
 - 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 Exhibits A and B.

- 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.
- 5.1.4. Owner shall include "Garver, LLC" as an indemnified party under the contractor's indemnity obligations included in the construction contract documents.
- 5.1.5. Owner will not directly or indirectly solicit any of Garver's Personnel during performance of this Agreement and for a period of one (1) year beyond completion of 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. Aside from Garver's direct subconsultants, Garver shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Garver have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any such contractor, or the safety



precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to that contractor's services. Garver shall not be responsible for the acts or omissions of any contractor for whom it does not have a direct contract. Garver 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 Garver is performing construction phase services.

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 B (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.

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. 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.

6.3.1. Since Garver has no control over: (i) the cost of labor, materials, equipment, or services furnished by others; (ii) the contractor or its subcontractor(s)' methods of determining prices; (iii) competitive bidding; (iv) market conditions; or (v) similar material factors, Garver's opinions of Project costs or construction costs provided pursuant to Exhibit B, if any, are to be made on the basis of Garver's experience and qualifications and represent Garver's reasonable judgment as an experienced and qualified professional engineering firm, familiar with the construction industry. Garver cannot and does not guarantee that proposals, bids, or actual Project or construction costs will not vary from estimates prepared by Garver.

6.3.2. Owner understands that the construction cost estimates developed by Garver do not establish a limit for the construction contract amount. If the actual amount of the low construction bid or resulting construction contract exceeds the construction budget established by Owner, Garver will not be required to re-design the Services without additional compensation. In the event Owner requires greater assurances as to probable construction cost, then Owner agrees to obtain an independent cost estimate.

6.4. Underground Utilities. Except to the extent expressly included as part of the Services, Garver 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, Garver 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 Garver 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.

6.5. Design without Construction Phase Services.

6.5.1. If the Owner requests in writing that Garver provide any specific construction phase services or assistance with resolving disputes or other subcontractor related issues, and if Garver agrees to provide such services, then Garver shall be compensated for the services as an Amendment in accordance with Sections 4 and 10.2.

6.5.2. Garver shall be responsible for only those construction phase Services expressly set forth in Exhibit B, if any. With the exception of such expressly required Services, Garver shall have no responsibility or liability for any additional construction phase services, including review and approval of payment applications, design, shop drawing review, or other obligations during construction. Owner assumes all responsibility for interpretation of the construction contract documents and for construction observation



and supervision and waives any claims against Garver that may be in any way connected thereto.

- 6.5.3. Owner agrees, to the fullest extent permitted by law, to indemnify and hold Garver, Garver's subconsultants, and their Personnel harmless from any loss, claim, or cost, including reasonable attorneys' fees and costs of defense, arising or resulting from the performance of such construction phase services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments, or changes made to the construction contract documents to reflect changed field or other conditions, except to the extent such claims arise from the negligence of Garver in performance of the Services.
- 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. Owner and Garver shall consider: (i) all information provided by the other Party that is marked as "Confidential Information" or "Proprietary Information" or identified as confidential pursuant to this Section 6.7 in writing promptly after being disclosed verbally; and (ii) all documents resulting from Garver's performance of Services to be Confidential Information. 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. 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, any and all municipality utility information which requires protections under applicable law shall be preserved as confidential as required under the Cyber Incident Notification Act and as would be protected under Title 17 Okla. Stat. §17-327.4. Nothing herein shall be interpreted as prohibiting Garver from disclosing general information regarding the Project for future marketing purposes.

7. INSURANCE

7.1. Insurance.

- 7.1.1. Garver shall procure and maintain insurance as set forth in Exhibit D 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 D.

8. DOCUMENTS

- 8.1. Audit. Garver will retain all pertinent records for a period of three (3) years beyond completion of the Services. Owner may have access to such records during normal business hours with three (3) business days advanced written notice. In no event shall Owner be entitled to audit the makeup of lump sum or other fixed prices (e.g., agreed upon unit or hour rates).
- 8.2. Delivery. After completion of the Project, and prior to final payment, Garver shall deliver to the Owner all Deliverables required under Exhibit B.

9. INDEMNIFICATION / WAIVERS

9.1. Indemnification.

9.1.1. Garver Indemnity. Subject to the limitations of liability set forth in Section 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. [Not used].

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.

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 shall be limited to the collectible proceeds of insurance at the limits set forth in Exhibit D.

9.2.4. No Other Warranties. [Not used].



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. DISPUTE RESOLUTION

10.1. Any controversy or claim ("**Dispute**") arising out of or relating to this Agreement or the breach thereof shall be resolved in accordance with the following:

10.1.1. Any Dispute that cannot be resolved by the project managers of Owner and Garver may, at the request of either Party, be referred to the senior management of each Party. If the senior management of the Parties cannot resolve the Dispute within thirty (30) days after such request for referral, then either Party may request mediation. If both Parties agree to mediation, it shall be scheduled at a mutually agreeable time and place with a mediator agreed to by the Parties. Should mediation fail, should either Party refuse to participate in mediation, or should the scheduling of mediation be impractical, either Party may file for arbitration in lieu of litigation.

10.1.2. Arbitration of the Dispute shall be administered by the American Arbitration Association ("AAA") in accordance with its Construction Industry Arbitration Rules. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY AND ALL RIGHT TO TRIAL BY JURY. The arbitration shall be conducted by a single arbitrator, agreed to by the Parties. In no event may a demand for arbitration be made if the institution of legal or equitable proceedings based on such dispute is barred by the applicable statute of limitations.

10.1.3. The site of the arbitration shall be Oklahoma City, Oklahoma. Each Party hereby consents to the jurisdiction of the federal and state courts within whose district the site of arbitration is located for purposes of enforcement of this arbitration provision, for provisional relief in aid of arbitration, and for enforcement of any award issued by the arbitrator.

10.1.4. To avoid multiple proceedings and the possibility of inconsistent results, either Party may seek to join third parties with an interest in the outcome of the arbitration or to consolidate arbitration under this Agreement with another arbitration. Within thirty (30) days of receiving written notice of such a joinder or consolidation, the other Party may object. In the event of such an objection, the arbitrator shall decide whether the third party may be joined and/or whether the arbitrations may be consolidated. The arbitrator shall consider whether any entity will suffer prejudice as a result of or denial of the proposed joinder or consolidation, whether the Parties may achieve complete relief in the absence of the proposed joinder or consolidation, and any other factors which the arbitrators conclude should factor on the decision.

10.1.5. The arbitrator shall have no authority to award punitive damages. Any award, order or judgment pursuant to the arbitration is final and may be entered and enforced in any court of competent jurisdiction.

10.1.6. The prevailing Party shall be entitled to recover its attorneys' fees, costs, and expenses, including arbitrator fees and costs and AAA fees and costs.



10.1.7. The foregoing arbitration provisions shall be final and binding, construed and enforced in accordance with the Federal Arbitration Act, notwithstanding the provisions of this Agreement specifying the application of other law. Pending resolution of any Dispute, unless the Agreement is otherwise terminated, Garver shall continue to perform the Services under this Agreement that are not the subject of the Dispute, and Owner shall continue to make all payments required under this Agreement that are not the subject of the Dispute.

10.1.8. Owner and Garver further agree to use commercially reasonable efforts to include a similar dispute resolution provision in all agreements with independent contractors and subconsultants retained for the Project.

10.2. 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 C 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 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 Oklahoma without regard to its choice of law provisions.

12.2. Owner's Responsibilities. Owner shall be responsible for all matters described in Exhibit A Item 8, which is attached hereto and incorporated by reference as a part of this agreement.



- 12.3. 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.
- 12.4. Independent Contractor. Garver is and at all times shall be deemed an independent contractor in the performance of the Services under this Agreement.
- 12.5. 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.
- 12.6. 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.
- 12.7. 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.
- 12.8. 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 Project
- Exhibit B – Scope of Services
- Exhibit C – Compensation Schedule
- Exhibit D – Insurance

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.



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

City of Clinton

Garver, LLC

By: _____
Signature

By: Mary Elizabeth Mach
Signature

Name: _____
Printed Name

Name: Mary Elizabeth Mach, PE
Printed Name

Title: _____

Title: Vice President

Date: _____

Date: May 4, 2023

Attest: _____

Attest: _____



EXHIBIT A
(SCOPE OF PROJECT)

GENERAL

In general, the scope of services shall consist of designing plans to relocate existing sewer line facilities in conflict with roadway construction of the Oklahoma Department of Transportation's (ODOT) #31842(04) I-40 Exit 65 highway project. All relocations will be of like size and kind material.

1. Sewer Item No. 1

1.1.1. Description and Location:

I-40 Sheet R042 – station 3502+74.04 there is an existing sanitary sewerline in conflict.

1.1.2. Proposed Rearrangements:

This sewerline is not in the clear. This underground crossing shall cross Neptune Drive and relocate west of proposed bridge crossing I-40 and then cross back over Neptune Drive tying to sanitary sewer manhole. This location will need to be reviewed by the City Engineer.

2. Sewer Item No. 2

2.1.1. Description and Location:

West Gary Boulevard Sheet R046 – station 100+95.42 sewerline in conflict with drainage structure.

2.1.2. Proposed Rearrangements:

New sanitary sewer line from the existing sanitary sewer manhole east of Gary Boulevard to proposed new sanitary sewer manhole north of the proposed drainage structure. Another new sanitary sewer manhole will need to be added on the existing sanitary sewer line west of Gary Boulevard for the tie-in point.

3. Sewer Item No. 3

3.1.1. Description and Location:

West Gary Boulevard Sheet R050 – station 127+63.05 crossing West Gary Boulevard.

3.1.2. Proposed Rearrangements:

This underground crossing is clear of construction.

4. Sewer Item No. 4

4.1.1. Description and Location:



At West Gary Boulevard Sheet R050 – station 129+10.00 under drive left side.

4.1.2. Proposed Rearrangements:

This underground crossing is clear of construction.

5. Sewer Item No. 5

5.1.1. Description and Location:

Oliver/Lexington Avenue Sheet R077 – station 11+05.00, manholes in conflict.

5.1.2. Proposed Rearrangements:

This underground crossing will be taken care of with the proposed plans.

6. Sewer Item No. 6

6.1.1. Description and Location:

Oliver/Lexington Avenue Sheet R077 station – 11+37.95, manholes in conflict.

6.1.2. Proposed Rearrangements:

This underground crossing will be taken care of with the proposed plans.

7. Sewer Item No. 7

7.1.1. Description and Location:

Oliver/Lexington Avenue Sheet R077 – station 11+54.20, manholes in conflict.

7.1.2. Proposed Rearrangements:

This underground crossing will be taken care of with the proposed plans.

8. RESPONSIBILITIES OF THE OWNER. The Owner agrees:

8.1. Reports, Records, etc. To furnish, as required by the work, and not at expense to Garver:

8.1.1. Records, reports, studies, plans, drawings, and other data available in the files of the Owner, which may be useful in the project.

8.1.2. Standard drawings and standard specifications.

8.2. Access. To provide access to public and private property when required in performance of Garver's services.

8.3. Staff Assistance. To furnish the services of at least one of the Owner's employees or staff who has right of entry to, and who has knowledge of, Owner's facilities related to this project.



- 8.3.1. To furnish legal assistance as required in the preparation, review and approval of construction documents.
- 8.3.2. To furnish staff assistance in locating existing utilities and in expediting their location.
- 8.4. Reivew. To examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by Garver and render in writing decisions pertaining thereto within a reasonable time as not to delay the services of Garver.
- 8.5. Record Drawings. To provide to Garver the construction information required to prepare record drawings at the conclusion of construction.
- 8.6. Topographic Survey. ODOT to provide topographical survey data to Garver. Garver shall not be responsible for survey accuracy or errors with survey data provided.
- 8.7. Permitting. Owner shall furnish all fees related to permitting and permit applications.



EXHIBIT B
(SCOPE OF SERVICES)

GENERAL

In general, the scope of services shall consist of designing plans to relocate approximately one thousand five hundred (1,500) linear feet (LF) existing small diameter sanitary sewer line facilities in conflict with roadway construction of the Oklahoma Department of Transportation's (ODOT) #31842(04) I-40 Exit 65 highway project. All relocations will be of like size and kind material. The services to be performed by Garver under this agreement may consist of three (3) phases as stated below. Further, it is understood and agreed that the date of commencement, rate of progress and the time of completion of the work to be done hereunder are essential provisions of this AGREEMENT (See project schedule) and it is further understood and agreed that the work which is the subject of this AGREEMENT shall commence upon execution of this AGREEMENT and after receipt of a Notice to Proceed for each project as required by the Owner.

The basic services shall include, but are not necessarily limited to, the following tasks:

1. PROJECT MANAGEMENT

1.1. Kickoff Meeting

- Conduct one (1) meeting with the Owner to establish critical design parameters, confirm the goals, schedule and deliverables of the project. Meeting minutes will be developed and prepared by Garver.

1.2. Progress Reports and Invoicing

- Prepare monthly reports to Owner to document project progress and prepare invoicing as the project progresses forward.

1.3. Meetings

- Internal Meetings: Garver will hold regular progress meetings to manage efforts of the project team including subconsultants. These meetings will assist in maintaining appropriate records and document project decisions, modifications and maintain project schedule.
- Public Meetings: Garver will attend up to three (3) virtual public meetings with up to three (3) project representatives.

2. SURVEY

- 2.1. Survey is not included in this scope of services and has been conducted by Others as part of a previous phase.

3. PRELIMINARY DESIGN

The preliminary design phase submittal will include the following:

- 3.1. Preliminary drawing set will include the following:



- General Sheets (up to 5 sheets)
 - Survey Control Sheets(Tie to permanent benchmark as verified by ODOT) (up to 1 sheet)
 - Summary of Quantities (up to 1 sheet)
 - Plan and profile sheets (Vertical scale 1"=10', Horizontal scale 1"=20') (up to 3 sheets)
 - Details (up to 4 sheets)
- 3.2. An opinion of probable construction cost (OPCC) with a 30% contingency will be developed in accordance with an Association for the Advancement of Cost Engineering (AACE) Class 3 OPCC.
- 3.3. 60% Specifications – Garver will prepare a specification table of contents and preliminary specifications. The following is an estimated list of technical specifications as part of the Preliminary Design Submittal:
- Front End Specs
 - General Requirements
 - Polymer concrete manholes
 - PVC Pipe
 - Trenchless Construction
- 3.4. Garver will perform Quality Control Reviews during the preliminary design development in accordance with the Project Management Plan (PMP).
- 3.5. Garver will conduct one (1) virtual Plan-in-Hand meeting with the Owner to present and review the preliminary design deliverable and discuss comments. Meeting minutes will be prepared by Garver.
- 3.6. Garver will furnish and provide a set of plans to the ODOT utility coordinator for coordination of other utilities in the project area.

The preliminary design phase will represent approximately 60 percent of final construction contract plans. Garver will incorporate comments from the Owner on the Preliminary Design in the Final Design. Garver will proceed with Final Design after the Preliminary Design is approved by the Owner in writing.

4. FINAL DESIGN

Once Garver receives written approval from Owner on Preliminary Design, Garver will begin Final Design. During the final design phase of the Project, Garver will conduct final designs to prepare construction plans and specifications, for one construction contract, including the following:

- 4.1. Final Field Investigation
- 4.2. Final Plans



- General Sheets (up to 5 sheets)
 - Survey Control Sheets (Tie to permanent benchmark as verified by ODOT) (up to 1 sheet)
 - Summary of Quantities (up to 1 sheet)
 - Plan and profile sheets (Vertical scale 1"=10', Horizontal scale 1"=20') (up to 3 sheets)
 - Details (up to 4 sheets)
- 4.3. An OPCC with a 15% contingency will be developed in accordance with an AACE Class 2 OPCC.
- 4.4. Final Specifications – Prepare a specification table of contents and final specifications. The following is an estimated list of technical specifications for the project:
- Front End Specs
 - General Requirements
 - Polymer Concrete Manholes
 - PVC Pipe
 - Trenchless Construction
- 4.5. Garver will develop and compile a summary letter with a sealed permitting plan set to submit to regulatory review for construction approval. This plan set will include all drawings and specifications as required by the reviewing body. Garver will also prepare an Application for Permit to Construct. One round of regulatory comments will be coordinated with the Owner and addressed in the final documents. Note that all permitting fees are to be paid by the Owner.
- 4.6. Garver shall submit all applicable signed, completed Design Project Checklists with one (1) digital copy of the plans and five (5) printed copies.
- 4.7. Garver will perform Quality Control Reviews during the final design development in accordance with the PMP.
- 4.8. Garver will conduct one (1) virtual workshop with the Owner to present and review the final design deliverable and discuss comments. Meeting minutes will be prepared by Garver.

5. BIDDING SERVICES

During the bidding phase of the Project, Garver will:

- 5.1. Prepare and submit Advertisement for Bids to newspaper(s) for publication as directed by the Owner. Owner will pay advertising costs outside of this contract.
- 5.2. Dispense construction contract documents to awarded contractor
- 5.3. Support the contract documents by preparing addenda as appropriate.



- 5.4. Participate in a pre-bid meeting.
- 5.5. Attend the bid opening.
- 5.6. Prepare bid tabulation.
- 5.7. Evaluate bids and recommend award.
- 5.8. Prepare construction contracts including the following:
 - Five (5) half size copies of the plans containing all Addenda changes.
 - Three (3) full size copies of the plans containing all Addenda changes.
 - Electronic copy of the submittal including CADD files

6. CONSTRUCTION PHASE SERVICES

During the construction phase of work, Garver will accomplish the following:

- 6.1. Issue a Notice to Proceed letter to the Contractor and attend preconstruction meeting.
- 6.2. Attend up to five (5) progress/coordination meetings with the Owner/Contractor.
- 6.3. Evaluate and respond up to ten (10) construction material submittals and shop drawings. Corrections or comments made by Garver on the shop drawings during this review will not relieve Contractor from compliance with requirements of the drawings and specifications. The check will only be for review of general conformance with the design concept of the Project and general compliance with the information given in the contract documents. The Contractor will be responsible for confirming and correlating all quantities and dimensions, selecting fabrication processes and techniques of construction, coordinating his work with that of all other trades, and performing his work in a safe and satisfactory manner. Garver's review shall not constitute approval of safety precautions or constitute approval of construction means, methods, techniques, sequences, procedures, or assembly of various components. When certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, either directly or implied for a complete and workable system, Garver shall be entitled to rely upon such submittal or implied certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.
- 6.4. Issue up to five (5) instructions to the Contractor on behalf of the Owner and issue necessary clarifications (respond to RFIs) regarding the construction contract documents.
- 6.5. Review up to six (6) Contractor's progress payment requests based on the actual quantities of contract items completed and accepted, and will make a recommendation to the Owner regarding payment. Garver's recommendation for payment shall not be a representation that Garver has made exhaustive or continuous inspections to (1) check the quality or exact quantities of the Work; (2) to review billings from Subcontractors and material suppliers to substantiate the Contractor's right to payment; or (3) to ascertain how the Contractor has used money previously paid to the Contractor.
- 6.6. When authorized by the Owner, prepare up to one (1) change order for changes in the work



from that originally provided for in the construction contract documents. If redesign or substantial engineering or surveying is required in the preparation of these change order documents, the Owner will pay Garver an additional fee to be agreed upon by the Owner and Garver.

- 6.7. Participate in Substantial Project inspection, prepare punch list, review final Project closing documents, and submit final pay request.'
- 6.8. Participate in Final Project inspection, review final Project closing documents, and submit final pay request.
- 6.9. Prepare As-Built drawings according to red lines provided by the Contractor.

7. PROJECT DELIVERABLES

The following will be submitted to the Owner, or others as indicated, by Garver:

- 7.1. Garver will furnish five (5) half-size copies of the Preliminary Design, OPCC, specifications and other documents listed in the preliminary design section. The submittal will also include a copy of the plans in PDF.
- 7.2. Garver will furnish five (5) half-size copies of the Final Design, OPCC, specifications and other documents listed in the final design section. The submittal will also include a copy of the plans in PDF.
- 7.3. Garver will furnish three (3) half-size copies of pre-advertisement review sets.
- 7.4. Garver will furnish five (5) half-size copies, three (3) full-size copies of plans and five (5) copies of final bound bid books. The submittal will also include a copy of the plans in PDF and all related CADD files.
- 7.5. One (1) hard copy set of Record Drawings.
- 7.6. Electronic files as requested.

8. EXTRA WORK

The following items are not included under this agreement but will be considered as extra work:

- Redesign for the Owner's convenience or due to changed conditions after previous alternate direction and/or approval.
- Submittals or deliverables in addition to those listed herein.
- Pavement Design beyond that furnished in the Geotechnical Report.
- Design of any utilities relocation other than water and sewer.
- Retaining walls or other significant structural design beyond that required.
- Street lighting or other electrical design.



- Preparation of a Storm Water Pollution Prevention Plan (SWPPP). The construction contract documents will require the Contractor to prepare, maintain, and submit a SWPPP to DEQ.
- Property Acquisition Documents
- Construction materials testing.
- Environmental Handling and Documentation, including wetlands identification or mitigation plans or other work related to environmentally or historically (culturally) significant items.
- Coordination with FEMA and preparation/submittal of a CLOMR and/or LOMR.
- Services after construction, such as warranty follow-up, etc.
- Construction observation
- Construction inspections or special inspections
- Hydraulic Modeling
- Topographical Survey and Subsurface Utility Engineering

Extra Work will be as directed by the Owner in writing for an addition fee as agreed upon by the Owner and Garver.

9. SCHEDULE

Garver shall begin work under this Agreement within ten (10) days of a Notice to Proceed and shall complete the work in accordance with the schedule below:

Phase Description	Calendar Days
Preliminary Design	90 days from approval of the Survey
Final Design	30 days from approval of Preliminary Design and Regulatory Approval
Bidding Services	45 days from Bid Advertisement
Construction Phase Services	180 days from Notice to Proceed to Contractor



**EXHIBIT C
(COMPENSATION SCHEDULE)**

The table below presents a summary of the fee amounts and fee types for this Agreement.

WORK DESCRIPTION	FEE AMOUNT	FEE TYPE
Task 1 – Project Management	\$21,400	LUMP SUM
Task 2 – Preliminary Design	\$65,050	LUMP SUM
Task 3 – Final Design	\$54,000	LUMP SUM
Task 4 – Bidding Services	\$23,975	LUMP SUM
Task 5 – Construction Phase Services	\$62,525	LUMP SUM
TOTAL FEE	\$226,950	LUMP SUM

To be converted to hourly rate

The lump sum amount to be paid under this Agreement is **\$226,950**. Any unused portion of the fee, due to delays beyond Garver's control, will be increased six percent (6%) annually with the first increase effective on or about July 1, 2024.



**EXHIBIT D
(INSURANCE)**

Pursuant to Section 7.1 of the Agreement, Garver shall maintain the following schedule of insurance until completion of the Services:

	Statutory Limit
Worker's Compensation	
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