

City of Fayetteville Staff Review Form

City Council Agenda Items
 and
 Contracts, Leases or Agreements

3-Apr-12

City Council Meeting Date
 Agenda Items Only

David Jurgens
 Submitted By

Water and Sewer
 Division

Utilities
 Department

Action Required:

Approval of an engineering contract with Crafton Tull & Associates for design of water and sewer creek crossing repairs due to flooding in the spring of 2011 for \$120,000, approval of a 5% contingency of \$6,000, and approval of a budget adjustment.

\$ 126,000
 Cost of this request
 5400-5700-5315.00
 5400-5600-5315.00
 Account Number
 11020.5400
 Project Number

\$ 1,000,000
 Category / Project Budget
 \$ 26,913
 Funds Used to Date
 \$ 973,087
 Remaining Balance

FEMA 2011 Contracts
 Program Category / Project Name
 2011 FEMA
 Program / Project Category Name
 Disaster/Replacement
 Fund Name

Budgeted Item

Budget Adjustment Attached

Spencer A. Nye
 Department Director

3-19-2012
 Date

Previous Ordinance or Resolution #

John Skelley
 City Attorney

3-19-12
 Date

Original Contract Date:

Original Contract Number:

Paul A. Buhn
 Finance and Internal Services Director

3-20-2012
 Date

Received in City
 Clerk's Office

ENTERED
 3-16-12

King

Ann Man
 Chief of Staff

3-20-12
 Date

Received in
 Mayor's Office

ENTERED
 3/19/12

Frederick Jordan
 Mayor

Date

Comments:

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan
Don Marr, Chief of Staff

From: David Jurgens, Utilities Director
Fayetteville Water and Sewer Committee

Date: March 19, 2012

Subject: Approval of an engineering contract with Crafton Tull & Associates for design of water and sewer creek crossing repairs due to flooding in the spring of 2011 and approval of a budget adjustment

RECOMMENDATION

City Administration recommends approval of an engineering contract with Crafton Tull & Associates for design of water and sewer creek crossing repairs due to flooding in the spring of 2011 for \$120,000, approval of a 5% contingency of \$6,000, and approval of a budget adjustment.

BACKGROUND

In the spring of 2011, the City experienced a period of extensive rainfall and suffered severe flooding. The incident was declared a national disaster by the President. Since the declaration, the City has been working with FEMA to obtain partial reimbursement of the costs incurred to respond to the event and to perform permanent repairs to infrastructure damaged by the event. FEMA will reimburse the City 75% of eligible costs. The State of Arkansas will reimburse the City 12.5% of eligible costs. The City's portion is also 12.5%.

The City's water and sewer system experienced a wide variety of damage from the flooding, including some locations where the water or sewer lines completely washed out. Most of these failures have been or will be repaired using in-house crews.

In order to meet the Federal Emergency Management Agency's (FEMA) requirements for reimbursement, eligible repairs must be completed within a certain timeframe.

DISCUSSION

Crafton Tull was selected by an Engineering Selection Committee on September 22, 2011. Crafton Tull has proven expertise in FEMA related work. City staff and Crafton Tull have negotiated the attached contract for design services for the ten project locations where contracted construction will be employed to complete the repairs.

BUDGET IMPACT

The budget adjustment transfers \$126,000 from the Emergency and Disaster Replacement Fund to the Water/Sewer fund, PW spreadsheet attached. All projects, except MDR060F, have received reimbursement from FEMA. Due to the size of job MDR060F, reimbursement will be granted after work is completed.

RESOLUTION NO. _____

A RESOLUTION APPROVING A CONTRACT WITH CRAFTON TULL & ASSOCIATES IN AN AMOUNT NOT TO EXCEED \$120,000.00 FOR ENGINEERING SERVICES TO DESIGN WATER AND SEWER CREEK CROSSING REPAIRS RELATED TO SPRING 2011 FLOODS, APPROVING A PROJECT CONTINGENCY OF \$6,000.00, AND APPROVING A BUDGET ADJUSTMENT

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 Crafton Tull & Associates in an amount not to exceed \$120,000.00 for engineering services to design water and sewer creek crossing repairs related to Spring 2011 floods. A copy of the contract is attached as Exhibit "A".

Section 2. That the City Council of the City of Fayetteville, Arkansas approves a project contingency of \$6,000.00.

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment, a copy of which is attached as Exhibit "B".

PASSED and APPROVED this 3rd day of April, 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
CRAFTON TULL & ASSOCIATES, INC.

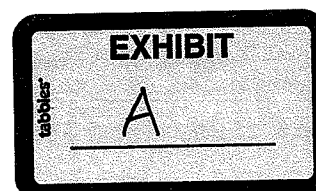
THIS AGREEMENT is made as of _____, 2012, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and CRAFTON TULL & ASSOCIATES, INC. (hereinafter called CRAFTON TULL).

CITY OF FAYETTEVILLE from time to time requires professional engineering services in connection with the investigation, planning, design & permitting of various water & sewer repair or replacement projects. Therefore, CITY OF FAYETTEVILLE and CRAFTON TULL in consideration of their mutual covenants agree as follows:

CRAFTON TULL shall serve as CITY OF FAYETTEVILLE's professional engineering consultant in those assignments to which this Agreement applies, and shall give consultation and advice to CITY OF FAYETTEVILLE during the performance of CRAFTON TULL'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 CRAFTON TULL.
- 1.2 Assignments may include services described hereafter as Basic Services or as Additional Services of CRAFTON TULL.
- 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 CRAFTON TULL

- 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 CRAFTON TULL during the Engineering Design Phase is included in Section 2.2 hereafter and in Appendix A attached hereto and made part of this Agreement.
 - 2.1.2 CRAFTON TULL shall coordinate their activities and services with the CITY OF FAYETTEVILLE. CRAFTON TULL and CITY OF FAYETTEVILLE agree that CRAFTON TULL has full responsibility for the engineering services.
- 2.2 Engineering Services – Water and Sewer Creek Crossing Flood Damage Repairs and other repairs and replacements as needed.
 - 2.2.1 Perform engineering services for the Water and Sewer Creek Crossing Flood Damage Repairs as described in the Scope of Services in Appendix A.

SECTION 3 - RESPONSIBILITIES OF CITY OF FAYETTEVILLE

CITY OF FAYETTEVILLE shall,

- 3.1 Provide full information as to CITY OF FAYETTEVILLE's requirements for the Project.
- 3.2 Assist CRAFTON TULL by placing at CRAFTON TULL'S disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.
- 3.3 Assist in obtaining access to and make reasonable provisions for CRAFTON TULL to enter upon public and private property as required for CRAFTON TULL to perform his services under this Agreement.
- 3.4 Examine all studies, reports, sketches, cost opinions, proposals, and other documents presented by CRAFTON TULL and render in writing decisions pertaining thereto within seven (7) calendar days.

- 3.5 The Assistant Water/Sewer Operations Manager is the CITY OF FAYETTEVILLE's project representative with respect to the services to be performed under this Agreement. The Assistant Water/Sewer Operations Manager 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 CRAFTON TULL 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. CRAFTON TULL 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 CRAFTON TULL

- 5.1 Compensation
- 5.1.1 Water and Sewer Creek Crossing Flood Damage Repairs and other repairs and replacements as needed

The maximum not-to-exceed amount authorized for this Agreement is **\$120,000.00**. The CITY OF FAYETTEVILLE shall compensate CRAFTON TULL based on a Unit Price or Lump Sum basis as described in Appendix A.

- 5.1.1.1 Subject to the City Council approval, adjustment of the not-to-exceed amount may be made should CRAFTON TULL establish and CITY OF FAYETTEVILLE agree that there has been or is to be a significant change in scope, complexity or character 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 CRAFTON TULL'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 CRAFTON TULL 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 CRAFTON TULL'S percent completion of the project.

5.3 Payments

All statements are payable upon receipt and due within thirty (30) days. If a portion of CRAFTON TULL'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 CRAFTON TULL 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, CRAFTON TULL 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 CRAFTON TULL 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 CRAFTON TULL 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, CRAFTON TULL 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

CRAFTON TULL 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 CRAFTON TULL 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 CRAFTON TULL's services.

6.2 Professional Responsibility

6.2.1 CRAFTON TULL will exercise reasonable skill, care, and diligence in the performance of CRAFTON TULL's services and will carry out its responsibilities in accordance with customarily accepted professional engineering practices. CITY OF FAYETTEVILLE will promptly report to CRAFTON TULL any defects or suspected defects in CRAFTON TULL's services of which CITY OF FAYETTEVILLE becomes aware, so that CRAFTON TULL 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 CRAFTON TULL.

6.3 Cost Opinions and Projections

Cost opinions and projections prepared by CRAFTON TULL relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on CRAFTON TULL's experience, qualifications, and judgment as a design professional. Since CRAFTON TULL 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, CRAFTON TULL does not guarantee that actual rates, costs, performance, schedules, and related items will not vary from cost opinions and projections prepared by CRAFTON TULL.

6.4 Changes

CITY OF FAYETTEVILLE shall have the right to make changes within the general scope of CRAFTON TULL'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 CRAFTON TULL.

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 CRAFTON TULL 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 CRAFTON TULL at the time of termination may be adjusted to cover any additional costs to CITY OF FAYETTEVILLE because of CRAFTON TULL's default.
- 6.5.4 If termination for default is effected by CRAFTON TULL, 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 CRAFTON TULL for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by CRAFTON TULL 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, CRAFTON TULL 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 CRAFTON TULL 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 CRAFTON TULL to fulfill contractual obligations, it is determined that CRAFTON TULL 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 CRAFTON TULL are suspended or delayed by CITY OF FAYETTEVILLE or by other events beyond CRAFTON TULL's reasonable control, CRAFTON TULL shall be entitled to additional compensation and time for reasonable costs incurred by CRAFTON TULL in temporarily closing down or delaying the Project.

6.7 Rights and Benefits

CRAFTON TULL'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 CRAFTON TULL 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 CRAFTON TULL 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 CRAFTON TULL 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 CRAFTON TULL 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 of CRAFTON TULL 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 CRAFTON TULL for services rendered by CRAFTON TULL.

6.10 Publications

Recognizing the importance of professional development on the part of CRAFTON TULL employees and the importance of CRAFTON TULL's public relations, CRAFTON TULL may prepare publications, such as technical papers, articles for periodicals, and press releases, pertaining to CRAFTON TULL'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 CRAFTON TULL. 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 CRAFTON TULL's activities pertaining to any such publication shall be for CRAFTON TULL'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 CRAFTON TULL 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.

CRAFTON TULL may use or modify CRAFTON TULL's proprietary computer models in service of CITY OF FAYETTEVILLE under this agreement, or CRAFTON TULL may develop computer models during CRAFTON TULL's service to CITY OF OFAYETTEVILLE under this agreement. Such use, modification, or development by CRAFTON TULL does not constitute a license to CITY OF FAYETTEVILLE to use or modify CRAFTON TULL's computer models. Said proprietary computer models shall remain the sole property of . CITY OF FAYETTEVILLE and CRAFTON TULL will enter into a separate license agreement if CITY OF FAYETTEVILLE wishes to use CRAFTON TULL'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. CRAFTON TULL may retain reproduced copies of drawings and copies of other documents.

Engineering documents, drawings, and specifications prepared by CRAFTON TULL as part of the Services shall become the property of CITY OF FAYETTEVILLE when CRAFTON TULL has been compensated for all Services rendered, provided, however, that CRAFTON TULL shall have the unrestricted right to their use. CRAFTON TULL 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 CRAFTON TULL

Any files delivered in electronic medium may not work on systems and software different than those with which they were originally produced. CRAFTON TULL 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.

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

CRAFTON TULL's address:

901 N. 47th Street, Suite 200
Rogers, AR 72756

6.14 Successor and Assigns

CITY OF FAYETTEVILLE and CRAFTON TULL 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 CRAFTON TULL shall assign, sublet, or transfer his interest in the Agreement without the written consent of the other.

6.15 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.

6.16 Entire Agreement

This Agreement represents the entire Agreement between CRAFTON TULL 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 CRAFTON TULL a purchase order, no preprinted terms thereon shall become a part of this Agreement. Said purchase order document, whether or not signed by CRAFTON TULL, 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 CRAFTON TULL

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 CRAFTON TULL 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 CRAFTON TULL shall be and shall remain liable, in accordance with applicable law, for all damages to CITY OF FAYETTEVILLE caused by CRAFTON TULL'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 CRAFTON TULL's obligations under this clause are in addition to CRAFTON TULL'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 CRAFTON TULL 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 CRAFTON TULL 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 CRAFTON TULL 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. CRAFTON TULL shall also maintain the financial information and data used by CRAFTON TULL 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. CRAFTON TULL 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 CRAFTON TULL;

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

CRAFTON TULL 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 CRAFTON TULL 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 CRAFTON TULL or any of CRAFTON TULL' 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 CRAFTON TULL 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 CRAFTON TULL as it could pursue in the event of a breach of the Agreement by CRAFTON TULL. 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 CRAFTON TULL 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, CRAFTON TULL 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 CRAFTON TULL, by its authorized officer have made and executed this Agreement as of the day and year first above written.

CITY OF FAYETTEVILLE, ARKANSAS

CRAFTON TULL & ASSOCIATES, INC.

By: _____
Mayor, Lioneld Jordan
ATTEST:

By: Bill Burnett

By: _____
City Clerk

Title: Vice President

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

**CITY OF FAYETTEVILLE
AGREEMENT FOR ENGINEERING SERVICES**

APPENDIX A – SCOPE OF SERVICES

This is **Appendix A**, consisting of 3 pages, referred to in and part of the **Agreement For Professional Engineering Services** between CITY OF FAYETTEVILLE, ARKANSAS and CRAFTON TULL & ASSOCIATES, INC. dated _____.

The following contains additional Scope of Services tasks.

A.1 General Scope

The work covered by this agreement includes detailed design, preparation of construction drawings and specifications, bidding and construction administration and observation for various water & sewer repair or replacement projects. The project generally includes the following:

1. Designs, including plans and specifications, for water and sewer creek crossing flood damage repairs and other repairs and replacements as needed.
2. Bidding services for water and sewer creek crossing flood damage repairs and other repairs and replacements as needed.
3. On order, if determined as being required for the City, construction phased services for water and sewer creek crossing flood damage repairs and other repairs and replacements as needed.
4. Work will be performed on a task order basis.

A.2 Specific Scope of Services

CRAFTON TULL shall provide a suitable engineering staff to complete the necessary field surveys, to perform detailed design, to prepare plans and specifications, to provide needed services during the bid phase and the construction phase of the project, and to provide other services as may be directed by the CITY OF FAYETTEVILLE. The staff shall consist of engineers, engineering technicians, surveyors, inspectors and other assistants as may be necessary to carry on the work in an efficient and expeditious manner. CRAFTON TULL will provide the following services:

A2.1 Detailed Design and Preparation of Construction Plans and Specifications

1. Prepare preliminary and final design for each location.
2. Prepare detailed construction specifications and drawings.
3. Prepare an opinion of probable cost of the authorized construction. It is understood and agreed that this opinion will be prepared for planning and budgeting purposes only and that CRAFTON TULL makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

4. Submit, on behalf of the CITY OF FAYETTEVILLE, construction specifications, drawings and design criteria for approval to the Arkansas Department of Health and other agencies, if required.
5. Prepare necessary environmental and other permitting applications, including SWPPP and BMP plans. For flood related repairs and replacements, site approval has already been received from both the Corps of Engineers and Arkansas Department of Environmental Quality. Short Term Activity Authorizations must still be obtained when work is to be performed. CITY OF FAYETTEVILLE informs CRAFTON TULL that work performed to repair flood damages facilities is already authorized by the Corps of Engineers.

A2.3. Bidding and Preconstruction Services

CRAFTON TULL will provide technical interpretation of the plans and specifications as needed, prepare addenda as required, attend a pre-bid conference and the bid opening, provide an engineering analysis of the bids received, make recommendations concerning award of the construction contract and assist in the preparation of contract documents. Supporting documents will be prepared and submitted to the CITY OF FAYETTEVILLE. The scope of services does include dividing construction contracts into multiple projects and/or bids on a task order basis, though the CITY OF FAYETTEVILLE may elect to combine multiple task orders into one bid.

- A2.4 Construction Phase Services should be included as a separate section in the scope of this contract, only to be executed upon receiving written authorization from the City. It is possible the City will provide construction phased services.

A.3 Project Deliverables

The following will be submitted to the CITY OF FAYETTEVILLE, or others indicated, by the CRAFTON TULL as part of the Project.

- Two (2) copies of 90% Plans and Specifications, including preliminary opinion of probable cost, to CITY OF FAYETTEVILLE for review.
- Three (3) copies of Final Plans and Specifications to the CITY OF FAYETTEVILLE.
- Permit applications as required by federal, state and local agencies, if such have not already been obtained by the City.
- Electronic files in accordance with the Agreement.

A.4 Compensation

In consideration of the performance of the foregoing services by CRAFTON TULL, the CITY OF FAYETTEVILLE shall pay to CRAFTON TULL compensation as follows:

1. Compensation shall be paid to CRAFTON TULL on the basis of CRAFTON TULL's standard hourly rates in effect at the time the work is performed, plus reimbursable expenses. Rates are adjusted annually at the beginning of each calendar year. CRAFTON TULL agrees to keep the CITY OF FAYETTEVILLE apprised in a timely manner of costs incurred.
2. The reimbursable expenses for which CRAFTON TULL will be reimbursed shall include travel expenses when traveling outside Northwest Arkansas in connection with the project, rental expenses for special equipment needed for completion of the work, purchase of

material, and other expenses directly attributable to the project, including any work performed by subcontractors. CRAFTON TULL shall charge the CITY OF FAYETTEVILLE for reimbursable expenses at actual cost plus ten percent (10%).

The maximum not-to-exceed amount authorized by this contract is \$120,000.

A.4 Project Design Schedule

CRAFTON TULL shall begin work under this Agreement within five (5) working days of a Notice to Proceed (NTP) for the first task order and shall complete the design work described in Section A2.1 for that task order in accordance with the schedule below. The schedule of complete for subsequent task orders will be specified therein. Federal Emergency Management Agency reimbursable construction must be 100% complete and paid no later than October 31, 2012, unless an extension is granted in advance of the October deadline from the Arkansas Department of Emergency Management or FEMA.

<u>Design Phase Description</u>	<u>Completion Date</u>
• Submit 90% Design Plans and Specifications	60 Days From NTP
• Submit Final Construction Plans and Specifications	75 Days From NTP

**City of Fayetteville, Arkansas
Budget Adjustment Form**

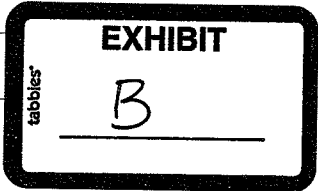
Budget Year 2012	Division: Water & Sewer Maintenance Department: Utilities Director	Request Date 4/3/2012	Adjustment Number
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BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION

Crafton Tull & Associates was selected to design the water and sewer creek crossing repairs due to the flooding in the spring of 2011 for \$120,000, plus a 5% contingency of \$6,000.

Division Head <i>Barbara Fee</i> Budget Director	Date 3/19/12 Date	Prepared By: <i>Alison Atha</i>	Reference: <i>atha #NAME?</i>
Department Director <i>Paul A. Berber</i> Finance Director	Date 3-19-2012 Date	Budget & Research Use Only	
Chief of Staff <i>Jim Man</i>	Date 3-20-12 Date	Type: A B C D E P	General Ledger Date
Mayor <i>Frederick Jones</i>	Date 3/20/12 Date	Posted to General Ledger	Initial Date
		Checked / Verified	Initial Date

Account Name	Account Number	TOTAL BUDGET ADJUSTMENT		Project.Sub Number
		126,000 Increase / (Decrease) Expense	126,000 Revenue	
Contract services	5400.5600.5315.00	63,000		11020 . 5400
Contract services	5400.5700.5315.00	63,000		11020 . 5400
Trans from Replacement	5400.0940.6602.27		126,000	11020 . 5400



PW #	For	Division	Claim	Federal Amount Expected (75%)	State Amount Expected (12.5%)	Total Expected Reimbursements	City Portion of Costs (12.5%)
RFJ073C	Noland gravel road	W&S	\$ 23,203.00	\$ 17,402.25	\$ 2,900.38	\$ 20,302.63	\$ 2,900.38
MDR041F	WS locations 8 & 9	W&S	\$ 1,386.00	\$ 1,039.50	\$ 173.25	\$ 1,212.75	\$ 173.25
MDR049F	WS locations 59 & 68	W&S	\$ 1,396.00	\$ 1,047.00	\$ 174.50	\$ 1,221.50	\$ 174.50
MDR051F	WS locations 25 & 58	W&S	\$ 1,191.00	\$ 893.25	\$ 148.88	\$ 1,042.13	\$ 148.88
MDR052F	WS locations 54 & 55	W&S	\$ 1,995.00	\$ 1,496.25	\$ 249.38	\$ 1,745.63	\$ 249.38
MDR053F	WS locations 7 & 11	W&S	\$ 2,436.00	\$ 1,827.00	\$ 304.50	\$ 2,131.50	\$ 304.50
MDR057F	White River Water Main (location 43)	W&S	\$ 42,932.00	\$ 32,199.00	\$ 5,366.50	\$ 37,565.50	\$ 5,366.50
MDR060F	WS location 42	W&S	\$ 71,990.00	\$ 53,992.50	\$ 8,998.75	\$ 62,991.25	\$ 8,998.75
MDP001F	WS location 22	W&S	\$ 3,770.81	\$ 2,828.11	\$ 471.35	\$ 3,299.46	\$ 471.35
TOTAL			\$150,299.81	\$112,724.86	\$18,787.48	\$131,512.33	\$18,787.48

large project - must request reimbursement after work completed
reimbursement received 2011

City Of Fayetteville - Purchase Order (PO) Request

(Not a Purchase Order)

All purchases under \$2500 shall be used on a P-Card unless medical or 1099 service related. (Call x256 with questions)

All PO Request shall be scanned to the Purchasing e-mail: Purchasing@ci.fayetteville.ar.us

Requisition No.:	Date:	03/19/12
P.O Number:	Expected Delivery Date:	A 4 Crafton Tull & Associates Page 24 of 24

Vendor #: 14670	Vendor Name: Crafton Tull & Associates	Mail Yes:___ No:___
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Address: 901 N. 47th Street, Suite 200	Fob Point:	Taxable Yes:___ No:___	Quotes Attached Yes:___ No:___
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City: Rogers	State: AR	Zip Code: 72756	Ship to code:	Divison Head Approval:
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Requester: Allison Atha	Requester's Employee #: 2613	Extension: 670
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Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	Design of water/sewer creek crossing repairs due to flooding in spring of 2011	1	JOB	60,000.00	\$60,000.00	5400.5600.5315.00	11020.5400		
2	Design of water/sewer creek crossing repairs due to flooding in spring of 2012	1	JOB	60,000.00	\$60,000.00	5400.5700.5315.00	11020.5400		
3					\$0.00				
4					\$0.00				
5					\$0.00				
6					\$0.00				
7					\$0.00				
8					\$0.00				
9					\$0.00				
10					\$0.00				
*	Shipping/Handling		Lot		\$0.00				

Special Instructions:

Per RFQ 11-01, Selection #4

Subtotal:	<u>\$120,000.00</u>
Tax:	_____
Total:	<u>\$120,000.00</u>

Approvals:

Mayor: _____	Department Director: _____	Purchasing Manager: _____
Finance & Internal Services Director: _____	Budget Manager: _____	IT Manager: _____
Dispatch Manager: _____	Utilities Manager: _____	Other: _____