

City Council Agenda Items
and
Contracts, Leases or Agreements

2/7/2012

City Council Meeting Date
Agenda Items Only

Matt Mihalevich
Submitted By

Engineering
Division

Development Services
Department

Action Required:

Staff recommends a resolution approving the agreement for professional engineering services between the City of Fayetteville and Garver, LLC. in an amount not to exceed \$94,200.00 for engineering design associated with two trail bridges and trail design under the South School (71B) Bridge for the Town Branch Trail.

\$ 94,200.00
Cost of this request

4470.9470.5814.05
Account Number

02016.1102
Project Number

\$ 1,361,000.00
Category / Project Budget

\$ 55,060.30
Funds Used to Date

\$ 1,305,939.70
Remaining Balance

Trail Development
Program Category / Project Name

Trail Improvements
Program / Project Category Name

Sales Tax Capital
Fund Name

Budgeted Item

Budget Adjustment Attached

[Signature]
Department Director
01.19.2012
Date

Previous Ordinance or Resolution # Res 131-11
RFQ 11-01

[Signature]
City Attorney
1-20-12
Date

Original Contract Date: _____

Original Contract Number: _____

Paul A. Beebe
Finance and Internal Services Director
1-20-2012
Date

Received in City Clerk's Office
01-19-12 04:15 RCVD
King

[Signature]
Chief of Staff
1-20-12
Date

Received in Mayor's Office
ENTER 1/20/12
[Signature]

[Signature]
Mayor
1/23/12
Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director *J*
Chris Brown, City Engineer *CB*

From: Matt Mihalevich, Trails Coordinator *mm*

Date: January 19, 2012

Subject: Resolution to approve a contract for engineering services with Garver, LLC.

RECOMMENDATION

Staff recommends a resolution approving the agreement for professional engineering services between the City of Fayetteville and Garver, LLC. in an amount not to exceed \$94,200.00 for engineering design associated with two trail bridges and trail design under the South School (71B) Bridge for the Town Branch Trail.

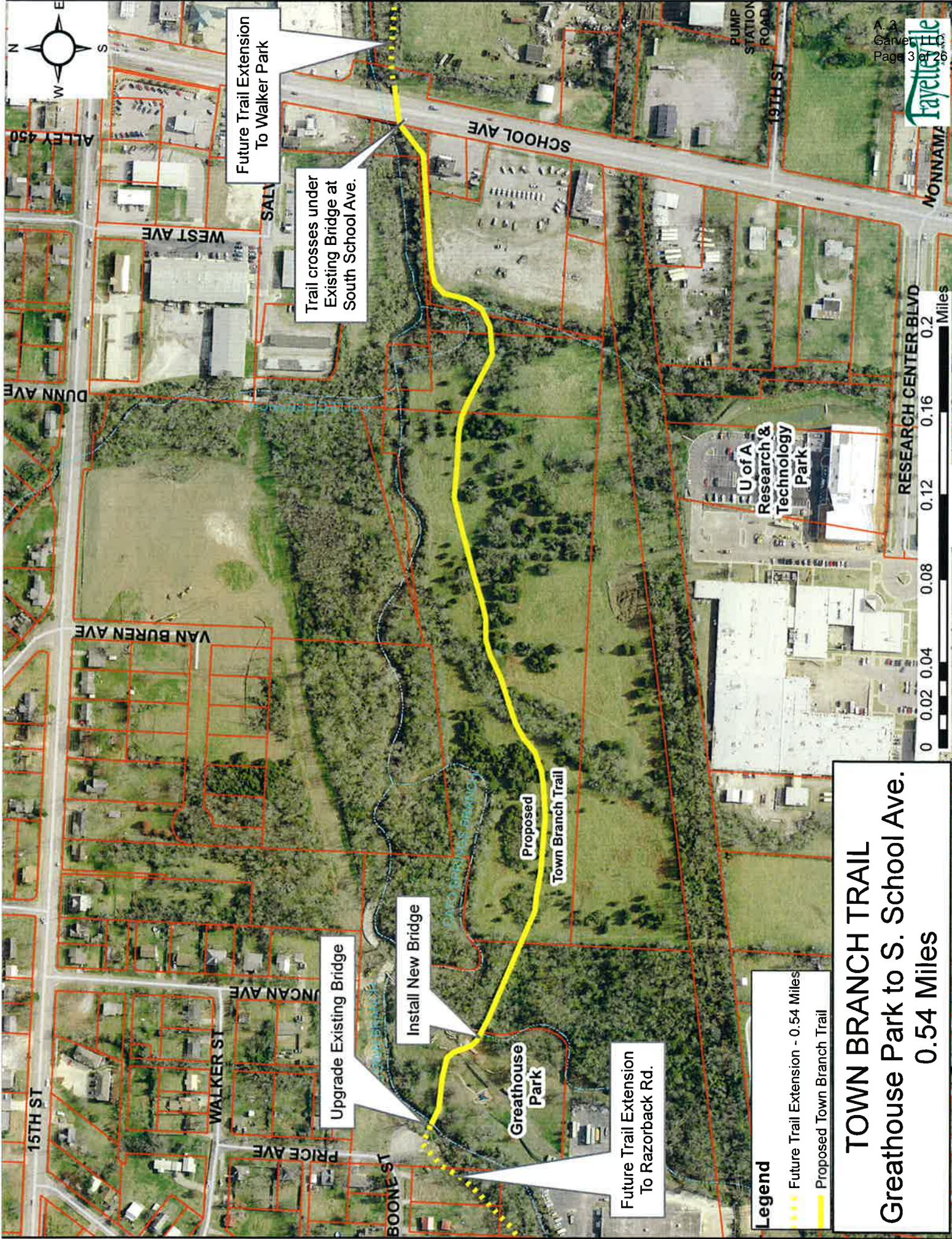
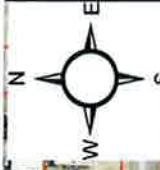
PROPOSAL:

Town Branch Trail is shown on the Fayetteville Alternative Transportation and Trails Master plan as the primary east-west trail for the southern parts of Fayetteville. The overall trail will be 2.8 miles and connect to existing trail at Razorback Road and extend east through Greathouse Park and the University of Arkansas Research and Technology Park with a connection to Walker Park and St. Paul Trail at City Lake Road. The section of the Town Branch Trail for this contract is 0.5 miles long and will connect South School (71B) to Greathouse Park and includes a trail underpass at the existing South School bridge, one new bridge over Cato Springs Branch and rehabilitation of an existing bridge over Town Branch (See attached map).

In August of 2011, resolution number 131-11 authorized acceptance of a Federal-Aid Transportation Enhancement Program Grant through the Arkansas State Highway and Transportation Department funds in the amount of \$270,000. The grant requires competitive bidding for the trail construction, therefore the City's in-house trail construction crew cannot be utilized for the construction, and detailed design plans will be necessary for bidding the project to private contractors. City staff will provide the majority of the trail design plans, however additional assistance is necessary for the structural design and flood studies for the bridges and South School underpass. Garver LLC, was selected through RFQ 11-01 and has provided the attached scope of services (Appendix A) and contract price for the requested professional engineering services.

BUDGET IMPACT:

The engineering contract of \$94,200 is not reimbursable by the Transportation Enhancement Grant, however funds have been budgeted for the project through the Trail Development Capital Improvement Program.



Future Trail Extension
To Walker Park

Trail crosses under
Existing Bridge at
South School Ave.

Proposed
Town Branch Trail

Install New Bridge

Upgrade Existing Bridge

Greathouse
Park

Future Trail Extension
To Razorback Rd.

Legend
Future Trail Extension - 0.54 Miles
Proposed Town Branch Trail

TOWN BRANCH TRAIL
Greathouse Park to S. School Ave.
0.54 Miles



RESOLUTION NO. _____

A RESOLUTION APPROVING AN AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES WITH GARVER, LLC IN AN AMOUNT NOT TO EXCEED \$94,200.00 FOR ENGINEERING DESIGN RELATED TO TOWN BRANCH TRAIL

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves an agreement for professional engineering services with Garver, LLC in an amount not to exceed \$94,200.00 for engineering design related to Town Branch Trail.

PASSED and APPROVED this 7th day of February, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

AGREEMENT
For
PROFESSIONAL ENGINEERING SERVICES
Between
CITY OF FAYETTEVILLE, ARKANSAS
And
GARVER, LLC.

THIS AGREEMENT is made as of _____, 2012, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and GARVER, LLC (hereinafter called GARVER).

CITY OF FAYETTEVILLE requires professional engineering services in connection with the design of pedestrian bridges and a School Avenue underpass associated with the Town Branch Trail. Therefore, CITY OF FAYETTEVILLE and GARVER in consideration of their mutual covenants agree as follows:

GARVER shall serve as CITY OF FAYETTEVILLE's professional engineering and architectural consultant in those assignments to which this Agreement applies, and shall give consultation and advice to CITY OF FAYETTEVILLE during the performance of GARVER's services. All services shall be performed under the direction of a professional engineer registered in the State of Arkansas and qualified in the particular field.

SECTION 1 - AUTHORIZATION OF SERVICES

- 1.1 Services on any assignment shall be undertaken only upon written Authorization of CITY OF FAYETTEVILLE and agreement of GARVER.
- 1.2 Assignments may include services described hereafter as Basic Services or as Additional Services of GARVER.
- 1.3 Changes, modifications or amendments in scope, price or fees to this contract shall **not** be allowed without a formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, costs, fees, or delivery schedule.

SECTION 2 - BASIC SERVICES OF GARVER

- 2.1 General
 - 2.1.1 Perform professional services in connection with the Project as hereinafter stated.

- 2.1.1.1 The Scope of Services to be furnished by GARVER during the design is included in Section 2.2 hereafter and in Appendix A attached hereto and made part of this Agreement.
- 2.1.2 GARVER shall coordinate their activities and services with the CITY OF FAYETTEVILLE. GARVER and CITY OF FAYETTEVILLE agree that GARVER has full responsibility for the engineering services.
- 2.2 Engineering Services – Town Branch Trail Pedestrian Bridges & School Avenue Underpass.
- 2.2.1 Perform engineering services for the design as described in the Scope of Services in Appendix A.

SECTION 3 - RESPONSIBILITIES OF CITY OF FAYETTEVILLE

CITY OF FAYETTEVILLE shall, within a reasonable time, so as not to delay the services of GARVER

- 3.1 Provide full information as to CITY OF FAYETTEVILLE's requirements for the Project.
- 3.2 Assist GARVER by placing at GARVER's disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.
- 3.3 Assist GARVER in obtaining access to property reasonably necessary for GARVER to perform its services under this Agreement.
- 3.4 Examine all studies, reports, sketches, cost opinions, proposals, and other documents presented by GARVER and render in writing decisions pertaining thereto.
- 3.5 The Trails Coordinator is the CITY OF FAYETTEVILLE's project representative with respect to the services to be performed under this Agreement. The Trails Coordinator shall have complete authority to transmit instructions, receive information, interpret and define CITY OF FAYETTEVILLE's policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.

3.6 CITY OF FAYETTEVILLE and/or its representative will review all documents and provide written comments to GARVER in a timely manner.

SECTION 4 - PERIOD OF SERVICE

4.1 This Agreement will become effective upon the first written notice by CITY OF FAYETTEVILLE authorizing services hereunder.

4.2 The provisions of this Agreement have been agreed to in anticipation of the orderly progress of the Project through completion of the services stated in the Agreement. GARVER will proceed with providing the authorized services immediately upon receipt of written authorization from CITY OF FAYETTEVILLE. Said authorization shall include the scope of the services authorized and the time in which the services are to be completed. The anticipated schedule for this project is included as Appendix A.

SECTION 5 - PAYMENTS TO GARVER

5.1 Compensation

5.1.1 Town Branch Trail

The maximum not-to-exceed amount authorized for this Agreement is **\$94,200**. The CITY OF FAYETTEVILLE shall compensate GARVER for time spent on the project at the rates described in Appendix B for each classification of GARVER's personnel. In addition, reimbursable expenses, including but not limited to printing, courier service, reproduction, travel, and subconsultants shall be paid to GARVER. For informational purposes, a breakdown of GARVER's estimated costs is included in Appendix B. The rates shown will be increased annually with the first increase effective on or about June 1, 2012.

5.1.1.1 Subject to the City Council approval, adjustment of the not-to-exceed amount may be made should GARVER establish and CITY OF FAYETTEVILLE agree that there has been or is to be a significant change in scope, complexity, character, or schedule of the services to be performed; or if CITY OF FAYETTEVILLE decides to shorten the duration of work from the time period specified in the Agreement for completion of work and such modification warrants such adjustment. Changes, modifications or amendments in scope, price or fees to this Contract shall **not** be allowed without formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost, fees, or delivery schedule.

5.1.1.2 Monthly statements for each calendar month shall be submitted to CITY OF FAYETTEVILLE or such parties as CITY OF FAYETTEVILLE may designate for professional services consistent with GARVER's normal billing schedule. Once established, the billing schedule shall be maintained throughout the duration of the Project. Applications for payment shall be made in accordance with a format to be developed by GARVER and approved by CITY OF FAYETTEVILLE. Applications for payment shall be accompanied each month by the updated project schedule as the basis for determining the value earned as the work is accomplished. Final payment for professional services shall be made upon CITY OF FAYETTEVILLE's approval and acceptance with the satisfactory completion of the study and report for the Project.

5.2 Statements

Statements and progress report for each calendar month will be submitted to CITY OF FAYETTEVILLE. Statements will be based on GARVER's actual time and reimbursable expenses accrued to the project.

5.3 Payments

All statements are payable upon receipt and due within thirty (30) days. If a portion of GARVER's statement is disputed by CITY OF FAYETTEVILLE, the undisputed portion shall be paid by CITY OF FAYETTEVILLE by the due date. CITY OF FAYETTEVILLE shall advise GARVER in writing of the basis for any disputed portion of any statement. CITY OF FAYETTEVILLE will make reasonable effort to pay invoices within 30 days of date the invoice is approved. However, payment within 30 days is not guaranteed.

5.4 Final Payment

Upon satisfactory completion of the work performed under this Agreement, as a condition before final payment under this Agreement, or as a termination settlement under this Agreement, GARVER shall execute and deliver to CITY OF FAYETTEVILLE a release of all claims against CITY OF FAYETTEVILLE arising under or by virtue of this Agreement, except claims which are specifically exempted by GARVER to be set forth therein. Unless otherwise provided in this Agreement or by State law or otherwise expressly agreed to by the parties to this Agreement, final payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of CITY OF FAYETTEVILLE's claims against GARVER or his sureties under this Agreement or applicable performance and payment bonds, if any.

SECTION 6 - GENERAL CONSIDERATIONS

6.1 Insurance

6.1.1 During the course of performance of these services, GARVER will maintain (in United States Dollars) the following minimum insurance coverages:

<u>Type of Coverage</u>	<u>Limits of Liability</u>
Workers' Compensation Employers' Liability	Statutory \$500,000 Each Accident
Commercial General Liability Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Automobile Liability: Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Professional Liability Insurance	\$1,000,000 Each Claim

GARVER will provide to CITY OF FAYETTEVILLE certificates as evidence of the specified insurance within ten days of the date of this Agreement and upon each renewal of coverage.

6.1.2 CITY OF FAYETTEVILLE and GARVER waive all rights against each other and their officers, directors, agents, or employees for damage covered by property insurance during and after the completion of GARVER's services.

6.2 Professional Responsibility

6.2.1 GARVER will exercise reasonable skill, care, and diligence in the performance of GARVER's services and will carry out its responsibilities in accordance with customarily accepted professional engineering practices. CITY OF FAYETTEVILLE will promptly report to GARVER any defects or suspected defects in GARVER's services of which CITY OF FAYETTEVILLE becomes aware, so that GARVER can take measures to minimize the consequences of such a defect. CITY OF FAYETTEVILLE retains all remedies to recover for its damages caused by any negligence of GARVER

6.3 Cost Opinions and Projections

Cost opinions and projections prepared by GARVER relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on GARVER's experience, qualifications, and judgment as a design professional. Since GARVER has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction Contractors' procedures and methods, unavoidable delays, construction Contractors' methods of determining prices, economic conditions, competitive bidding or market conditions, and other factors affecting such cost opinions or projections, GARVER does not guarantee that actual rates, costs, performance, schedules, and related items will not vary from cost opinions and projections prepared by GARVER.

6.4 Changes

CITY OF FAYETTEVILLE shall have the right to make changes within the general scope of GARVER's services, with an appropriate change in compensation and schedule only after Fayetteville City Council approval of such proposed changes and, upon execution of a mutually acceptable amendment or change order signed by the Mayor of the CITY OF FAYETTEVILLE and the duly authorized officer of GARVER.

6.5 Termination

6.5.1 This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given:

6.5.1.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,

6.5.1.2 An opportunity for consultation with the terminating party prior to termination.

6.5.2 This Agreement may be terminated in whole or in part in writing by CITY OF FAYETTEVILLE for its convenience, provided that GARVER is given:

6.5.2.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,

- 6.5.2.2 An opportunity for consultation with the terminating party prior to termination.
- 6.5.3 If termination for default is effected by CITY OF FAYETTEVILLE, an equitable adjustment in the price provided for in this Agreement shall be made, but
 - 6.5.3.1 No amount shall be allowed for anticipated profit on unperformed services or other work,
 - 6.5.3.2 Any payment due to GARVER at the time of termination may be adjusted to cover any additional costs to CITY OF FAYETTEVILLE because of GARVER's default.
- 6.5.4 If termination for default is effected by GARVER, or if termination for convenience is effected by CITY OF FAYETTEVILLE, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to GARVER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by GARVER relating to commitments which had become firm prior to the termination.
- 6.5.5 Upon receipt of a termination action under Paragraphs 6.5.1 or 6.5.2 above, GARVER shall:
 - 6.5.5.1 Promptly discontinue all affected work (unless the notice directs otherwise),
 - 6.5.5.2 Deliver or otherwise make available to CITY OF FAYETTEVILLE all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by GARVER in performing this Agreement, whether completed or in process.
- 6.5.6 Upon termination under Paragraphs 6.5.1 or 6.5.2 above CITY OF FAYETTEVILLE may take over the work and may award another party an agreement to complete the work under this Agreement.
- 6.5.7 If, after termination for failure of GARVER to fulfill contractual obligations, it is determined that GARVER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of CITY OF FAYETTEVILLE. In such event, adjustments of the agreement price shall be made as provided in Paragraph 6.5.4 of this clause.

6.6 Delays

In the event the services of GARVER are suspended or delayed by CITY OF FAYETTEVILLE or by other events beyond GARVER's reasonable control, GARVER shall be entitled to additional compensation and time for reasonable costs incurred by GARVER in temporarily closing down or delaying the Project.

6.7 Rights and Benefits

GARVER's services will be performed solely for the benefit of CITY OF FAYETTEVILLE and not for the benefit of any other persons or entities.

6.8 Dispute Resolution

6.8.1 Scope of Paragraph: The procedures of this Paragraph shall apply to any and all disputes between CITY OF FAYETTEVILLE and GARVER which arise from, or in any way are related to, this Agreement, including, but not limited to the interpretation of this Agreement, the enforcement of its terms, any acts, errors, or omissions of CITY OF FAYETTEVILLE or GARVER in the performance of this Agreement, and disputes concerning payment.

6.8.2 Exhaustion of Remedies Required: No action may be filed unless the parties first negotiate. If timely Notice is given under Paragraph 6.8.3, but an action is initiated prior to exhaustion of these procedures, such action shall be stayed, upon application by either party to a court of proper jurisdiction, until the procedures in Paragraphs 6.8.3 and 6.8.4 have been complied with.

6.8.3 Notice of Dispute

6.8.3.1 For disputes arising prior to the making of final payment promptly after the occurrence of any incident, action, or failure to act upon which a claim is based, the party seeking relief shall serve the other party with a written Notice;

6.8.3.2 For disputes arising within one year after the making of final payment, CITY OF FAYETTEVILLE shall give GARVER written Notice at the address listed in Paragraph 6.14 within thirty (30) days after occurrence of any incident, accident, or first observance of defect or damage. In both instances, the Notice shall specify the nature

and amount of relief sought, the reason relief should be granted, and the appropriate portions of this Agreement that authorize the relief requested.

6.8.4 Negotiation: Within seven days of receipt of the Notice, the Project Managers for CITY OF FAYETTEVILLE and GARVER shall confer in an effort to resolve the dispute. If the dispute cannot be resolved at that level, then, upon written request of either side, the matter shall be referred to the President or Chief Engineer of GARVER and the Mayor of CITY OF FAYETTEVILLE or his designee. These officers shall meet at the Project Site or such other location as is agreed upon within 30 days of the written request to resolve the dispute.

6.9 CITY OF FAYETTEVILLE represents that it has sufficient funds or the means of obtaining funds to remit payment to GARVER for services rendered by GARVER.

6.10 Publications

Recognizing the importance of professional development on the part of GARVER's employees and the importance of GARVER's public relations, GARVER may prepare publications, such as technical papers, articles for periodicals, and press releases, pertaining to GARVER's services for the Project. Such publications will be provided to CITY OF FAYETTEVILLE in draft form for CITY OF FAYETTEVILLE's advance review. CITY OF FAYETTEVILLE shall review such drafts promptly and provide CITY OF FAYETTEVILLE's comments to GARVER. CITY OF FAYETTEVILLE may require deletion of proprietary data or confidential information from such publications, but otherwise CITY OF FAYETTEVILLE will not unreasonably withhold approval. The cost of GARVER's activities pertaining to any such publication shall be for GARVER's account.

6.11 Indemnification

6.11.1 CITY OF FAYETTEVILLE agrees that it will require all construction Contractors to indemnify, defend, and hold harmless CITY OF FAYETTEVILLE and GARVER from and against any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractors, or their employees, agents, Subcontractors, and Suppliers.

6.12 Computer Models. GARVER may use or modify GARVER'S proprietary computer models in service of CITY OF FAYETTEVILLE under this agreement, or GARVER may develop computer models during GARVER's service to CITY OF OFAYETTEVILLE under this agreement. Such use, modification, or development by GARVER does not constitute a

license to CITY OF FAYETTEVILLE to use or modify GARVER's computer models. Said proprietary computer models shall remain the sole property of GARVER. CITY OF FAYETTEVILLE and GARVER will enter into a separate license agreement if CITY OF FAYETTEVILLE wishes to use GARVER's computer models.

6.13 Ownership of Documents

All documents provided by CITY OF FAYETTEVILLE including original drawings, disks of CADD drawings and cross sections, estimates, specification field notes, and data are and remain the property of CITY OF FAYETTEVILLE. GARVER may retain reproduced copies of drawings and copies of other documents.

Engineering documents, drawings, and specifications and other hard copy or electronic media prepared by GARVER as part of the Services shall become the property of CITY OF FAYETTEVILLE when GARVER has been compensated for all Services rendered, provided, however, that GARVER shall have the unrestricted right to their use. GARVER shall, however, retain its rights in its standard drawings details, specifications, databases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of GARVER.

Any files delivered in electronic medium may not work on systems and software different than those with which they were originally produced. GARVER makes no warranty as to the compatibility of these files with any other system or software. Because of the potential degradation of electronic medium over time, in the event of a conflict between the sealed original drawings/hard copies and the electronic files, the sealed drawings/hard copies will govern.

6.14 Notices

Any Notice required under this Agreement will be in writing, addressed to the appropriate party at the following addresses:

CITY OF FAYETTEVILLE's address:
113 West Mountain Street
Fayetteville, Arkansas 72701

GARVER, LLC's address:
2049 E. Joyce Blvd, Suite 400
Fayetteville, Arkansas 72703

6.15 Successor and Assigns

CITY OF FAYETTEVILLE and GARVER each binds himself and his successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither CITY OF FAYETTEVILLE nor GARVER shall assign, sublet, or transfer his interest in the Agreement without the written consent of the other.

6.16 Controlling Law

This Agreement shall be subject to, interpreted and enforced according to the laws of the State of Arkansas without regard to any conflicts of law provisions.

6.17 Entire Agreement

This Agreement represents the entire Agreement between GARVER and CITY OF FAYETTEVILLE relative to the Scope of Services herein. Since terms contained in purchase orders do not generally apply to professional services, in the event CITY OF FAYETTEVILLE issues to GARVER a purchase order, no preprinted terms thereon shall become a part of this Agreement. Said purchase order document, whether or not signed by GARVER, shall be considered as a document for CITY OF FAYETTEVILLE's internal management of its operations.

SECTION 7 - SPECIAL CONDITIONS

7.1 Additional Responsibilities of GARVER

7.1.1 CITY OF FAYETTEVILLE's review, approval, or acceptance of design drawings, specifications, reports and other services furnished hereunder shall not in any way relieve GARVER of responsibility for the technical adequacy of the work. Neither CITY OF FAYETTEVILLE's review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

7.1.2 GARVER shall be and shall remain liable, in accordance with applicable law, for all damages to CITY OF FAYETTEVILLE caused by GARVER's negligent performance of any of the services furnished under this Agreement except for errors, omissions or other deficiencies to the extent attributable to CITY OF FAYETTEVILLE or CITY OF FAYETTEVILLE-furnished data.

7.1.3 GARVER's obligations under this clause are in addition to GARVER's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that CITY OF FAYETTEVILLE may have against GARVER for faulty materials, equipment, or work.

7.2 Remedies

Except as may be otherwise provided in this Agreement, all claims, counter-claims, disputes and other matters in question between CITY OF FAYETTEVILLE and GARVER arising out of or relating to this Agreement or the breach thereof will be decided in a court of competent jurisdiction within Arkansas.

7.3 Audit: Access to Records

7.3.1 GARVER shall maintain books, records, documents and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied in effect on the date of execution of this Agreement. GARVER shall also maintain the financial information and data used by GARVER in the preparation of support of the cost submission required for any negotiated agreement or change order and send to CITY OF FAYETTEVILLE a copy of the cost summary submitted. CITY OF FAYETTEVILLE, the State or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. GARVER will provide proper facilities for such access and inspection.

7.3.2 Records under Paragraph 7.3.1 above, shall be maintained and made available during performance on assisted work under this Agreement and until three years from the date of final payment for the project. In addition, those records which relate to any controversy arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

7.3.3 This right of access clause (with respect to financial records) applies to:

7.3.3.1 Negotiated prime agreements:

7.3.3.2 Negotiated change orders or agreement amendments in excess of \$10,000 affecting the price of any formally advertised, competitively awarded, fixed price agreement.

7.3.3.3 Agreements or purchase orders under any agreement other than a formally advertised, competitively awarded, fixed price agreement. However, this right of access does not apply to a prime agreement, lower tier subagreement or purchase order awarded after effective price competition, except:

7.3.3.3.1 With respect to record pertaining directly to subagreement performance, excluding any financial records of GARVER;

7.3.3.3.2 If there is any indication that fraud, gross abuse or corrupt practices may be involved;

7.3.3.3.3 If the subagreement is terminated for default or for convenience.

7.4 Covenant Against Contingent Fees

GARVER warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage or continent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by GARVER for the purpose of securing business. For breach or violation of this warranty, CITY OF FAYETTEVILLE shall have the right to annul this Agreement without liability or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

7.5 Gratuities

7.5.1 If CITY OF FAYETTEVILLE finds after a notice and hearing that GARVER or any of GARVER's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of CITY OF FAYETTEVILLE, in an attempt to secure an agreement or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, CITY OF FAYETTEVILLE may, by written notice to GARVER terminate this Agreement. CITY OF FAYETTEVILLE may also pursue other rights and remedies that the law or this

Agreement provides. However, the existence of the facts on which CITY OF FAYETTEVILLE bases such finding shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

7.5.2 In the event this Agreement is terminated as provided in Paragraph 7.5.1, CITY OF FAYETTEVILLE may pursue the same remedies against GARVER as it could pursue in the event of a breach of the Agreement by GARVER. As a penalty, in addition to any other damages to which it may be entitled by law, CITY OF FAYETTEVILLE may pursue exemplary damages in an amount (as determined by CITY OF FAYETTEVILLE) which shall be not less than three nor more than ten times the costs GARVER incurs in providing any such gratuities to any such officer or employee.

7.6 Arkansas Freedom of Information Act

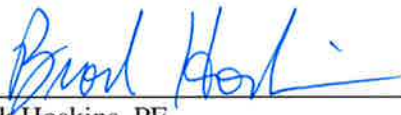
City contracts and documents, including internal documents and documents of subcontractors and sub-consultants, prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act (FOIA). If a Freedom of Information Act request is presented to the CITY OF FAYETTEVILLE, GARVER will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

IN WITNESS WHEREOF, CITY OF FAYETTEVILLE, ARKANSAS by and through its Mayor, and GARVER, by its authorized officer have made and executed this Agreement as of the day and year first above written.

CITY OF FAYETTEVILLE, ARKANSAS

GARVER

By : _____
Mayor, Lioneld Jordan

By:  _____
Brock Hoskins, PE

ATTEST:

By: _____
City Clerk

Title: Sr. Vice President/Chief Engineer

Changes, modifications or amendments in scope, price or fees to this Contract shall **not** be allowed without formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost, fees, or delivery schedule.

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

APPENDIX A – SCOPE OF SERVICES

2.1 General

Generally, the scope of services includes design and partial bidding services for improvements to the City of Fayetteville Town Branch Trail. Improvements will consist primarily of a new pedestrian bridge, upgrade of an existing pre-fabricated bridge, and the trail design under the Highway 71B (School Avenue) Bridge over the Town Branch Creek.

2.2 Surveys

2.2.1 Design Surveys

The City of Fayetteville will provide all field survey data for designing the project including the location of utilities. This survey data will be assumed to be correct.

2.2.2 Property Surveys

The City of Fayetteville will perform all property surveys required for the project.

2.3 Geotechnical Services

Garver will subcontract with Grubbs, Hoskyn, Barton & Wyatt to provide geotechnical investigations and recommendations as specified in the attached proposal and made a part of this agreement.

2.4 Coordination

Garver will furnish final plans and obtain a Nationwide permit from the U.S. Army Corps of Engineers(COE) and a permit from the Arkansas State Highway and Transportation Department(AHTD) for work within the Highway 71B right-of-way.

Garver will also attend coordination meetings with the City of Fayetteville and other agencies as required. Garver will prepare exhibits for these meetings when appropriate.

2.5 Environmental Services

Garver will delineate wetlands as necessary to obtain a Nationwide Permit from the COE. In addition, Garver will provide design of BMP devices or stream bank stabilization as necessary to meet or exceed the requirements of the City of Fayetteville Streamside Protection Ordinance. Environmental services specifically excluded from this agreement include but are not limited to wetland mitigation design, Stormwater Pollution Prevention Plans (SWPPP), NEPA requirements, Short-Term Activity Authorization (STAA) and coordination with the US Fish and Wildlife Service (USFWS), State Historic Preservation Office (SHPO), and ADEQ.

2.6 Drainage Study

Garver will utilize existing HEC-HMS and HEC-RAS hydrologic models for the design of a new bridge across the Cato Springs Branch Creek at Greathouse Park and for the new trail design located under the existing School Avenue Bridge over the Town Branch Creek. Modeling parameters, such as areas, slopes, drainage paths, and distances will be obtained from City of Fayetteville provided planimetric contour maps and aerial photos and verified by field investigations. Runoff characteristics for non-developed areas will be based on current land-use plans.

Garver will utilize the modified and new HEC-RAS models for the design of the creek crossings and trail construction within the designated FEMA floodplain/floodway to achieve a "No-Rise" in the water surface elevations during the 100-year rainfall event.

Garver will develop a drainage report including the following:

- Existing HEC-HMS model data
- HEC-RAS model results and supporting data
- Summary of Results

2.7 Conceptual Design (30% Submittal)

The conceptual design phase submittal will include an analysis of the existing truss bridge over Town Branch Creek in Greathouse Park to determine the feasibility of replacing the wooden deck with a concrete deck, plan & profile sheets of all project structures showing horizontal and vertical alignment, Drainage Study preliminary results, recommended mitigation for work within the City stream bank protection zones, COE Nationwide permit draft, and an opinion of probable construction cost. This conceptual submittal will be for the purpose of coordinating the proposed improvements with the City of Fayetteville and developing an order of magnitude cost estimate for the project. Garver will not begin preliminary design until the conceptual design is approved by the City of Fayetteville in writing.

2.8 Preliminary Design (60% Submittal)

The preliminary design phase submittal will include plan & profile sheets, preliminary bridge and underpass details, Drainage Study report, COE Nationwide permit, draft of the technical specifications, and an opinion of probable construction cost. The preliminary design phase will represent approximately 60 percent of final construction contract plans. Garver will not begin final design until the preliminary design is approved by the City of Fayetteville in writing.

Garver will furnish plans to the COE for their review and comment.

2.9 Final Design (90% and 100% Submittals)

During the final design phase of the project, Garver will conduct final designs to prepare construction plans and specifications, for one construction contract, including final construction details and quantities, special provisions, applicable permit applications, and opinion of probable construction cost. Garver will also make any needed plan changes as a result of the final field inspection and the review of the 90% plans, and prepare the construction documents as required to advertise for bids.

Garver will furnish plans to the AHTD for approval of work within the Highway 71B right-of-way.

2.10 Property Acquisition Documents

The scope for the Property Acquisition Document is excluded from this agreement.

2.11 Bidding Services

During the bidding phase of the project, Garver will:

1. Support the contract documents by preparing addenda and responding to inquiries as appropriate.
2. Participate in a pre-bid meeting.
3. Attend the bid opening.
4. Evaluate bids and recommend award.

2.12 Construction Phase Services

The scope and fee for the Construction Phase Services will be inserted to this agreement by amendment at a later date.

2.13 Project Deliverables

The following will be submitted to the City of Fayetteville, or others as indicated, by Garver:

1. Two (2) copies of the preliminary drainage report and two (2) copies of the final drainage report.
2. Two (2) copies of the Geotechnical Report.
3. Three (3) copies of the Conceptual Design with opinion of probable construction cost.
4. Three copies (3) of the Preliminary Design with opinion of probable construction cost.
5. Three (3) copies of the Final Design with opinion of probable construction cost.
6. Three (3) copies of the revised Final Design with opinion of probable construction cost.
7. Electronic files as requested.

2.14 Extra Work

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

1. All surveying including topographical, property, and utility location.
2. Utility Coordination.
3. Payment of review fees or advertisement fees.
4. Design of plans and survey in AHTD format.
5. Property Acquisition Documents.
6. Redesign for the Owner's convenience or due to changed conditions after previous alternate direction and/or approval.
7. Submittals or deliverables in addition to those listed herein.
8. Design of any utilities relocation.
9. Street/Trail lighting or other electrical design.
10. Preparation of a Storm Water Pollution Prevention Plan (SWPPP).

11. Construction materials testing.
12. Environmental Handling and Documentation, including wetlands mitigation plans or other work related to environmentally or historically (culturally) significant items.
13. Coordination with FEMA and preparation/submittal of a CLOMR and/or LOMR.
14. Construction Phase Services.
15. Services after construction, such as warranty follow-up, operations support, etc.

Extra Work will be as directed by the City of Fayetteville in writing for an additional fee as agreed upon by the City of Fayetteville and Garver.

2.15 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:

<u>Phase Description</u>	<u>Calendar Days</u>
Geotechnical Engineering	30 days from start date
Conceptual Design (30%)	45 days from start date
Preliminary Design (60%)	45 days from approval of Conceptual Design
Final Design (90%)	45 days from approval of Preliminary Design
Final Construction Documents (100%)	15 days from approval of Final Design

APPENDIX B
Town Branch Trail / 11047130
Garver Hourly Rate Schedule

Classification	Rates
Engineers / Architects	
E-1	\$ 88.00
E-2	\$ 104.00
E-3	\$ 123.00
E-4	\$ 145.00
E-5	\$ 176.00
E-6	\$ 215.00
Planners	
P-1	\$ 106.00
P-2	\$ 124.00
Designers	
D-1	\$ 83.00
D-2	\$ 111.00
Technicians	
T-1	\$ 71.00
T-2	\$ 94.00
Surveyors	
S-1	\$ 42.00
S-2	\$ 52.00
S-3	\$ 70.00
S-4	\$ 99.00
S-5	\$ 127.00
2-Man Crew (Survey)	\$ 160.00
3-Man Crew (Survey)	\$ 200.00
2-Man Crew (GPS Survey)	\$ 180.00
3-Man Crew (GPS Survey)	\$ 220.00
Construction Observation	
C-1	\$ 80.00
C-2	\$ 108.00
C-3	\$ 144.00
Administration	
X-1	\$ 49.00
X-2	\$ 66.00
X-3	\$ 109.00

APPENDIX B

CITY OF FAYETTEVILLE TOWN BRANCH TRAIL

FEE SUMMARY

Title I Services	Estimated Fees
<i>Geotechnical Services</i>	\$6,500.00
Drainage Study	\$7,700.00
Conceptual Design	\$13,000.00
Preliminary Design	\$16,400.00
Final Design	\$47,300.00
Bidding Services	\$3,300.00
Subtotal for Title I Services	\$94,200.00
Title II Services	
<i>Construction Materials Testing</i>	\$0.00
Construction Phase Services	\$0.00
Subtotal for Title II Services	\$0.00

