

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AUTHORIZING THE MAYOR TO AMEND THE EXECUTED CONTRACT UNDER ORDINANCE 23.29 FOR THE ON-CALL ENGINEERING SERVICES WITH R MILLER COMPANIES, LLC.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, AS FOLLOWS:

Section 1. The Board of Aldermen of the City of Osage Beach hereby authorizes the Mayor to amend the execute a contract with R. Miller Companies, LLC form substantially similar in terms and content contained in the engagement letter attached to this ordinance as Exhibit "A."

Section 2 The City Administrator is hereby authorized to take such further actions as are necessary to carry out the intent of this Ordinance and Contract.

Section 3 This Ordinance shall be in full force and effect upon date of passage.

READ FIRST TIME: June 1, 2023

READ SECOND TIME: June 1, 2023

I hereby certify that the above Ordinance No. 23.49 was duly passed on June 1, 2023, by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes: 4

Nays: 0

Abstentions: 0

Absent: 2

This Ordinance is hereby transmitted to the Mayor for his signature.

June 1, 2023
Date

Tara Berreth
Tara Berreth, City Clerk

Approved as to form:

Cole Bradbury
Cole Bradbury, City Attorney

I hereby APPROVE Ordinance No. 23.49

June 1, 2023
Date

Michael Harmison
Michael Harmison, Mayor

ATTEST:

Tara Berreth
Tara Berreth, City Clerk



CITY OF OSAGE BEACH ENGINEERING AGREEMENT

THIS ENGINEERING AGREEMENT (the "Agreement") states the terms and conditions that govern the contractual relationship between the City of Osage Beach, Missouri ("**City**") and R. Miller Companies, LLC dba Miller Companies ("**Engineer**"), on the following terms.

I. TERMS

1. **Relationship Created.** City hereby hires Engineer to perform various tasks ("**Work**") upon the following terms. For each new project, City and Engineer will enter into a separate Work Order detailing the scope of Work to be provided, the schedule, and any other terms specific to that Work Order. Each Work Order shall be governed by the terms in this Agreement and shall be incorporated into this Agreement and no Work Order shall contradict the terms of this Agreement without an affirmative vote of the City's Board of Aldermen.
2. **Engineer's Obligations.**
 - a. *Work Orders.* Engineer agrees to perform all Work Orders as agreed upon with the City.
 - b. *Professionalism.* Engineer will exercise the care and skill ordinarily used by members of the subject profession practicing under similar circumstances (as defined by the appropriate licensing authority, professional standards, and/or relevant industry practices). Engineer understands that it will be perceived as a representative of the City and will ensure its personnel and any subcontractors will conduct themselves in a thoroughly professional and respectable manner while performing all Work for the City and while on-site. Engineer shall ensure its personnel and any subcontractors comply with all City policies while on-site. Engineer and its personnel and any subcontractors will comply with all reasonable instructions and requests by the City. City property and resources are to be used only in ways that are consistent with their lawful intended purpose.
 - c. *Time.* If a specific time of performance of the Work is provided, that time shall control. If a specific time of performance is not provided, Engineer's obligation to perform the Work will be for a period which may reasonably be required

for the completion thereof. If City has requested changes in the scope or character of the Work and a specific time was not included in such changes, the time for performance shall be adjusted equitably.

- d. *Insurance.* Engineer shall purchase and maintain insurance as set forth below:
 - i. Commercial General Liability insurance with a limit of \$1,000,000 for each occurrence and \$2,000,000 general aggregate;
 - ii. Workers Compensation and Employer's Liability insurance in accordance with statutory requirements, with a limit of \$1,000,000 for each accident;
 - iii. Professional Liability insurance on a claims-made basis in the amount of \$3,000,000 per claim and \$3,000,000 annual aggregate; and
 - iv. If Engineer is using a company-owned vehicle to perform the Work, Automobile Liability insurance with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.

Upon request, Engineer shall cause City to be named as additional insured for any or all of such policies.

- e. *Licenses, Permits, Taxes.* Engineer shall be responsible for applying for, obtaining, and maintaining all licenses, permits, and other approvals required for itself, including but not limited to the Work. Engineer shall be responsible for paying all sales, income, property, and other taxes required to carry on its business.
- f. *Communication.* Engineer will provide timely replies to City's inquiries and requests for information. Engineer's point of contact for this Agreement is: Lee Schuman, PE.

3. City's Obligations.

- a. *Payment.* City hereby agrees to pay Engineer for the Work according to Engineer's standard rates, a copy of which is attached hereto as **Exhibit A**. City will pay Engineer not more frequently than monthly unless otherwise agreed in writing.
- b. *Criteria and Direction.* City will provide Engineer with all criteria and full information as to City's requirements for the Work, including objectives, design, capacity, performance, and budgetary requirements and limitations.

- c. *Access.* Unless otherwise specified in the Work Order, City will arrange for access to and make all provisions for Engineer to enter upon public and private property as required to perform the Work.
- d. *Cooperation.* City will examine alternative solutions, reports, drawings, specifications, and other documents presented by Engineer and render timely decisions pertaining to the documents. City will participate in conferences, meetings, bid openings, and other similar aspects of the Project as requested by Engineer.
- e. *Permitting and Approvals.* City will provide timely reviews, approvals, licenses, and permits from where it has jurisdiction over components or phases of the Work. Such approvals are contingent upon Engineer meeting the requirements therefor.
- f. City will provide timely replies to Engineer's inquiries and requests for information. City's point of contact for this Agreement is Assistant City Administrator Mike Welty.

II. STANDARD CONDITIONS

The following conditions are standard in all City of Osage Beach contracts and are only to be modified with substantial justification, and then only as much as necessary to accommodate such justification.

- 4. **Appropriations.** The continuation of this Agreement is contingent upon annual appropriation of funds by the Osage Beach Board of Aldermen. In the event the Board of Aldermen shall not budget and appropriate, specifically with respect to this Agreement, on or before January 1, subsequent years of the contract moneys sufficient to make all payments under this Agreement, the City shall not be obligated to make those payments.
- 5. **Pre-Contract Expense.** The City shall not be obligated to pay or liable for any cost incurred by Engineer prior to execution of this Agreement. All costs to prepare and submit a response to this and any other RFQ, RFP, or IFB shall be borne by the proposer.
- 6. **Assignment or Transfer.** Neither this Agreement, nor any portion thereof, shall be transferred or assigned without formal written approval by the City.
- 7. **Discrimination Policy.** The City of Osage Beach advises the public that it does not discriminate on the basis of disability, race or color, national origin, religion, age, or sex in employment or the provision of municipal services. Furthermore, the City has an Affirmative Action Plan for the purpose of promoting vigorously the objectives of equal

opportunity in employment and all programs and services. Engineer shall not discriminate on any prohibited basis and shall comply with all applicable employment laws.

8. **Laws, Ordinances, and Regulations.** Engineer shall conform to all Federal, State, and local regulations, ordinances, and laws applicable to Engineer, the City, or the subject matter of this Agreement. The City shall not be responsible for any fees, charges, money, or other obligations due as result of from any service provided under this Agreement. Engineer shall conform to all changes made to this Agreement as a result of any ordinance, law and/or directive issued by the Federal, State, or local authority having jurisdiction over this Agreement, Engineer, or the City.
9. **E-Verify.** If this Agreement is for an aggregate value in excess of \$5,000.00, Engineer shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection to the contracted services. Engineer shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection to the Work. See R.S.Mo. § 285.530.
10. **Indemnification by Engineer.** Engineer shall indemnify, save, and hold harmless the City, its employees, and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by Engineer or its employees, agents, subcontractors, or assignees arising out of this Agreement.
11. **No Indemnification by City.** Nothing in this Agreement shall be construed to require the City to indemnify Engineer. Such indemnification is illegal under Missouri law. See Mo. A.G. Opinion 138-87 (1987).
12. **Sunshine Law.** All material submitted to the City will become public record and will be subject to the Missouri Sunshine Act, R.S.Mo. Chapter 610. Any material requested to be treated as proprietary or confidential must be clearly identified and easily separable from other materials. Engineer must include justification for the request. The City's obligation to comply with the Sunshine Act supersede any request by Engineer that material be treated as proprietary or confidential.
13. **Ownership of Work Product.** All documents and other work product created by Engineer under this Agreement shall become the property of City once the invoice for the preparation of such document or work product has been paid.
14. **Termination.** The City reserves the right to terminate this Agreement without cause by giving 30 days' written notice to Engineer. City may terminate this Agreement upon written notice of any violation of this Agreement if such violation is not cured within 7 calendar days of such notice. City may immediately terminate this Agreement for any

material violation or any violation which creates a risk to the health, safety, or welfare of any person or property.

15. **Notices.** All formal notices or other documents required by this Agreement shall be in writing and delivered personally or mailed by certified mail, postage prepaid, addressed to the parties at:

For City:

City Clerk

1000 City Parkway

Osage Beach, MO 65065

For Engineer:

City may also serve written notice to Engineer by personal delivery to any of its owners, officers, or employees.

16. **Necessary Documents.** The parties agree to execute and deliver without additional consideration such instruments and documents and to take such further actions as they may reasonably request in order to fulfill the intent of and give effect to this Agreement and the transactions contemplated thereby.
17. **Entire Agreement.** This Agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them.
18. **Non-Waiver.** No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right unless otherwise expressly provided herein.
19. **Headings.** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
20. **Governing Law; Venue for Disputes.** This Agreement was made in the State of Missouri and shall be interpreted under and governed by the laws of the State of Missouri. Any action arising out of this Agreement or its subject matter shall be filed in the Circuit Court for Camden County, Missouri or the Associate Division thereof and the parties hereby consent and agree to the exclusive personal and subject-matter jurisdiction of that Court.
21. **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies under or by reason of this Agreement.
22. **Severability.** If any provision in this Agreement shall be found to be void, the other provisions of this Agreement shall survive and remain enforceable.

23. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. A facsimile or electronic (such as .PDF) copy of this Agreement or a signature thereto shall have the same force and effect as an original.

24. **Binding Effect.** This Agreement, subject to the above conditions of assignment, shall be binding upon and inure to the benefit of all parties and their respective legal representatives, successors, heirs, and assigns.

III. ACCEPTANCE

CITY:
CITY OF OSAGE BEACH
COMPANIES

ENGINEER:
R. MILLER COMPANIES, LLC DBA MILLER



BY: Michael Harmison
ITS: Mayor

4/20/23
Date



05/12/2023
Date

BY:
ITS:

Attest:



BY: Tara Berreth
ITS: City Clerk

4/20/23
Date