(This item is placed on the agenda so the Clinton City Council, by unanimous consent, can designate those routine items they wish to be approved by one motion. If an item does not meet the approval of all members, that item will be heard in regular order.)

PUBLIC NOTICE OF A SPECIAL MEETING
OF THE CITY COUNCIL
TUESDAY, SEPTEMBER 28, 2021 AT 5:00 PM
CLINTON CITY HALL

AMENDED AGENDA

Source listing: 09/28/21Special Meeting
Original source: https://agendas.clintonok.gov/archive/2021/092821/launch.html
The archive links the amended September 28 notice. The earlier version prints September 21 but was filed September 24 and references the September 21 minutes.
Original authority agenda:
https://agendas.clintonok.gov/archive/2021/092821/SPECMTGAGNEDA92821.htm
Original authority agenda:
https://agendas.clintonok.gov/archive/2021/092821/SPECMTGAMENDEDA92821.htm

1. CALL TO ORDER, OPENING PRAYER/PLEDGE OF ALLEGIANCE

    A. Jeff Johnson, Pastor, First Christian Church
    Donald Miller, Commander, American Legion Post 41

2. CONSIDER APPROVAL OF CONSENT AGENDA

    A. Minutes from 9/21/21 Regular Meeting ;

3. DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION REGARDING:

    A. Acceptance of Professional Engineering Services Proposal from Garver for the Preparation of a Feasibility Study and Cost Estimate for the Possible Construction of Water Resiliency Infrastructure between the Cities of Clinton & Weatherford ;

    B. Proposed Adjustment to the Financial Terms of the American Towers Lease - Clinton #4 .

4. NEW BUSINESS (If any, pursuant to Section 311.9 of the Oklahoma Open Meeting Act.)

5. COUNCIL COMMENTS

6. CITY MANAGER'S COMMENTS

7. AUDIENCE PARTICIPATION (According to Audience Participation Decorum Guidelines at Clinton City Council Public Meetings effective: 2/14/2017)

8. ADJOURN

Filed this 27th Day of September, 2021. Posted on the bulletin board in the lobby of the Clinton City Hall on September 27, 2021 at 4:15 p.m.

_____

Not recorded

MINUTES OF THE CLINTON CITY COUNCIL MEETING
SEPTEMBER 21, 2021

Minutes of the meeting of the Mayor and Council of the Clinton City Council, City of Clinton, Oklahoma, Custer County, held in the City Council Room, City Hall on Tuesday, September 21, 2021, at 5:30 p.m. A notice of this meeting with agenda was posted on the bulletin board in the lobby of Clinton City Hall on September 17, 2021, at 2:00 p.m.

Mayor David Berrong called the meeting to order at 5:30 p.m. with the following present:

MAYOR: David Berrong
TRUSTEES: Patch McComas, Ernie Dowdell, Arthur Lloyd, Chris Jones
MANAGER: Robert Johnston
CITY TREASURER: Debra Blanchard, absent
CITY ATTORNEY: Ryan Meacham
CITY CLERK: Amy Jones
NEWS MEDIA: Logan Moser, Kelcie Hartley-Wolfe
OTHERS: Gene McCullough, Toby Anders, Samantha Aispuro, Paul Rinkel, Ernesto Villaneuva, Roland Mower, Tom Jaworski, Tyler Wolfe, Doris Scarlett. Jeff Johnson, Jamie Newell and others.

Jeff Johnson, Pastor First Christian Church opened the meeting with prayer and Tom Jaworski, Post Vice Commander, American Legion Post 41 led the Pledge of Allegiance.

AGENDA ITEM NO. 2: CONSENT AGENDA

A. Minutes from September 7, 2021 Regular Meeting;
B. Minutes from Economic Development Authority Special Meetings 8/10/21, 8/1721, and 8/24/21

Motion was made by Councilman Lloyd and seconded by Councilman Jones that Consent Agenda Items be approved.

Chairman put the motion to a roll call vote:

Aye: Lloyd, Dowdell, McComas, Jones, Berrong
Nay: None

Chairman declared the motion carried.

AGENDA ITEM NO. 3 DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION REGARDING

A. Appointment of Donna Rother to the Board of Adjustments to Complete an Unexpired Term Ending 6/60/23 and to the Planning and Zoning Board to Complete an Unexpired term ending 6/30/22.

Mayor Berrong presented the appointment of Donna Rother to the Board of Adjustments to complete an unexpired term ending 6/60/23 and the Planning and Zoning Board to complete an unexpired term ending 6/30/22.

Motion was made by Councilman McComas and seconded by Councilman Jones to approve the appointment of Donna Rother to the Board of Adjustments to complete an unexpired term ending 6/60/23 and the Planning and Zoning Board to complete an unexpired term ending 6/30/22.

Chairman put the motion to a roll call vote:

Aye: Lloyd, Dowdell, McComas, Jones, Berrong
Nay: None

Chairman declared the motion carried

B. Purchase of Five (5) new SCBAs for the Clinton Fire Department (Capital Improvement Funded Expenditure)

Fire Chief Brett Russell stated that the Fire Department is needing to replace 5 SCBAs that are out of date. The new SCBA's will match the new ones received with the new Engine 2 year ago. Russell presented the quote from CASCO Industries for $32,665.00. Chief Russell stated that the life cycle of the SCBA's is 10 years. The current ones the department has had for 23 years.

Motion was made by Councilman McComas and seconded by Councilman Lloyd to approve the purchase of Five (5) new SCBAs for Clinton Fire Department (Capital Improvement Funded Expenditure).

Chairman put the motion to a roll call vote:

Aye: Lloyd, Dowdell, McComas, Jones, Berrong
Nay: None

Chairman declared the motion carried

C. Resolution 927 - Declaring Certain Clinton FireDepartment Vehicles to be Surplus Property and Authorizing Disposal by Auction.

Fire Chief Russell presented his Agenda Commentary regarding 4 fire units that he would like to surplus. Truck 5:1991 International wild-land truck with 1000 gallon tank, BP101: 2008 Ford F350 V10 wild land truck with 300 gallon tank, Old Rescue: 1997 Ford F350 (this truck was on loan to Arapaho and they have returned it);Command unit 6: 2005 Chevy Tahoe originally purchased from OHP retired units, it has not been in use for three years. The Department is requesting to permission to take these units to Entz Equipment Auction in November. Chief Russell explained that he feels that through this auction the City could possibly sell the surplus vehicles for higher bids then the way we have done in the past.

Motion was made by Councilman Dowdell and seconded by Councilman McComas to approve Resolution 927 declaring certain Clinton Fire Department vehicles to be surplus property and authorizing disposal by auction of items listed in exhibit A of resolution.

Chairman put the motion to a roll call vote:

Aye: Lloyd, Dowdell, McComas, Jones, Berrong
Nay: None

Chairman declared the motion carried

D. Request from the Clinton Economic Development Authority (CEDA) for Funding Not to Exceed $300,000 for asbestos abatement expenses related to the redevelopment of the former Glancy Motel Buildings

City Manager Johnston presented the information regarding the request from Clinton Economic Development Authority (CEDA) for funding not to exceed $300,000 for asbestos abatement expenses related to the redevelopment of the former Glancy Motel Buildings. The Memorandum of Understanding (MoU) between CEDA and Mr. Koch representing Centurion which was approved earlier today was provided for information to the Council members.

Motion was made by Councilman Dowdell and seconded by Councilman Lloyd to approve the request from Clinton Economic Development Authority (CEDA) for funding not to exceed $300,000 for asbestos abatement expenses related to the redevelopment of the former Glancy Motel Buildings.

Chairman put the motion to a roll call vote:

Aye: Lloyd, Dowdell, McComas, Jones, Berrong
Nay: None

Chairman declared the motion carried

E. Authorize the Execution of Documents Related to the City's Application for the American Recovery Plan Act (ARPA) Funds

City Manager Johnston presented the information to the Council to Authorize the Execution of Documents Related to the City's Application for the American Recovery Plan Act (ARPA) Funds.

Motion was made by Councilman Jones and seconded by Councilman Dowdell to Authorize the Execution of Documents Related to the City's Application for the American Recovery Plan Act (ARPA) Funds.

Chairman put the motion to a roll call vote:

Aye: Lloyd, Dowdell, McComas, Jones, Berrong

Nay: None

Chairman declared the motion carried

AGENDA ITEM NO. 4 NEW BUSINESS (IF ANY PURSUANT TO SECTION 311.9 OF THE OKLAHOMA OPEN MEETING ACT.)

None

AGENDA ITEM NO. 5 COUNCIL COMMENTS

None

AGENDA ITEM NO. 6 CITY MANAGER'S COMMENTS

City Manager Johnston reported Chief Rinkel had approved the new date for the department's two (2) new units have now been received. Public Works Director McCullough briefly reported on public work projects. He stated that the electrical storm damage from the February ice storm at the WWTP has been diagnosed and repairs will be made, the filter box/clarifier project at Clinton Lake Water Treatment Plant is almost completed; a second walk through is being scheduled. He also informed the Council that a surplus list would be provided for public works department's items soon and hopefully be able to take to the same auction as the Fire Department in November. City Manager Johnston added that now the ARPA Funds are applied for he requests that we have a Special Council meeting next week to approve an engineering plan regarding potential water system improvements. Consensus to proceed.

AGENDA ITEM NO. 8: ADJOURNMENT

Moved by Councilman McComas and seconded by Councilman Jones to adjourn the meeting.

Mayor put the motion to a roll call vote:

Aye: Dowdell, Jones, McComas, Berrong
Nay: None

Mayor declared the meeting adjourned at 5:47 p.m.

_____
Date Approved

_____
David D. Berrong, Mayor

Robert Johnston

From: Mach, Mary, E <MEMach@GarverUSA.com>
Sent: Friday, September 24, 2021 12:04 PM
To: Mike Brown; David Berrong
Cc: Robert Johnston
Subject: Custer County Waterline
Attachments: 21W02150- Custer County V2.pdf; Custer County OK Water Line - Weatherford PSA.pdf; Custer County OK Water Line - Clinton PSA.pdf; 21W02151 - APPENDIX A - SCOPE OF SERVICES.pdf

Good afternoon –

I have attached several documents: Statement of Qualifications, Contracts, and Scope with upcoming fee proposal coming soon. I have a Water Infrastructure Statement of Qualifications for your records with Cover Letter, Firm History, Org Chart, Project Experience, and Resumes.

Additionally, I have attached two contracts that are exactly the same, except for the City's name changed. We had to run a few things through our legal department and it took a little more time than I anticipated. However, I wanted to give you the assurance that if one contract was not approved, the other could be voided essentially. The fee is not filled out, but it will give your legal a chance to start their review, if necessary. The fee will be split equally between the two towns and we are tracking right at the range we told you. Update on that in a few hours!

Thanks so much and let me know if you have any questions-
Mary Elizabeth

GARVER

Mary Elizabeth Mach, PE
Senior Project Manager
Oklahoma Water Team Leader

405-329-2555
405-269-6884

1016 24th Avenue NW
Norman, OK 73069
Ph: 405-329-2555
www.GarverUSA.com

September 24, 2021

Mayor David Berrong
City of Clinton
415 W Gary Blvd.
Clinton, OK 73601

Mayor Mike Brown
City of Weatherford
522 W Rainey Ave.
Weatherford, OK 73096

RE: Qualifications to Provide Engineering Services for Custer County

Dear Mayor Berrong and Mayor Brown,

The Cities of Clinton and Weatherford have demonstrated a desire to solve pressing water supply challenges that could have an impact on growth and development throughout Custer County. Connecting the high-quality infrastructure both your cities have invested in could form the backbone behind this solution. This current opportunity of using ARPA funds in the next step on a journey of water resiliency will allow you to build upon a legacy of providing long-term water security. **Garver wants to be your dedicated partner in delivering this opportunity to the citizens and municipalities of Custer County.**

We refer to ourselves as "project partners." We take on the mentality that we operate as an extension of your staff, executing quality designs and holding ourselves accountable for every phase of a project. This allows you to focus on other responsibilities. We also want to make use of your previous investments and combine it with our long and successful engineering experience in Oklahoma. Garver will find innovative yet practical solutions to confirm the feasibility of a waterline between Clinton and Weatherford to serve the entire Custer County.

Our Norman and Oklahoma offices combined with our company-wide resources provide availability and capacity to deliver this project. This Oklahoma water team is the same team that is delivering a similar project for the City of Enid which includes nearly 70 miles of water pipeline. We have the capability to respond rapidly to any questions or concerns, making your concerns and projects our priority.

We look forward to assisting your communities and all of Custer County with this water resiliency project. Partnering with Garver means selecting a firm that will be accountable for the success of this project from conception and through design and construction, if the studies indicate its feasibility.

Please don't hesitate to contact us at (405) 329-2555 or memach@garverusa.com if you have any questions.

Your Project Partner,
GARVER

Mary Elizabeth Mach, PE
Principal-in-Charge,
Oklahoma Water Team Leader

WATER INFRASTRUCTURE & TREATMENT:
PROJECT EXPERIENCE

The Garver team stands readily available with a portfolio covering a wide range of experience to address water system improvements. The matrix below summarizes the Garver's water-related experience, which is followed by full descriptions for each project, as well as the requested information identified the RFP.

	Pipeline											Treatment / Pump Station									
Water System Projects Project, Location	Water Main/Transmission	Gravity Sewer	Relocation/Replacement	Upsizing	Trenchless Technology	Hydraulic Analysis/System Modeling	Condition Assessment	Utility Coordination	Construction Administration	Construction Observation	Bypass Pumping	New Pump	Replacement	Rehabilitation	Increase Capacity	Hydraulic Modeling / Evaluation	Condition Assessment	Electrical Improvements	Standby Power	SCADA Improvements	Funding Assistance
Enid Alternate Water Supply Program, Enid, OK	●				●	●		●	●	●		●			●	●		●	●	●	●
Midwest City Water Distribution System, Midwest City, OK	●		●	●		●	●	●													●
Perkins Road Discharge Water Line Improvements and Booster Pump Station, Stillwater, OK	●			●	●	●		●	●	●		●	●		●	●		●	●	●	
Lawton Alternate Water Supply, Lawton, OK	●					●		●	●	●		●			●	●	●	●		●	●
Jacksonville Water Transmission Lines, Jacksonville, AR	●		●			●	●	●	●	●	●							●		●	●
Elgin Water System Improvements, Elgin, OK	●	●	●	●	●	●	●	●	●	●	●						●			●	
Norman Arsenic Removal Pilot Study, Norman, OK												●	●		●	●		●		●	
COMCD Lake Thunderbird Water Reuse, Norman, OK												●	●	●	●	●	●	●	●	●	●
Del City WWTP Improvements, Del City, OK						●	●					●		●	●	●	●	●	●	●	●

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 [Insert Text Here] (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 GARVER

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, subject to the provisions with sub-Section 2.2. below. In consideration for such Services, Owner agrees to pay Garver in accordance with Section 3 below.

2.2. This Agreement is contingent upon and shall be effective upon the execution of a second Agreement between Garver and the City of Weatherford, OK pertaining to the Project identified above.

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.

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, in the form set forth in Exhibit D, 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.

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. Consequently, 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 remain the property of Garver, subject to the terms and conditions stated herein. Upon payment in full, Garver shall grant Owner an irrevocable, non-exclusive, royalty-free license to use the same for the purposes contemplated under this Agreement. To the extent allowed under applicable law, Owner shall defend, indemnify and hold harmless Garver and its subconsultants against all claims, losses, damages, injuries, and expenses, including reasonable attorneys' fees arising out of change to, or re-use of deliverables for any other project.

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. Owner hereby conveys a limited license for use of any Intellectual Property provided by Owner under this Agreement to Garver and to the City of Weatherford, said license effective only in the operation and maintenance of the Project for which it was provided.

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 A, 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 only for those construction phase Services expressly set forth in Exhibit A, 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. 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 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

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 A.

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. Subject to the limitations of liability set forth in Section 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.

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 one hundred percent (100%) of Garver's fee set forth in Exhibit B.

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. 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 Norman, 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

11.2. 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, (ii) all costs reasonably incurred to bring such Services to an orderly cessation; and (iii) a cancellation fee equal to five percent (5%) of the value of the unperformed Services as a direct result of the termination.

11.3. 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.

11.4. 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.

11.5. Termination Contingency. Upon the termination of the related Agreement between Garver and the City of Weatherford, this Agreement so also shall be terminated. Garver's obligations to complete Services are contingent upon effective and applicable Project contracts in place between Garver and the City of Clinton, and the City of Weatherford, OK.

12. MISCELLANEOUS

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

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

13.2. 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 – Form of Amendment

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: _____ *Signature*
Name: David Berrong *Printed Name*	Name: Randy McIntyre *Printed Name*
Title: Mayor	Title: Vice President
Date: _____	Date: _____
Attest: _____	Attest: _____

EXHIBIT A
(SCOPE OF SERVICES)

1.1 Garver shall provide the following Services:

1.1.1 [Insert text here [or] in Appendix A as needed.]

1.2 In addition to those obligations set forth in the Agreement, Owner shall:

1.2.1 Give thorough consideration to all documents and other information presented by Garver and informing Garver of all decisions within a reasonable time so as not to delay the Services.

1.2.2 Make provision for the Personnel of Garver to enter public and private lands as required for Garver to perform necessary preliminary surveys and other investigations required under the applicable Work Order.

1.2.3 Obtain the necessary lands, easements and right-of-way for the construction of the work. All costs associated with securing the necessary land interests, including property acquisition and/or easement document preparation, surveys, appraisals, and abstract work, shall be borne by the Owner outside of this Agreement, except as otherwise described in the Services under Section 1.1.

1.2.4 Furnish Garver such plans and records of construction and operation of existing facilities, available aerial photography, reports, surveys, or copies of the same, related to or bearing on the proposed work as may be in the possession of Owner. Such documents or data will be returned upon completion of the Services or at the request of Owner.

1.2.5 Furnish Garver a current boundary survey with easements of record plotted for the project property.

1.2.6 Pay all plan review and advertising costs in connection with the project.

1.2.7 Provide legal, accounting, and insurance counseling services necessary for the project and such auditing services as Owner may require.

1.2.8 Furnish permits, permit fees, and approvals from all governmental authorities having jurisdiction over the project and others as may be necessary for completion of the project.

1.2.9 Furnishing Garver a current geotechnical report for the proposed site of construction. Garver will coordinate with the geotechnical consultant, Owner has contracted with, on Owner's behalf for the project specific requested information.

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
PUT PHASE DESCRIPTIONS IN THIS COLUMN Preliminary Work/Study	$50	LUMP SUM
TOTAL FEE	$ 100.00	

The lump sum amount to be paid under this Agreement is [Insert fee]. 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.

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 [month day, year].

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 for each classification of Garver's personnel (may include contract staff classified at Garver's discretion) plus reimbursable expenses including but not limited to printing, courier service, reproduction, and travel. The agreed upon rates will be increased annually with the first increase effective on or about [month day, year].

Garver shall provide Owner notice when Garver is within ten percent (10%) of the not-to-exceed amount. In which event, Owner may direct Garver to proceed with the Services up to the not-to-exceed budgetary threshold before ceasing performance of the Services or increase the not-to-exceed amount with notice to Garver. Underruns in any phase may be used to offset overruns in another phase as long as the overall Agreement amount is not exceeded. In no event shall the not-to-exceed amount be interpreted as a guarantee the Services can be performed for the not-to-exceed budgetary threshold.

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

EXHIBIT D
(FORM OF AMENDMENT)

AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
[Client Name]
Project No. [????????]

AMENDMENT NO. [?]

This Amendment No. [?], effective on the date last written below, shall amend the original contract between the [Client Name] (**"Owner"**) and Garver, LLC (**"Garver"**), dated [Insert date] (the **"Agreement"**).

This Amendment No. [?] adds/modifies the Services for the:

[Describe improvements and location]

The Agreement is hereby modified as follows:

SECTION [?] – [Insert section heading]

Section [?] of the Agreement is hereby amended as follows:

This Amendment may be executed in two (2) or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

[OWNER NAME]		Garver, LLC	
By:		By:	
	Signature		*Signature*
Name:		Name:	
	Printed Name		*Printed Name*
Title:		Title:	
Date:		Date:	
Attest:		Attest:	

AMERICAN TOWER®

MD7

August 11, 2021

City Of Clinton Ok
PO BOX 1177
CLINTON, OK, 73601

RE: American Tower Site No. 35900 / Clinton #4 ("Tower Site")

Dear Valued Landlord,

As the leading independent operator of wireless and broadcast communication sites, American Towers LLC (together with its affiliates and subsidiaries, "American Tower") understands the importance of maintaining productive long-term relationships with its landlords. American Tower has therefore engaged MD7 to reach out to its landlords to review ways to grow and develop those relationships.

Based upon current market conditions, we need to adjust the financial terms of this Tower Site's contract in order to ensure the long-term stability of the Tower Site and allow all parties to benefit. The proposal below outlines two options available for the tower on your property:

Option 1: Rent Reduction

- A one-time signing bonus of $2,000
- $400 per month commencing October 1, 2021
- 7.5% annual escalation will commence November 1, 2025
- Providing 2 terms of 5 years each; final expiration date will be October 31, 2060
- 5 Year Rent Guarantee

Option 2: Perpetual Easement

Option 1 – Lump Sum.

- Purchase price of $84,975 in exchange for perpetual easement.

Option 2 – Monthly installments over 5 years.

- Purchase price of $82,500 in exchange for perpetual easement.
- 60 monthly installment payment of $1,514.32 totaling $90,858.92 after all installments paid out.

Option 3 – Monthly installments over 10 years.

- Purchase price of $82,500 in exchange for perpetual easement.
- 120 monthly installment payments of $832.50 totaling $99,899.69 after all installments paid out.

**PLEASE NOTE: All proposals are good for a limited time and for discussion purposes only. The parties will not be bound in any respect and with regard to any proposal until and unless a written agreement is signed by all applicable parties. Further, all proposals are contingent upon: 1) American Tower's confirmation, review and approval, in its sole discretion, of a title report and if necessary, a land survey of the property; and 2) final approval and authorization by American Tower's Executive Team. Nothing contained herein shall be construed as, or deemed to create, an agency, joint venture, or partnership relationship between American Tower and MD7.

I look forward to working with you to secure this mutually beneficial relationship for the years to come. After you review the options outlined above, please contact me to discuss further.

Respectfully,
Joshua Plaza
jplaza@md7.com
(858) 900-9782

MD7 | Lease Consultant
An authorized vendor of American Towers LLC and its subsidiaries and affiliates

**PLEASE NOTE: ***This conditional offer expires and is for discussion purposes only. The parties will not be bound in any respect until and unless a written agreement is signed by all applicable parties.*

Account Data And Map Image

Data provided by County Assessor

Date 08/11/2021
Time 16:22:26

Map Image



Assessment Data

Account	200013064
Parcel ID	0720-00-017-016-0-000-00
Cadastral ID	0720-017-016-00-0-000-00
Property Type	REAL - Real Property
Property Class	E
Tax Area	205 - Cli City I-99
Situs	00413 ORIENT
Subdivision	CLINTON ORIGINAL
Lot/Block	0016 / 0017
Sec/Twn/Rng	/ / /
Neighborhood	72000 - ORIGINAL CLI

CITY OF CLINTON

P O BOX 1177
CLINTON OK 73601-0000

Primary Image

Legal Description

CLINTON ORIGINAL ALL OF LT 16, W22' OF LT 17 BLK 17

Assessed Valuation

Land Value	0	**Assessed Value**	0
Improvements	0	**Assessment Level**	11%
Mobile Home	0	**Penalty Amount**	0
Total Value	0	**Exemption**	0
		Total Taxable	0