

Greenland
#1

City of Fayetteville Staff Review Form

City Council Agenda Items
and
Contracts, Leases or Agreements

11/20/2012

City Council Meeting Date
Agenda Items Only

David Jurgens Submitted By	Utilities Division	Utilities Department
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Action Required:

Approval of a professional engineering services agreement with Garver Engineers for on-call engineering and surveying services for \$25,000 (\$12,500 water and \$12,500 sewer) and engineering design services for the Greenland Sewer Rehab project in the amount of \$100,087.04 with a contingency of \$10,000.

\$ 12,500	\$ 441,002	Water Line Projects as Needed
\$ 12,500	\$ 4,097,341	Sanitary Sewer Rehabilitation
\$ 110,087	\$ 4,097,341	Sanitary Sewer Rehabilitation
Cost of this request	Category / Project Budget	Program Category / Project Name
5400.5600.5314.00	\$ 329	Water and Wastewater
5400.5700.5314.00	\$ 878,591	Water and Wastewater
5400.5700.5314.00	\$ 878,591	Water and Wastewater
Account Number	Funds Used to Date	Program / Project Category Name
4020.1202	\$ 440,673	Water and Sewer
02017.1202	\$ 3,218,750	Water and Sewer
02017.1201	\$ 3,218,750	Water and Sewer
Project Number	Remaining Balance	Fund Name

Budgeted Item

Budget Adjustment Attached

[Signature] 2 Nov 12 Previous Ordinance or Resolution # _____
 Department Director Date

[Signature] 11-2-12 Original Contract Date: _____
 City Attorney Date Original Contract Number: _____

Paul A. Becher 11-5-2012
 Finance and Internal Services Director Date

Received in City Clerk's Office 02-12 P01:53 RCVD
 [Signature]

[Signature] 11-6-12
 Chief of Staff Date


Received in Mayor's Office 11/2/12
 [Signature]

[Signature] 11/8/12
 Mayor Date

Comments:

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan
Don Marr, Chief of Staff
Fayetteville Water and Sewer Committee

From: David Jurgens, Utilities Director 

Date: November 2, 2012

Subject: Approval of engineering services agreement with Garver Engineers, LLC for engineering design services

RECOMMENDATION

City Administration recommends approval of a professional engineering services agreement with Garver Engineers, LLC for on-call engineering and surveying services for \$25,000 (\$12,500 water and \$12,500 sewer) and engineering design services for the Greenland Sewer Rehab project in the amount of \$100,087.04 with a contingency of \$10,000.

BACKGROUND

The City of Fayetteville requires the need for professional engineering and surveying services on an on-call basis for various water and wastewater facilities. The services will vary depending on the specific need at the time.

Collection system rehabilitation reduces infiltration and inflow (I/I) in the system, therefore offsetting domestic flow increases, thus extending the life of pumping stations and interceptors and increasing the amount of future growth that can occur in the basins. This rehabilitation project is a major component of the City's larger action plan to proactively address the continued sewer challenges in the area. The wastewater flows from the City of Greenland and a portion of southern Fayetteville are transported to the sewer interceptor along south Fayetteville, ultimately resulting in treatment at the Noland WWTP.

DISCUSSION

Unforeseen projects emerge during the course of doing business in the Water & Sewer Department. Reacting quickly to the need of rerouting water or sewer lines as a result of circumstances beyond the control of typical operations is imperative. Retention of professional engineering and surveying services from Garver Engineers LLC will provide the means necessary to respond quickly to the needs of the Department. \$12,500 for water and \$12,500 for sewer is requested.

The Greenland Sewer Rehab Project will cover Greenland and significant areas of southern Fayetteville and consist of replacement and/or upsizing of approximately 10,500 linear feet of gravity sewer and manholes as needed and point repairs for approximately 15 sewer line segments in Greenland, Basin W-32 as previously defined by RJN Group in the last sanitary sewer evaluation study. The proposed gravity sewer sizes will range from 8-inches to 15-inches in diameter. Garver Engineers, LLC will survey the areas and prepare plan and profile drawings for the project. The Utilities Capital Projects team will assemble the drawings with construction specifications and administer the bidding and construction phases of the contract. The project will be funded through a \$287,000 State Tribal and Assistance Grant (received in late 2010), Greenland supplied funding, and Fayetteville water and sewer funds from the sanitary sewer rehabilitation project.

BUDGET IMPACT

Funds are available in the respective projects, Water Line Projects as Needed and Sanitary Sewer Rehabilitation Project.

RESOLUTION NO. _____

A RESOLUTION APPROVING A PROFESSIONAL ENGINEERING SERVICES AGREEMENT WITH GARVER, LLC FOR ON-CALL ENGINEERING AND SURVEYING SERVICES IN THE AMOUNT OF \$25,000.00 AND ENGINEERING DESIGN SERVICES FOR THE GREENLAND SEWER REHABILITATION PROJECT IN THE AMOUNT OF \$100,087.00, AND APPROVING A PROJECT CONTINGENCY OF \$10,000.00

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 professional engineering services agreement with Garver, LLC for on-call engineering and surveying services in the amount of \$25,000.00 and engineering design services for the Greenland Sewer Rehabilitation Project in the amount of \$100,087.00.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a project contingency of \$10,000.00.

PASSED and APPROVED this 20th day of November, 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 ENGINEER).

CITY OF FAYETTEVILLE from time to time requires professional engineering services in connection with the evaluation, design, and/or construction supervision of capital improvement projects. Therefore, CITY OF FAYETTEVILLE and ENGINEER in consideration of their mutual covenants agree as follows:

ENGINEER 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 ENGINEER'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 ENGINEER.
- 1.2 Assignments may include services described hereafter as Basic Services or as Additional Services of ENGINEER.
- 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 ENGINEER

- 2.1 Perform professional services in connection with the Project as hereinafter stated.
 - 2.1.1 The Scope of Services to be furnished by ENGINEER during the Project is included in Appendix A attached hereto and made part of this Agreement.
- 2.2 ENGINEER shall coordinate their activities and services with the CITY OF FAYETTEVILLE. ENGINEER and CITY OF FAYETTEVILLE agree that ENGINEER has full responsibility for the engineering services.

SECTION 3 - RESPONSIBILITIES OF CITY OF FAYETTEVILLE

- 3.1 CITY OF FAYETTEVILLE shall, within a reasonable time, so as not to delay the services of ENGINEER.
 - 3.1.1 Provide full information as to CITY OF FAYETTEVILLE's requirements for the Project.
 - 3.1.2 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.
 - 3.1.3 Assist ENGINEER in obtaining access to property reasonably necessary for ENGINEER to perform its services under this Agreement.
 - 3.1.4 Examine all studies, reports, sketches, cost opinions, proposals, and other documents presented by ENGINEER and render in writing decisions pertaining thereto.
 - 3.1.5 Provide such professional legal, accounting, financial, and insurance counseling services as may be required for the Project.
 - 3.1.6 The Utilities Director is the CITY OF FAYETTEVILLE's project representative with respect to the services to be performed under this Agreement. The Utilities Director 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.
 - 3.1.7 CITY OF FAYETTEVILLE and/or its representative will review all documents and provide written comments to ENGINEER 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. ENGINEER 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 ENGINEER

- 5.1 The maximum not-to-exceed amount authorized for this Agreement shall be based on a Unit Price or Lump Sum basis as described in Appendix A.
- 5.2 Statements
 - 5.2.1 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 ENGINEER'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 ENGINEER 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.

5.3 Payments

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

5.4.1 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, ENGINEER 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 ENGINEER 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 ENGINEER 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, ENGINEER 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

ENGINEER 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 ENGINEER 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 ENGINEER's services.

6.2 Professional Responsibility

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

6.3 Cost Opinions and Projections

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

6.4 Changes

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

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

6.7 Rights and Benefits

6.7.1 ENGINEER'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 ENGINEER 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 ENGINEER 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 ENGINEER 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 ENGINEER 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 ENGINEER 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 ENGINEER for services rendered by ENGINEER.

6.10 Publications

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

6.12.1 All documents provided by CITY OF FAYETTEVILLE including original drawings, CAD drawings, estimates, field notes, and project data are and remain the property of CITY OF FAYETTEVILLE. ENGINEER may retain reproduced copies of drawings and copies of other documents.

6.12.2 Engineering documents, computer models, drawings, specifications and other hard copy or electronic media prepared by ENGINEER as part of the Services shall become the property of CITY OF FAYETTEVILLE when ENGINEER has been compensated for all Services rendered, provided, however, that ENGINEER shall have the unrestricted right to their use. ENGINEER 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 ENGINEER.

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

6.13 Notices

6.13.1 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

ENGINEER's address:
2049 East Joyce Blvd., Suite 400
Fayetteville, AR 72703

6.14 Successor and Assigns

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

6.15 Controlling Law

6.15.1 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

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

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 ENGINEER 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 ENGINEER shall be and shall remain liable, in accordance with applicable law, for all damages to CITY OF FAYETTEVILLE caused by ENGINEER'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 ENGINEER's obligations under this clause are in addition to ENGINEER'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 ENGINEER for faulty materials, equipment, or work.

7.2 Remedies

7.2.1 Except as may be otherwise provided in this Agreement, all claims, counter-claims, disputes and other matters in question between CITY OF FAYETTEVILLE and ENGINEER 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 ENGINEER 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. ENGINEER shall also maintain the financial information and data used by ENGINEER 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. ENGINEER 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 ENGINEER;

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

7.4.1 ENGINEER 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 ENGINEER 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 ENGINEER or any of ENGINEER’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 ENGINEER 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 ENGINEER as it could pursue in the event of a breach of the Agreement by ENGINEER. 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 ENGINEER incurs in providing any such gratuities to any such officer or employee.

7.6 Arkansas Freedom of Information Act

7.6.1 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, ENGINEER 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 ENGINEER, by its authorized officer have made and executed this Agreement as of the day and year first above written.

CITY OF FAYETTEVILLE, ARKANSAS

GARVER, LLC

By : _____
Mayor, Lioneld Jordan

By: _____

ATTEST:

By: _____
City Clerk

Title: Vice President

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

Appendix A-1

Work Order 1

1. Project Title: On-Call Services
2. Project Description: GARVER will provide professional engineering and surveying services on an on-call basis for various water and wastewater facilities.
3. Services of Garver: GARVER will perform duties as directed by the CITY OF FAYETTEVILLE and agreed to by the Engineer. Work beyond the not to exceed amount below is considered extra work.
4. Payment to Engineer: The CITY OF FAYETTEVILLE will pay GARVER, for time spent on the project, at the unburdened hourly payroll rate of each of GARVER'S personnel during the performance of these services for work time directly connected with the project, plus payroll and general overhead costs of 191.95% of the unburdened hourly rate, plus direct reimbursable expenses normal and necessary for the completion of the project, plus a professional fee of 12% of actual work invoiced. The not to exceed cost of these services is \$25,000.00. Except for additional costs incurred by delays or escalation provisions herein, the actual total fee may not exceed this estimate without a formal contract amendment approved by the CITY OF FAYETTEVILLE. For informational purposes, a breakdown of Garver's approximate current hourly rates for each employee classification is included in Exhibit A. Any unused portion of the fee, due to delays beyond GARVER's control, will be increased 6% annually with the first increase effective on or about June 1, 2013.

Expenses other than salary costs that are directly attributable to performance of professional services will be billed as follows:

- a. Direct cost for travel, outside reproduction and presentation material preparation, and mail/courier expenses.
- b. Direct cost plus 10 percent for subcontract/subconsultant fees (not subject to professional fee).
- c. Charges similar to commercial rates for reports, plan sheets, presentation materials, etc.
- d. The amount allowed by the federal government for mileage with an additional \$0.05 for survey trucks/vans.
- e. \$20 per hour for GPS survey equipment use.

In addition to the fees described above for Property Record Research, ARKUPS (Utility Marking) and as may be modified for additional services required, the CITY OF FAYETTEVILLE will reimburse GARVER the actual amount invoiced to GARVER plus a 10 percent administrative markup.

5. Attachments: Exhibit A - Hourly Rate Schedule

Appendix A-2

Work Order 2

1. Project Title: Greenland Sewer Rehabilitation
2. Project Description: The project will consist of replacement and/or upsizing of approximately 10,500 linear feet of gravity sewer and manholes as needed and point repairs for approximately 15 sewer line segments in Greenland, Basin W-32 as previously defined by others for the CITY OF FAYETTEVILLE as shown on Exhibit B. The proposed gravity sewer sizes will range from 8-inches to 15-inches in diameter.
3. Services of GARVER:
 - a. Surveys/Acquisition: GARVER will provide field survey data for designing the project 25 feet either side of existing gravity sewer line to be repaired or replaced and for a new re-alignment crossing Highway 71B and the railroad, and this survey will be tied to the Owner's control network. GARVER will conduct field surveys, utilizing GPS and radial topography methods, at intervals and for distances at and/or along the project site as appropriate for modeling the existing ground, including locations of pertinent features or improvements. GARVER will locate buildings and other structures, streets, drainage features, trees over eight inches in diameter, visible utilities as well as those underground utilities marked by their owners and/or representatives, and any other pertinent topographic features that may be present at and/or along the project site. The survey will include manhole rim elevations, invert elevations, and pipe sizes. GARVER will establish horizontal and vertical control points for use during construction. GARVER will verify the exact survey limits with the CITY OF FAYETTEVILLE prior to any surveying.

GARVER will locate existing monumentation representing right of way and/or easements based on record data which will be provided by an abstractor for approximately 4 parcels to be verified with the CITY OF FAYETTEVILLE for the new re-alignment crossing Highway 71B and the railroad. GARVER will provide mapping as required for preparing easement acquisition documents for the CITY OF FAYETTEVILLE'S use in acquiring the property. Documentation will include an individual tract map with description of temporary and permanent easement for each parcel. The CITY OF FAYETTEVILLE will provide a standard easement acquisition document or "go-by" example for use by GARVER. The fee for providing property acquisition documentation is based on easements for approximately four parcels.
 - b. Environmental: GARVER will perform a wetland delineation for the entire project. GARVER will prepare a wetland report and submit to the US Army Corps of Engineers (USACE) requesting a jurisdictional determination. If USACE requires mitigation, a mitigation plan and approval is considered extra work outside this agreement. GARVER will also request authorization to proceed under a Nationwide 404 permit. If an individual 404 permit is required, it shall be considered extra work outside this agreement. If stream crossings are required, the CITY OF FAYETTEVILLE will notify the Arkansas Department of Environmental Quality (ADEQ) during construction and pay the \$200 permit fee for the Short Term Activity Authorization outside this agreement. GARVER will prepare and submit initial clearance letters from the US Fish and Wildlife Service (USFWS) and the State Historic Preservation Office (SHPO). If USFWS or

SHPO requires a cultural resource survey, an endangered species survey, or any other items, this shall be considered extra work outside this agreement. GARVER will prepare, submit, and coordinate approval of a Stormwater Pollution Prevention Plan (SWPPP) with ADEQ. The CITY OF FAYETTEVILLE will reimburse GARVER the \$200 SWPPP permit fee.

- c. Design: GARVER will generate all construction drawings including plan and profiles at either a 20 scale or 50 scale as appropriate, survey control data, erosion control drawings and details, traffic control plan for Highway 71B crossing, and construction details. GARVER will prepare an opinion of probable construction cost and perform a plan-in-hand review with the CITY OF FAYETTEVILLE before final completion of the drawings prepared for bidding. The CITY OF FAYETTEVILLE will prepare all front end and technical specifications. The CITY OF FAYETTEVILLE shall also pay the \$500 review fee and submit and obtain approval from the Arkansas Department of Health. GARVER will prepare and submit the utility permits and exhibits for the Arkansas and Missouri Rail Road (A&M) and Arkansas State Highway and Transportation Department (AHTD). The CITY OF FAYETTEVILLE will pay all bond and permit fees for the AHTD and A&M permits. GARVER will provide horizontal and vertical controls points during construction for the proposed new sewer alignment crossing Hwy. 71B and the railroad.
 - d. Bidding and Construction: Except for record drawings, the CITY OF FAYETTEVILLE will provide all bidding and construction services including services after construction. Based upon mark-ups provided by the CITY OF FAYETTEVILLE, GARVER will prepare and furnish record drawings to the CITY OF FAYETTEVILLE.
 - e. Extra Work: In addition to the items aforementioned as extra work outside this agreement or provided by the CITY OF FAYETTEVILLE, the following items are considered extra work:
 - i. Coordination with FEMA and hydrologic and hydraulic modeling beyond reviewing existing Flood Insurance Rate Maps with respect to manhole rim elevations.
 - ii. Retaining walls or other significant structural design.
 - iii. Geotechnical services for design and construction.
 - iv. Design of other utility relocations beyond sanitary sewer.
 - v. Utility coordination beyond ARKUPS (Utility Marking).
4. Payment to Engineer: The CITY OF FAYETTEVILLE will pay GARVER, for time spent on the project, at the unburdened hourly payroll rate of each of GARVER'S personnel during the performance of these services for work time directly connected with the project, plus payroll and general overhead costs of 191.95% of the unburdened hourly rate, plus direct reimbursable expenses normal and necessary for the completion of the project, plus a professional fee of 12% of actual work invoiced. The not to exceed cost of these services is \$100,087.04. Except for additional costs incurred by delays or escalation provisions herein, the actual total fee may not exceed this estimate without a formal contract amendment approved by the CITY OF FAYETTEVILLE. For informational purposes, a breakdown of Garver's estimated costs is included in Exhibit A with approximate current hourly rates for each employee classification. Any unused portion of the fee, due to delays beyond GARVER's control, will be increased 6% annually with the first increase effective on or about June 1, 2013.

Expenses other than salary costs that are directly attributable to performance of professional services will be billed as follows:

- a. Direct cost for travel, outside reproduction and presentation material preparation, and mail/courier expenses.
- b. Direct cost plus 10 percent for subcontract/subconsultant fees (not subject to professional fee).
- c. Charges similar to commercial rates for reports, plan sheets, presentation materials, etc.
- d. The amount allowed by the federal government for mileage with an additional \$0.05 for survey trucks/vans.
- e. \$20 per hour for GPS survey equipment use.

5. Schedule:

<u>Phase Description</u>	<u>Calendar Days</u>
Surveying	60 days from notice to proceed
Design/Environmental/Acquisition Documents	90 days from Surveying

6. Deliverables:

- a. Sealed Construction Drawings, including Details printable at 22'x36' (full size) and 11'x17' (half size) in .pdf format.
- b. Opinion of Probable Construction Cost
- c. SWPPP Document and Drawings
- d. Wetlands Determination and Nationwide 404 permit request
- e. US Fish and Wildlife Service (USFWS) letter
- f. State Historic Preservation Office (SHPO) letter
- g. AHTD permit application
- h. Arkansas and Missouri Rail Road permit application
- i. Easement exhibits and legal descriptions
- j. Record Drawings in .dwg and .pdf format

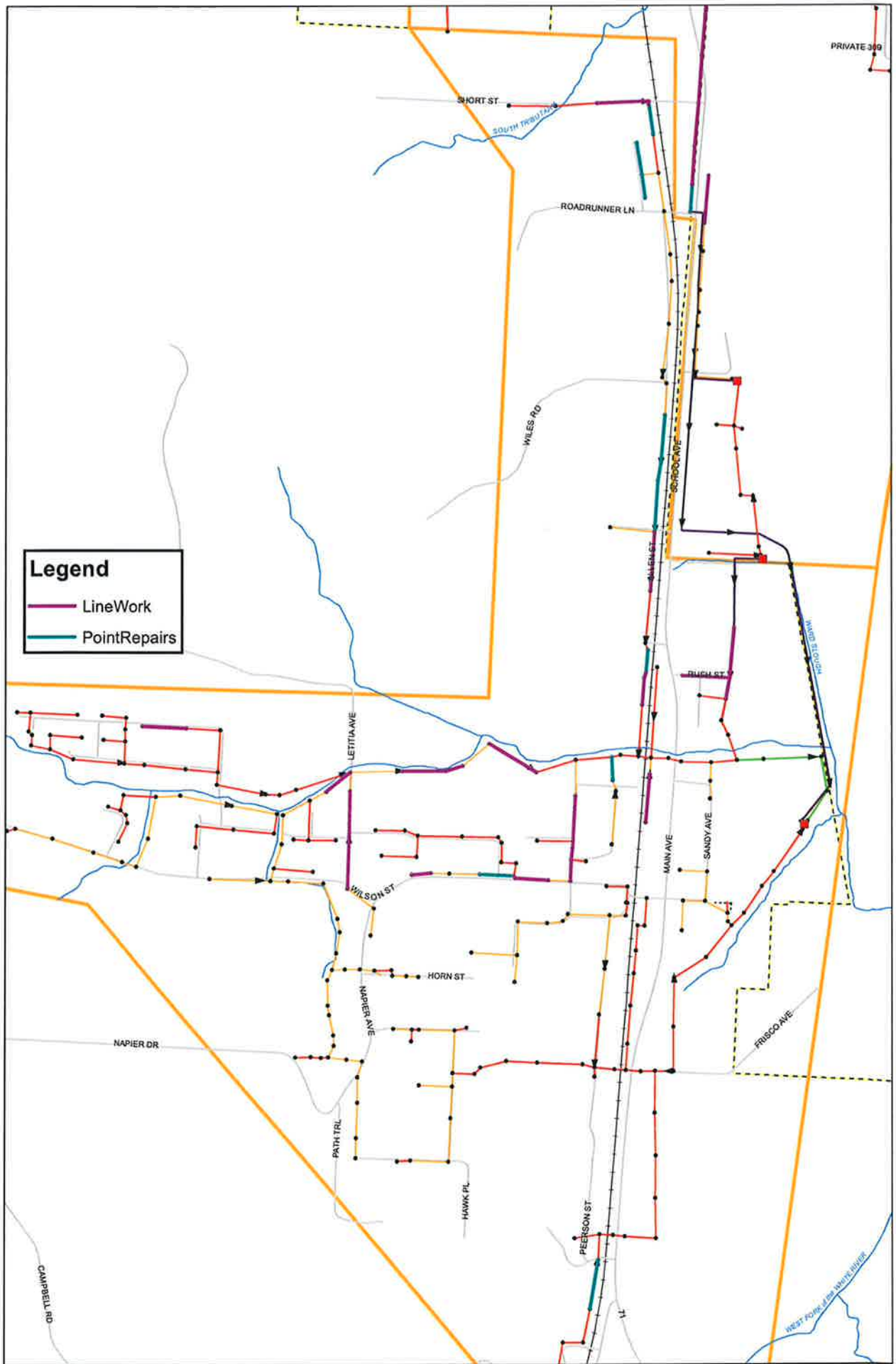
7. Attachments: Exhibit A - Hourly Rate Schedule
Exhibit B - Project Map



Exhibit A

Garver Hourly Rate Schedule

Classification	Rates
Engineers / Architects	
E-1	\$ 22.60
E-2	\$ 29.55
E-3	\$ 35.34
E-4	\$ 48.80
E-5	\$ 60.00
E-6	\$ 81.73
Planners	
P-1	\$ 31.25
P-2	\$ 42.79
Designers	
D-1	\$ 27.25
D-2	\$ 38.46
Technicians	
T-1	\$ 24.10
T-2	\$ 31.50
Surveyors	
S-1	\$ 13.00
S-2	\$ 15.13
S-3	\$ 20.80
S-4	\$ 30.11
S-5	\$ 42.79
2-Man Crew (Survey)	\$ 48.00
3-Man Crew (Survey)	\$ 64.00
2-Man Crew (GPS Survey)	NA
3-Man Crew (GPS Survey)	NA
Construction Observation	
C-1	\$ 26.64
C-2	\$ 37.45
C-3	\$ 49.42
Administration	
X-1	\$ 16.87
X-2	\$ 23.08
X-3	\$ 41.11



0 337.5 675 1,350 2,025 Feet



Exhibit B

