

City Council Agenda Items
and
Contracts, Leases or Agreements

3/6/2012

City Council Meeting Date
Agenda Items Only

Chase Gipson Parks Parks
Submitted By **Division** **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 \$40,000 for engineering design associated with the renovation of the Wilson Pool deck and swimming pool interior.

<u>\$40,000</u> Cost of this request	<u>\$ 253,000.00</u> Category / Project Budget	<u>Wilson Park Improvements</u> Program Category / Project Name
<u>2250.9255.5314.00</u> Account Number	<u>\$ -</u> Funds Used to Date	<u>Wilson Park Improvements</u> Program / Project Category Name
<u>08002.1101</u> Project Number	<u>\$ 253,000.00</u> Remaining Balance	<u>Parks Development</u> Fund Name

Budgeted Item Budget Adjustment Attached

Amie Admonator 2-16-12
Department Director Date

[Signature] 2-17-12
City Attorney Date

Paul A. Beuh 2-17-2012
Finance and Internal Services Director Date

Don Mar 2-21-12
Chief of Staff Date

Freddie Johnson 2/22/12
Mayor Date

Previous Ordinance or Resolution # _____
Original Contract Date: _____
Original Contract Number: _____

Received in City Clerk's Office 02-17-12 A11:16 RCVD
Kim G.

Received in Mayor's Office ENTERED
2/17/12
[Signature]

Comments:



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan and City Council

Thru: Don Marr, Chief of Staff
Connie Edmonston, Parks and Recreation Director
Alison Jumper, Park Planning Superintendent

From: Chase Gipson, Recreation Superintendent

Date: February 17, 2012

Subject: Resolution to approve a contract for engineering services with Garver, LLC
Agenda Request for March 6, 2012 Meeting

PROPOSAL:

The Wilson Park Swimming Pool is the only municipal pool within the City of Fayetteville and had over 22,000 visitors in 2011 during the eight week summer season. The original Wilson Park Pool was built in the 1930s and has become a well recognized structure within the city over the last 80 years. The pool has undergone renovations at different times throughout its history, with the most recent renovation occurring in 1997.

The pool deck and interior pool surface are in visible need of repair and renovation. In the fall of 2010, Parks and Recreation contracted Garver Engineering to provide a structural analysis of the pool to determine a proper course of action for the aging structure. Based on the results of the analysis, Parks Staff, after consultation with the Parks and Recreation Advisory Board, determined that renovations and repairs to the structurally sound facility were the most cost effective way to continue to provide this popular amenity to the citizens of Fayetteville. The 2010 structural analysis recommended a complete resurfacing of both the pool deck surface and the pool surface, along with repairs and renovations to the necessary areas. Garver estimated this cost to be approximately \$230,000. This project was approved as part of the 2012 CIP, with construction due to begin in August after the pool closes for the season. A selection committee was formed per RFQ 11-01 and met on February 3, 2012. Garver LLC was selected and has provided the attached scope of services and contract price for the requested professional engineering services.

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 \$40,000 for engineering design associated with the renovation of the Wilson Pool deck and swimming pool surface.

BUDGET IMPACT:

This project is funded with Parks Development Funds. The cost of \$40,000 is accounted for in project number 08002.1101- Wilson Park Improvements.

Attachments:

Staff Review Form
Agreement Signed by Engineer

RESOLUTION NO. _____

A RESOLUTION APPROVING A CONTRACT WITH GARVER, LLC IN AN AMOUNT NOT TO EXCEED \$40,000.00 FOR PROFESSIONAL ENGINEERING SERVICES RELATED TO THE RENOVATION OF THE WILSON PARK SWIMMING POOL DECK AND INTERIOR

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 a contract with Garver, LLC, a copy of which is attached as Exhibit "A", in an amount not to exceed \$40,000.00 for professional engineering services related to the renovation of the Wilson Park swimming pool deck and interior.

PASSED and APPROVED this 6th day of March, 2012.

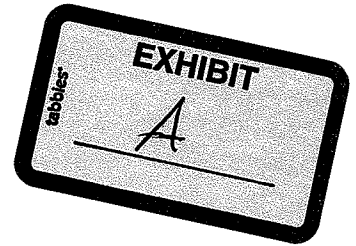
APPROVED:

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 renovation of the Wilson Park Pool. 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 – Wilson Park Pool Renovations.
- 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 City Recreation Superintendent is the CITY OF FAYETTEVILLE's project representative with respect to the services to be performed under this Agreement. The Recreation Superintendent 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 Wilson Park Pool Renovations

The maximum not-to-exceed amount authorized for this Agreement is **\$40,000**. 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

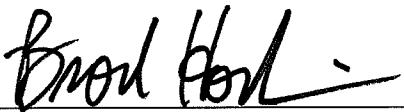
City contracts and documents, including internal documents and documents of subcontractors and sub-consultants, prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act (FOIA). If a Freedom of Information Act request is presented to the CITY OF FAYETTEVILLE, 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 surveying, design, bidding services, and partial construction support services for renovations to the Wilson Park Swimming Pool. Improvements will consist primarily of repair of cracks within pool structure and surrounding deck, removal and replacement of pool and deck surface, and repairs to the box culvert structure as recommended in the February, 2011 Structural Investigation Study.

2.2 Surveys

2.2.1 Design Surveys

Garver will provide field survey data for designing the project utilizing assumed coordinates and elevations.

Garver will only conduct field surveys, utilizing radial topography methods, in sufficient detail to determine the pool deck and pool areas required for project quantities. Garver will establish control points for use during construction.

2.2.2 Property Surveys

Property surveys are not anticipated for this project and are excluded from the scope of services.

2.3 Geotechnical Services

The need for Geotechnical services are not anticipated for this project and are excluded from the scope of services.

2.4 Coordination

Garver will furnish plans and obtain all necessary permits to all applicable regulatory agencies. These agencies may include but not limited to the US Corps of Engineers, ADEQ, Arkansas Health Department, and the City of Fayetteville (Grading/Drainage or Building Permit).

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

2.5 Conceptual Design

The conceptual design phase submittal will include 30 percent construction plans for the repair of the pool transverse and hairline cracks, recommendations for the pool coating removal & replacement, spot repairs of the concrete deck, recommendations for the removal and replacement of the pool deck surface coating, box culvert spot repairs, list of upgrades to meet current ADA guidelines, and an opinion of probable construction cost of the recommended surface treatments. This conceptual submittal will be for the purpose of coordinating the proposed improvements with the City, selecting the final surface treatments for the project, and identifying improvements to meet ADA guidelines. Garver will not begin preliminary design until the conceptual design is approved by the City.

2.6 Preliminary Design

The preliminary design phase submittal will be excluded for this project. Garver will proceed directly

to final design after approval is granted by the City of the conceptual design.

2.7 Final Design

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

2.8 Property Acquisition Documents

The need to produce property acquisition documents are not anticipated for this project and are excluded from the scope of services.

2.9 Bidding Services

During the bidding phase of the project, Garver will:

1. Assist in the preparation of the Advertisement for Bids as directed by the City. City will pay advertising costs outside of this contract.
2. Assist in contacting potential bidders.
3. City will dispense construction contract documents to prospective bidders.
4. Support the contract documents by preparing addenda as appropriate.
5. Participate in a pre-bid meeting if necessary.
6. Attend the bid opening.
7. Prepare bid tabulation.
8. Evaluate bids and recommend award.
9. Prepare construction contracts.

2.10 Partial Construction Phase Services

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

1. Issue a Notice to Proceed letter to the Contractor and attend preconstruction meeting.
2. Attend progress/coordination meetings with the City/Contractor.
3. Evaluate and respond to construction material submittals and shop drawings. Corrections or comments made by Garver on the shop drawings during this review will not relieve Contractor from compliance with requirements of the drawings and specifications. The check will only be for review of general conformance with the design concept of the project and general compliance with the information given in the contract documents. The Contractor will be responsible for confirming and correlating all quantities and dimensions, selecting fabrication processes and techniques of construction, coordinating his work with that of all other trades, and performing his work in a safe and satisfactory manner. Garver's review shall not constitute approval of safety precautions or constitute approval of construction means, methods, techniques, sequences, procedures, or assembly of various components. When certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, either directly or implied for a complete and workable system, Garver shall be entitled to rely upon such submittal or implied certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.
4. Issue instructions to the Contractor on behalf of the Owner and issue necessary clarifications (respond to RFIs) regarding the construction contract documents.
5. Review the Contractor's progress payment requests based on the actual quantities of

contract items completed and accepted, and will make a recommendation to the City regarding payment. Garver's recommendation for payment shall not be a representation that Garver has made exhaustive or continuous inspections to (1) check the quality or exact quantities of the Work; (2) to review billings from Subcontractors and material suppliers to substantiate the Contractor's right to payment; or (3) to ascertain how the Contractor has used money previously paid to the Contractor.

6. Provide part-time resident construction observation services for the 75-calendar-day construction contract performance time. The proposed fee is based on approximately 2 hours per day, 3 days per week, during the 75-calendar-day construction contract performance time. If the construction time extends beyond the time established in this agreement or if the City wishes to increase the time or frequency of the observation, the City will pay Garver an additional fee agreed to by the City and Garver.
7. When authorized by the City, prepare change orders for changes in the work from that originally provided for in the construction contract documents. If redesign or substantial engineering or surveying is required in the preparation of these change order documents, the City will pay Garver an additional fee to be agreed upon by the City and Garver.
8. Participate in final project inspection, prepare punch list, review final project closing documents, and submit final pay request.

Construction observation services will be provided by Garver's Resident Project Representative, who will provide or accomplish the following:

- Consult with and advise the City during the construction period.
- Maintain a file of quantities incorporated into the work, test reports, certifications, shop drawings and submittals, and other appropriate information.
- Maintain a project diary which will contain information pertinent to each site visit.

In performing construction observation services, Garver will endeavor to protect the City against defects and deficiencies in the work of the Contractor(s); but Garver cannot guarantee the performance of the Contractor(s), nor be responsible for the actual supervision of construction operations or for the safety measures that the Contractor(s) takes or should take. However, if at any time during construction Garver observes that the Contractor's work does not comply with the construction contract documents, Garver will notify the Contractor of such non-compliance and instruct him to correct the deficiency and/or stop work, as appropriate for the situation. Garver will also record the observance, the discussion, and the actions taken. If the Contractor continues without satisfactory corrective action, Garver will notify the City immediately, so that appropriate action under the City's contract with the Contractor can be taken.

2.11 Project Deliverables

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

1. Three copies of the Conceptual Design with opinion of probable construction cost of the various surface treatment options.
2. Three copies of the Final Design with opinion of probable construction cost.
3. Three copies of the revised Final Design with opinion of probable construction cost.
4. One copy of the revised Final Plans to each regulatory agency as required.
5. Three copies of the Final Plans and Specifications to the Contractor.
6. Two copies of approved shop drawings/submittals from the Contractor.
7. Electronic files as requested.

2.12 Extra Work

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

1. Redesign for the Owner's convenience or due to changed conditions after previous alternate direction and/or approval at a previous design phase.
2. Submittals or deliverables in addition to those listed herein.
3. Design of any piping and filtration systems.
4. Lighting or other electrical design.
5. Preparation of a Storm Water Pollution Prevention Plan (SWPPP).
6. Construction materials testing.
7. Drainage Studies including HEC-RAS and HEC-HMS hydrologic modeling.
8. Environmental Handling and Documentation, including wetlands identification or mitigation plans or other work related to environmentally or historically (culturally) significant items.
9. Coordination with FEMA and preparation/submittal of a CLOMR and/or LOMR.
10. Services after construction, such as warranty follow-up, operations support, etc.

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

2.13 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>
Surveys - Design	10 days from start date
Conceptual Design	30 days from start date
Final Design	40 days from approval of Conceptual Design

APPENDIX B
Fayetteville City Pool Renovations
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 WILSON PARK POOL RENOVATIONS

FEE SUMMARY

Title I Services	Estimated Fees
Surveys	\$1,900.00
Conceptual Design (30%)	\$8,100.00
Final Design (100%)	\$13,200.00
Bidding Services	\$1,800.00
Subtotal for Title I Services	\$25,000.00
Title II Services	
<i>Construction Materials Testing</i>	\$0.00
Construction Phase Services	\$15,000.00
Subtotal for Title II Services	\$15,000.00

APPENDIX B

**CITY OF FAYETTEVILLE
 WILSON PARK POOL RENOVATIONS**

SURVEYS

WORK TASK DESCRIPTION	E-6	E-5	S-5	S-4	S-3	2-Man Crew (Survey)	3-Man Crew (Survey)	2-Man Crew (GPS Survey)	3-Man Crew (GPS Survey)	MANHOUR SUBTOTALS
	\$215.00	\$176.00	\$127.00	\$99.00	\$70.00	\$160.00	\$200.00	\$180.00	\$220.00	
	hr	hr	hr	hr	hr	hr	hr	hr	hr	
1. Surveys - Topographic										
Topographic Surveys			1			8				
Data Processing/DTM Preparation			0.5	4						
Subtotal - Surveying	0	0	1.5	4	0	8	0	0	0	
2. Surveys - Property										
Property Surveys										
Data Processing										
Subtotal - Surveying	0	0	0	0	0	0	0	0	0	
Hours	0	0	1.5	4	0	8	0	0	0	14
Salary Costs	\$0.00	\$0.00	\$190.50	\$396.00	\$0.00	\$1,280.00	\$0.00	\$0.00	\$0.00	\$1,866.50

SUBTOTAL - SALARIES: \$1,866.50

DIRECT NON-LABOR EXPENSES

Document Printing/Reproduction/Assembly	\$10.00
Postage/Freight/Courier	\$0.00
Survey Supplies	\$13.50
Travel Costs	\$10.00

SUBTOTAL - DIRECT NON-LABOR EXPENSES: \$33.50

TOTAL FEE: \$1,900.00

APPENDIX B

**CITY OF FAYETTEVILLE
 WILSON PARK POOL RENOVATIONS**

CONCEPTUAL DESIGN (30%)

WORK TASK DESCRIPTION	E-6	E-5	E-4	E-3	E-2	E-1	T-2	T-1	X-2	X-1	MANHOUR SUBTOTALS
	\$215.00	\$176.00	\$145.00	\$123.00	\$104.00	\$88.00	\$94.00	\$71.00	\$66.00	\$49.00	
	hr	hr	hr	hr	hr	hr	hr	hr	hr	hr	
1. Civil Engineering											
Pool Surface Options		3		8							
Deck Surface Options		3		8							
ADA Improvements				2							
Plan Sheets				6		8		10			
Meetings/Coordination with City		2		2							
Opinion of Probable Construction Cost for surface options				4		2					
QC Review		1		1							
Subtotal - Civil Engineering	0	9	0	31	0	10	0	10	0	0	
2. Structural Engineering											
Field Inspections		3			4						
Subtotal - Structural Engineering	0	3	0	0	4	0	0	0	0	0	
Hours	0	12	0	31	4	10	0	10	0	0	67
Salary Costs	\$0.00	\$2,112.00	\$0.00	\$3,813.00	\$416.00	\$880.00	\$0.00	\$710.00	\$0.00	\$0.00	\$7,931.00
SUBTOTAL - SALARIES:											\$7,931.00
<u>DIRECT NON-LABOR EXPENSES</u>											
Document Printing/Reproduction/Assembly		\$149.00									
Postage/Freight/Courier		\$0.00									
Travel Costs		\$20.00									
SUBTOTAL - DIRECT NON-LABOR EXPENSES:											\$169.00
TOTAL FEE:											\$8,100.00

