

City of Fayetteville Staff Review Form

City Council Agenda Items  
and  
Contracts, Leases or Agreements

2/19/2013

City Council Meeting Date  
Agenda Items Only

CB  
Chris Brown Engineering Development Services  
Submitted By Division Department

Action Required:

A resolution approving an Agreement with McClelland Consulting Engineers for professional services for the rehabilitation of the historic Maple Street Bridge and Lafayette Street Bridge in the amount of \$279,071.90. This also recognizes federal grant revenue in the amount of \$223,257.00 045.55 CB

223,257.00 Federal grant revenue		
223,257.00 Professional Services		
56,000 2009 Transportation Bonds	\$ 289,623.00	Historic Lafayette & Maple Bridges
Cost of this request	Category / Project Budget	Program Category / Project Name
4470.0947.4309.00	\$ -	
4470.9470.5314.00		
4520.9540.5314.00	\$ -	Street Improvements
Account Number	Funds Used to Date	Program / Project Category Name
	\$ -	
	\$ -	
06035.1101	\$ 289,623.00	09 Transportation Bonds & Federal Gr
Project Number	Remaining Balance	Fund Name

Budgeted Item

Budget Adjustment Attached

[Signature] 02-05-2013 Previous Ordinance or Resolution # \_\_\_\_\_  
Department Director Date

[Signature] 2-5-13 Original Contract Date: \_\_\_\_\_  
City Attorney Date

Paul A. Buler 2-5-2013 Original Contract Number: \_\_\_\_\_  
Finance and Internal Services Director Date

Received in City Clerk's Office 02-05-13 A09:11 RCVD  
[Signature]

[Signature] 2-5-13  
Chief of Staff Date

Received in Mayor's Office  
ENTERED 2/5/13  
[Signature]

[Signature] 2/5/13  
Mayor Date

Comments:

## CITY COUNCIL AGENDA MEMO

Council Meeting of February 19, 2013

**To:** Mayor and City Council

**Thru:** Don Marr, Chief of Staff  
Jeremy Pate, Development Services Director

**From:** Chris Brown, City Engineer *CB*

**Date:** February 4, 2013

**Subject:** **A Resolution approving an Agreement with McClelland Consulting Engineers, Inc. for professional services for the rehabilitation of the historic Maple Street Bridge and Lafayette Street Bridge in the amount of \$279,045.55 and approve a Budget Adjustment.**

### BACKGROUND:

This project is located in downtown Fayetteville near the University campus on Maple Street and on Lafayette Street over a single track of the Arkansas & Missouri Railroad. The concrete bridges were built in 1936 & 1938 with approximate lengths of 83' & 120', are listed on the National Register of Historic Places and will require special rehabilitation work to retain this designation. It is the intent of the City to preserve and enhance the historic attributes and life of both bridges in a cost effective way. The historic integrity of the bridges must be maintained throughout the rehabilitation construction process.

On February 16, 2011 in response to a letter from the City requesting federal funding for the Maple and Lafayette Street historic bridges, the City received a letter from the Arkansas State Highway and Transportation Department advising that the subject bridges qualify for funding from the Federal-aid Highway Bridge Replacement and Rehabilitation Program (HBRRP) to restore both bridges. The HBRRP utilizes 80% Federal-aid and 20% local matching funds with a limitation of \$1 million in Federal-aid available per project. In subsequent correspondence, the AHTD also confirmed that the two bridges may be combined into a single project for purposes of the program. The total estimate for rehabilitation of the two bridges (including deck replacement of the Maple Street bridge) is approximately \$1.4 million.

A request for Letters Of Interest was advertised on April 20, 2012 and the City received two valid responses on May 16<sup>th</sup>. On May 25<sup>th</sup>, a Selection Committee containing City Staff and one City Council Member convened and voted to request proposals from both firms. RFQ's were sent to both firms on July 3<sup>rd</sup> with a due date of July 27<sup>th</sup>.

On July 30, 2012, a selection committee consisting of City staff and Alderman Bobby Ferrell selected McClelland Consulting Engineers (MCE) of Fayetteville to provide these services, along with their bridge subconsultants Horner and Shifrin of St. Louis. Since that time, the City has been working with the AHTD and MCE to develop a contract acceptable to all parties.

**PROPOSAL:**

MCE has provided a proposed scope and fee in the amount of \$279,045.55. This contract will be paid based on hourly rates for work completed, up to the total contract amount. This contract has been reviewed and approved by the AHTD, and is ready for review and approval by the City Council.

This design project will provide for the rehabilitation of two historic bridges including repairing/replacing the retaining wall near the Lafayette Bridge only, repair/replace bridge railings, period lighting, deck surfacing, expansion joints, abutment bearings, deck drains, concrete fascia beams, concrete abutment backwalls, concrete sidewalk, and approach pavement. Storm drainage systems, relocated utility facilities, maintenance of traffic and other incidental systems and facilities will be designed and constructed as necessary.

This design agreement has allotted 9 (nine) months for completion, however, this time frame may be extended depending upon the review workload of the Arkansas State Highway and Transportation Department (AHTD). The consultant will prepare and submit final plans and specifications to the City which will be used by AHTD to advertise a separate construction project which will be administered solely by the AHTD.

**RECOMMENDATION:**

Staff recommends City Council approval of the contract with McClelland Consulting Engineers, Inc. for providing the professional design services for the rehabilitation of the historic Maple Street Bridge and Lafayette Street Bridge.

**BUDGET IMPACT:**

This project is based on an Agreement Of Understanding with AHTD in which Federal Aid money will pay 80% of the contract amount and the City will pay 20%. These services will be funded either through the Transportation Bond Program or the CIP Program in an existing project set up for bridge cost sharing. The cost of these services will not exceed \$279,045.55, with the City's share being 20% or \$55,809.11.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION APPROVING A PROFESSIONAL ENGINEERING DESIGN SERVICES AGREEMENT WITH MCCLELLAND CONSULTING ENGINEERS IN THE AMOUNT OF \$279,045.55 FOR THE REHABILITATION OF THE HISTORIC MAPLE STREET AND LAFAYETTE STREET BRIDGES, AND APPROVING A BUDGET ADJUSTMENT RECOGNIZING FEDERAL GRANT REVENUE IN THE AMOUNT OF \$223,257.00

**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 design services agreement with McClelland Consulting Engineers in the amount of \$279,045.55 for the rehabilitation of the historic Maple Street and Lafayette Street bridges.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment, a copy of which is attached to this Resolution as Exhibit "A", recognizing federal grant revenue in the amount of \$223,257.00.

**PASSED and APPROVED** this 19<sup>th</sup> day of February, 2013.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN**, Mayor

By: \_\_\_\_\_  
**SONDRA E. SMITH**, City Clerk/Treasurer

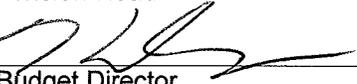
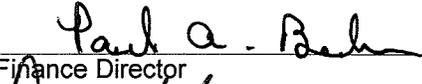
**City of Fayetteville, Arkansas  
Budget Adjustment Form**

A. 9 V12.0724  
McClelland Consulting Engineers

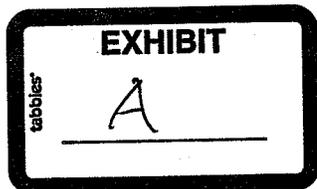
<b>Budget Year</b> 2013	Division: Engineering Department: Development Services	<b>Request Date</b> 2/4/2013	<b>Adjustment Number</b>
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**BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION**

This budget adjustment is to recognize the federal grant revenue of \$223,257.00 due from AHTD for the design phase of the Historic Lafayette and Maple Bridges. There is also transfer from the Crossover project to the Historic Bridges project which represents the City portion of the project expense (\$56,000.00).

 Division Head		Prepared By: <u>Peggy Bell</u>	
	Date		<i>kspringer</i>
 Budget Director	<u>2-5-2013</u> Date	Reference: _____	
 Department Director	<u>02-05-2013</u> Date	<b>Budget &amp; Research Use Only</b>	
 Finance Director	<u>2-5-2013</u> Date	Type:    A    B    C <u>D</u> E    P	
 Chief of Staff	<u>2-5-13</u> Date	General Ledger Date _____	
 Mayor	<u>2/5/13</u> Date	Posted to General Ledger _____	Initial _____ Date _____
		Checked / Verified _____	Initial _____ Date _____

Account Name	Account Number		TOTAL BUDGET ADJUSTMENT		Project.Sub Number
			223,257 Increase / (Decrease) Expense	223,257 Revenue	
Federal Grants-Capital	4470.0947.4309.00	RE	-	223,257	06035 . 1101
Professional services	4470.9470.5314.00	⇒	223,257		06035 . 1101
Street improvements	4520.9540.5809.00	⇒	(56,000)		06035 . 2000
Professional services	4520.9540.5314.00	⇒	56,000		06035 . 1101



# Project Request Form

## Request for Additional Subprojects

Project Number : 06035  
Project Title : Transportation Bond Street Improvements

### Sub Project Request:

Sub Project Number : 1101  
Sub Project Title : Lafayette & Maple Bridges  
Sub Project Status : Active  
Sub Project Manager : Chris Brown  
Grant (Y/N) : Yes

GL Accounts Assigned:	<u>4470.0947.4309.00</u>	<u>Federal Grants - Capital</u>	<input type="checkbox"/>
	<u>4470.9470.5314.00</u>	<u>Professional Services</u>	
	<u>4520.9540.5314.00</u>	<u>Professional Services</u>	

### Sub Project Request:

Sub Project Number : \_\_\_\_\_  
Sub Project Title : \_\_\_\_\_  
Sub Project Status : \_\_\_\_\_  
Sub Project Manager : \_\_\_\_\_  
Grant (Y/N) : \_\_\_\_\_

GL Accounts Assigned:	_____	_____	<input type="checkbox"/>
	_____	_____	
	_____	_____	

### Sub Project Request:

Sub Project Number : \_\_\_\_\_  
Sub Project Title : \_\_\_\_\_  
Sub Project Status : \_\_\_\_\_  
Sub Project Manager : \_\_\_\_\_  
Grant (Y/N) : \_\_\_\_\_

GL Accounts Assigned:	_____	_____	<input type="checkbox"/>
	_____	_____	
	_____	_____	

J:\EXCEL\Historic Bridges\[Historic Bridges add accounts.xls]Additional Subprojects

Peggy Bell 2/4/2013  
Requested By

\_\_\_\_\_  
Entered By

**AGREEMENT**  
**FOR**  
**ENGINEERING SERVICES**  
(LOCAL VERSION – COST PLUS FEE)

JOB NO. 040618  
FEDERAL AID PROJECT ("FAP") NO. BRN-9142(29)  
Maple St. & Lafayette St. Bridge Rehab.  
(Fayetteville)(S)  
Washington County

**PREAMBLE**

**THIS AGREEMENT**, entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between The City of Fayetteville, Arkansas("Owner"),and McClelland Consulting Engineers, Inc. ("Consultant"), a corporation existing under the laws of the State of Arkansas, with principal offices at 1810 North College Avenue, Fayetteville, Arkansas 72703 and 900 West Markham, Little Rock, Arkansas 72203.

**WITNESSETH:**

**WHEREAS**, the City of Fayetteville is planning to rehabilitate the historic Maple Street Bridge (Bridge Number 01940) and Lafayette Street Bridge (Bridge Number 01941), including related approach work in Fayetteville, Arkansas, and requires the professional services from McClelland Consulting Engineers, Inc. to perform a geotechnical evaluation, topographic survey, design, construction administration, and construction observation, and,

**WHEREAS**, the City of Fayetteville's forces are fully employed on other urgent work that prevents their early assignment to the aforementioned work; and,

**WHEREAS**, McClelland Consulting Engineers, Inc.'s staff is adequate and well qualified, and it has been determined that its current workload will permit completion of the project on schedule.

**NOW THEREFORE**, it is considered to be in the best public interest for the City of Fayetteville to obtain the assistance of McClelland Consulting Engineers, Inc.'s organization in connection with engineering services. In consideration of the faithful performance of each party of the mutual covenants and agreements set forth hereinafter, it is mutually agreed as follows:

**1. PRELIMINARY MATTERS**

- 1.1. "McClelland Consulting Engineers, Inc.'s Representative" shall be Daniel Barnes, P.E., until written notice is provided to the City of Fayetteville designating a new representative.
- 1.2. "Contract Ceiling Price." The Contract Ceiling Price for this Agreement is \$279,045.55
- 1.3. The Contract Ceiling Price is the maximum aggregate amount of all payments that the City of Fayetteville may become obligated to make under this Agreement. In no event, unless modified in writing, shall total payments by the City of Fayetteville under this Agreement exceed the Contract Ceiling Price. McClelland Consulting Engineers, Inc. shall not be entitled to receive adjustment, reimbursement, or payment, nor shall the City of Fayetteville, its officers, agents, employees, or representatives, incur any liability for, any fee or cost, exceeding the Contract Ceiling Price. McClelland Consulting Engineers, Inc. additionally agrees that half cell potential tests, bridge deck replacement

design, and analysis of existing structures for bridge deck replacement will not be performed unless authorized by the City of Fayetteville.

- 1.4. "Contract Price" is aggregate amount of allowable costs and fees to be paid by the City of Fayetteville under this Agreement.
- 1.5. "Default" means the failure of McClelland Consulting Engineers, Inc. to perform any of the provisions of this Agreement. *Default includes, but is not limited to, failure to complete phases of the work according to schedule or failure to make progress in the work so as to endanger timely performance of this Agreement, failure to pay subcontractors in a timely manner, failure to comply with federal and state laws, and failure to comply with certifications made in or pursuant to this Agreement.*
- 1.6. "Department" or "AHTD" means the Arkansas State Highway and Transportation Department.
- 1.7. "DOT" means the United States Department of Transportation.
- 1.8. "FAR" means the Federal Acquisition Regulations, codified in 48 C.F.R.
- 1.9. "Fee" whether fixed or otherwise is a dollar amount that includes McClelland Consulting Engineers, Inc.'s profit on the job.
- 1.10. "FHWA" means the Federal Highway Administration.
- 1.11. "Indirect Cost Rate." The Indirect Cost Rate is defined in the provisions of 48 C.F.R. Part 31, and is also subject to any limitations contained herein. The Indirect Cost Rate for McClelland Consulting Engineers, Inc. under this Agreement shall be 184.34 percent. If applicable, the Indirect Cost Rate for each subcontractor shall be listed in Appendix B.
- 1.12. "Title I Services" are those services provided by McClelland Consulting Engineers, Inc. before the award of the contract for the construction of the Project, consisting primarily of engineering services for the planning or design of the Project.
- 1.13. "Title I Services Ceiling Price." The Title I Services Ceiling Price for this Agreement is \$250,044.26. The Title I Services Ceiling price is the maximum aggregate amount of all payments that the City of Fayetteville may become obligated to make under this Agreement for fees and costs related to Title I Services. In no event, unless modified in writing, shall total payments by the City of Fayetteville related to Title I Services exceed the Title I Services Ceiling Price. McClelland Consulting Engineers, Inc. shall not be entitled to receive adjustment, reimbursement, or payment for, nor shall the City of Fayetteville, its officers, agents, employees, or representatives, incur any liability for, any fee or cost related to, Title I Services exceeding the Title I Services Ceiling Price.
- 1.14. "Title II Multiplier" (if applicable) is the mark-up by which the fee and indirect costs associated with Title II services are calculated. The Title II Multiplier, which accounts for the fee and indirect costs, is multiplied by the salary rate, as shown on the Schedule of Salary Ranges, of the particular individual(s) performing the Title II services. The Title II Multiplier for the term of this Agreement is 3.18.
- 1.15. "Title II Services" are those services provided by McClelland Consulting Engineers, Inc. after the award of the contract for the construction of the Project, consisting primarily of engineering services during the construction of the Project.
- 1.16. "Title II Services Ceiling Price". The Title II Services Ceiling Price for this Agreement is \$29,001.29. The Title II Services Ceiling price is the maximum aggregate amount of

all payments that the City of Fayetteville may become obligated to make under this Agreement for fees and costs related to Title II Services. In no event, unless modified in writing, shall total payments by the City of Fayetteville related to Title II Services exceed the Title II Services Ceiling Price. McClelland Consulting Engineers, Inc. shall not be entitled to receive adjustment, reimbursement, or payment for, nor shall the City of Fayetteville, its officers, agents, employees, or representatives, incur any liability for, any fee or cost related to, Title II Services exceeding the Title II Services Ceiling Price.

## **2. TYPE OF AGREEMENT**

- 2.1. This Agreement is a cost-plus-fixed-fee contract. McClelland Consulting Engineers, Inc. is being hired to perform professional engineering services in connection with the Project as set forth herein. In consideration for Title I services performed, the City of Fayetteville will reimburse McClelland Consulting Engineers, Inc. for allowable direct and indirect costs, as defined herein, and pay McClelland Consulting Engineers, Inc. a fixed fee. If Title II services are to be performed, the City of Fayetteville will reimburse McClelland Consulting Engineers, Inc. for allowable direct costs and also pay McClelland Consulting Engineers, Inc. an amount determined by multiplying the salary rate of the individual(s) performing the Title II services, as shown on the Schedule of Salary Ranges, by the Title II Multiplier.
- 2.2. The Project to be performed under this Agreement is a federally-assisted project and federal funds will be used, in part, to pay McClelland Consulting Engineers, Inc.. Therefore, notwithstanding any provision of this Agreement, all payments, costs, and expenditures are subject to the requirements and limitations of 48 C.F.R. Part 31, and McClelland Consulting Engineers, Inc. shall certify the accuracy of all invoices and requests for payment, along with supporting documentation and any information provided in determining the Indirect Cost Rates.

## **3. COSTS, FEES, AND PAYMENT**

### **3.1. *Allowable costs.***

3.1.1. Allowable costs are subject to the limitations, regulations, and cost principles and procedures in 48 C.F.R. Part 31, which are expressly incorporated into this Agreement by reference. For the purpose of reimbursing allowable costs (except as provided in subparagraph 2 below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term *costs* includes only—

3.1.1.1. Those recorded costs that, at the time of the request for reimbursement, McClelland Consulting Engineers, Inc. has paid by cash, check, or other form of actual payment for items or services purchased directly for the Agreement;

3.1.1.2. When McClelland Consulting Engineers, Inc. is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

- Materials issued from McClelland Consulting Engineers, Inc.'s inventory and placed in the production process for use in its performance under this Agreement;
- Direct labor;

- Direct travel;
- Other direct in-house costs; and
- Properly allocable and allowable indirect costs, as shown in the records maintained by McClelland Consulting Engineers, Inc. for purposes of obtaining reimbursement under government contracts; and
- The amount of progress payments that have been paid to McClelland Consulting Engineers, Inc.'s subcontractors under similar cost standards.

3.1.2. McClelland Consulting Engineers, Inc.'s contributions to any pension or other post-retirement benefit, profit-sharing or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; *provided*, that McClelland Consulting Engineers, Inc. pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until McClelland Consulting Engineers, Inc. actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until McClelland Consulting Engineers, Inc. actually makes the payment.

3.1.3. Notwithstanding the audit and adjustment of invoices or vouchers, allowable indirect costs under this Agreement shall be obtained by applying Indirect Cost Rates established in accordance with Subsection 3.3 below.

3.1.4. Any statements in specifications or other documents incorporated in this Agreement by reference designating performance of services or furnishing of materials at McClelland Consulting Engineers, Inc.'s expense or at no cost to the City of Fayetteville shall be disregarded for purposes of cost-reimbursement.

3.2. *Salaries.* The following schedule covers the classification of personnel and the salary ranges for all personnel anticipated to be assigned to this project by McClelland Consulting Engineers, Inc.:

**3.2.1.1. SCHEDULE OF SALARY RANGES**

<u>Labor Classification</u>	<u>Labor Rate Range</u>
Principal Engineer	\$41.27 - \$50.50
Project Engineer	\$25.84 - \$41.40
Engineering Technician	\$16.50 - \$30.00
Construction Observer	\$15.00 - \$31.25
Chief Draftsman	\$22.00 - \$25.00
Draftsman	\$15.38 - \$19.00
Survey Technician	\$17.00 - \$27.00
Registered Land Surveyor	\$21.50 - \$32.00
Field Survey (1-man or Rodman)	\$16.50 - \$24.00
Survey (2- man or Robotic) Crew	\$17.00 - \$27.00
Geotech Engineer	\$26.66 - \$41.40
Soils Lab Supervisor	\$16.25 - \$21.50
Soils Lab Technician	\$12.90 - \$15.25
Office Administration	\$14.50 - \$19.50
Clerical	\$10.50 - \$20.00

3.2.1.2. The City of Fayetteville shall reimburse McClelland Consulting Engineers, Inc. for overtime costs only when the overtime has been authorized in writing by the City of Fayetteville. When authorized, overtime shall be reimbursed at the rate of time and one-half for all nonexempt employees. Notwithstanding this provision, McClelland Consulting Engineers, Inc. must comply with all federal and state wage and hour laws and regulations, regardless whether the overtime is considered reimbursable under this Agreement.

3.3. *Indirect Cost Rates.*

- 3.3.1. Allowable indirect costs incurred by McClelland Consulting Engineers, Inc. shall also be reimbursed by the City of Fayetteville at the Indirect Cost Rate. The Indirect Cost Rate of McClelland Consulting Engineers, Inc. for this Agreement shall be the rate as set forth in subsection 1.11. If applicable, the Indirect Cost Rate for subcontractors shall be determined in the same manner and subject to the same limitations as McClelland Consulting Engineers, Inc., and shall be listed for each subcontractor identified in Appendix B. The Indirect Cost Rate, or any adjustment thereto, shall not change any monetary ceiling, contract obligation, or specific cost allowance, or disallowance provided for in this Agreement except as provided for in sections 3.3.4. and 3.3.5. The Indirect Cost Rate must reflect the allowable indirect costs pursuant to 48 C.F.R. Part 31 ("FAR").
- 3.3.2. In establishing the Indirect Cost Rate or proposing any adjustment thereto, McClelland Consulting Engineers, Inc. shall, upon request, submit to the City of Fayetteville, FHWA, or their representatives an audited indirect cost rate and supporting cost data in accordance with the requirements set forth in the current *Arkansas Highway & Transportation Department Indirect Cost Rate Audit Requirements*.
- 3.3.3. During the term of this Agreement, if an audit of a subsequent accounting period of McClelland Consulting Engineers, Inc. demonstrates that McClelland Consulting Engineers, Inc. has incurred allowable indirect costs at a different rate than the Indirect Cost Rate, the Indirect Cost Rate shall be adjusted. Any adjustment is subject to the audit and documentation requirements of the FAR and the current *Arkansas Highway & Transportation Department Indirect Cost Rate Audit Requirements*. Except in the case of a provisional Indirect Cost Rate, as provided in the following subparagraphs, or the disallowance of cost following a subsequent audit, any adjustment to the Indirect Cost Rate shall be effective only prospectively from the date that the adjustment is accepted.
- 3.3.4. In order to expedite some projects, when an audited indirect cost rate has not yet been submitted and approved, the City of Fayetteville may extend a temporary waiver and accept a provisional indirect cost rate. This provisional rate must be reviewed by, and receive a positive recommendation from the Arkansas Highway and Transportation Department's Chief Auditor. The provisional cost proposal must be accompanied by written assurance from an independent CPA that he/she has been engaged to audit the costs in accordance with the above requirements. The anticipated audit must be based on costs incurred in the most recently completed fiscal year for which the cost data is available, with the audit scheduled to begin within a reasonable time frame. If the date of the initial cost proposal is within the last quarter of the current fiscal year, the audit may be delayed until the current

fiscal year is closed and the final cost data is available. The written assurance from the CPA that he or she has been engaged to perform the audit at an appropriate time is still required.

- 3.3.5. Once an audited indirect cost rate is approved, the ceiling prices provided for in the initial agreement using the provisional indirect cost rate will be adjusted with a supplemental agreement to implement the resulting increase or decrease from revising the indirect cost rate, and all amounts paid McClelland Consulting Engineers, Inc. prior to receipt and acceptance of an audited indirect cost rate will be retroactively adjusted for changes in the indirect cost rate. However, no changes in hours, fixed fees, or other costs will be allowed as a result of applying the audited indirect cost rate.
- 3.4. *Fees.* The justification for the fees and costs is contained in Appendix A. In addition to reimbursement of the allowable costs as set forth above, the City of Fayetteville shall pay to McClelland Consulting Engineers, Inc. a fixed fee of **\$7,844.18** for Title I Services. For Title II Services, if applicable, the City of Fayetteville shall reimburse McClelland Consulting Engineers, Inc. for allowable direct costs and also pay to McClelland Consulting Engineers, Inc. an amount determined by multiplying the salary rate of the individual(s) performing the Title II Services, as shown on the Schedule of Salary Ranges, by the Title II Multiplier. The Title II Multiplier shall account for all fees and indirect costs associated with Title II services.
- 3.5. *Invoices, Reimbursement, and Partial Payments.* Submission of invoices and payment of the fees shall be made as follows, unless modified by the written agreement of both parties:
- 3.5.1. Not more often than once per month, McClelland Consulting Engineers, Inc. shall submit to the City of Fayetteville, in such form and detail as the City of Fayetteville may require, an invoice or voucher supported by a statement of the claimed allowable costs for performing this Agreement, and estimates of the amount and value of the work accomplished under this Agreement. The invoices for costs and estimates for fees shall be supported by any data requested by the City of Fayetteville.
- 3.5.2. In making estimates for fee purposes, such estimates shall include only the amount and value of the work accomplished and performed by McClelland Consulting Engineers, Inc. under this Agreement which meets the standards of quality established under this Agreement. McClelland Consulting Engineers, Inc. shall submit with the estimates any supporting data required by the City of Fayetteville. At a minimum, the supporting data shall include a progress report in the form and number required by the City of Fayetteville.
- 3.5.3. Upon approval of the estimate by the City of Fayetteville, payment upon properly executed vouchers shall be made to McClelland Consulting Engineers, Inc., as soon as practicable, of 100 percent of the allowed costs, and of 90 percent of the approved amount of the estimated fee, less all previous payments. Notwithstanding any other provision of this Agreement, only costs and fees determined to be allowable by the City of Fayetteville in accordance with subpart 31.2 of the Federal Acquisition Regulations (FAR) in effect on the date of this Agreement and under the terms of this Agreement shall be reimbursed or paid.
- 3.5.4. Before final payment under the Agreement, and as a condition precedent thereto, McClelland Consulting Engineers, Inc. shall execute and deliver to the City of Fayetteville a release of all claims which are known or reasonably could have been known to exist against the City of Fayetteville arising under or by virtue of this Agreement, other than any claims that are specifically excepted by McClelland

Consulting Engineers, Inc. from the operation of the release in amounts stated in the release.

- 3.6. *Title I Services, Title II Services, and Contract Ceiling Prices.* The parties agree that aggregate payments under this Agreement, including all costs and fees, shall not exceed the Contract Ceiling Price. The parties further agree that aggregate payments for Title I services under this Agreement, including all costs and fees, shall not exceed the Title I Services Ceiling Price; and that aggregate payments for Title II services under this Agreement, including all costs and fees, shall not exceed the Title II Services Ceiling Price. No adjustment of the Indirect Cost Rate or the Title II Multiplier, claim, or dispute shall affect the limits imposed by these ceiling prices. No payment of costs or fees shall be made above these ceiling prices unless the Agreement is modified in writing.
- 3.7. *Final payment.*
- 3.7.1. McClelland Consulting Engineers, Inc. shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but no later than forty-five (45) days (or longer, as the City of Fayetteville may approve in writing) after the completion date. Upon approval of the completion invoice or voucher, and upon McClelland Consulting Engineers, Inc.'s compliance with all terms of this Agreement, the City of Fayetteville shall promptly pay any balance of allowable costs and any retainage owed to McClelland Consulting Engineers, Inc.. After the release of said retainage McClelland Consulting Engineers, Inc. agrees that it will continue to provide consultation services to the City of Fayetteville as needed through supplemental agreement(s) with respect to the contracted services under this Agreement until all work is completed under both Title I and Title II.
- 3.7.2. McClelland Consulting Engineers, Inc. shall pay to the City of Fayetteville any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by McClelland Consulting Engineers, Inc. or any assignee under this Agreement, to the extent that those amounts are properly allocable to costs for which McClelland Consulting Engineers, Inc. has been reimbursed by the City of Fayetteville. Reasonable expenses incurred by McClelland Consulting Engineers, Inc. for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the City of Fayetteville. Before final payment under this Agreement, McClelland Consulting Engineers, Inc. and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—
- An assignment to the City of Fayetteville, in form and substance satisfactory to the City of Fayetteville, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which McClelland Consulting Engineers, Inc. has been reimbursed by the City of Fayetteville under this Agreement; and,
  - A release discharging the City of Fayetteville, its officers, agents, and employees from all liabilities, obligations, and claims which were known or could reasonably have been known to exist arising out of or under this Agreement.
- 3.8. *City of Fayetteville's Right to Withhold Payment.* The City of Fayetteville may withhold payment to such extent as it deems necessary as a result of: (1) third party claims arising out of the services of McClelland Consulting Engineers, Inc. and made against the City of Fayetteville; (2) evidence of fraud, over-billing, or overpayment; (3) inclusion of non-allowable costs; (4) failure to make prompt payments to subcontractors in the time provided by this Agreement; (5) payment requests received including fees for unapproved subcontractors; and/or (6) McClelland Consulting Engineers, Inc.'s default or unsatisfactory performance of services. The withholding of payment under

this provision shall in no way relieve McClelland Consulting Engineers, Inc. of its obligation to continue to perform its services under this Agreement.

#### **4. DISALLOWANCE OF COSTS**

- 4.1. Notwithstanding any other clause of this Agreement, the City of Fayetteville may at any time issue to McClelland Consulting Engineers, Inc. a written notice of intent to disallow specified costs incurred or planned for incurrence under this Agreement that have been determined not to be allowable under the contract terms.
- 4.2. Failure to issue a notice under this Section shall not affect the City of Fayetteville's rights to take exception to incurred costs.
- 4.3. If a subsequent audit reveals that: (1) items not properly reimbursable have, in fact, been reimbursed as direct costs; or (2) that the Indirect Cost Rate contains items not properly reimbursable under the FAR; then, in the case of indirect costs, the Indirect Cost Rate shall be amended retroactively to reflect the actual allowable indirect costs incurred, and, in the case of both direct and indirect costs, the City of Fayetteville may offset, or McClelland Consulting Engineers, Inc. shall repay to City of Fayetteville, any overpayment.

#### **5. RECORDS & AUDITS**

- 5.1. *Records* includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- 5.2. *Examination.* McClelland Consulting Engineers, Inc. shall maintain, and the City of Fayetteville, AHTD, FHWA, and their authorized representatives shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs (direct and indirect) claimed to have been incurred or anticipated to be incurred in performance of this Agreement. This right of examination shall also include examination and audit of any records considered, relied upon, or relating to the determination of the Indirect Cost Rate or any certification thereof, including any CPA audit relied upon to establish the rate. This right of examination shall also include inspection at all reasonable times of McClelland Consulting Engineers, Inc.'s offices and facilities, or parts of them, engaged in performing the Agreement.
- 5.3. *Supporting Data.* If McClelland Consulting Engineers, Inc. has been required to submit data in connection with any action relating to this Agreement, including the negotiation of or pre-negotiation audit of the Indirect Cost Rate, the negotiation of the Fee, request for cost reimbursement, request for payment, request for an adjustment, or assertion of a claim, the City of Fayetteville, AHTD, FHWA, or their authorized representatives, in order to evaluate the accuracy, completeness, and accuracy of the data, shall have the right to examine and audit all of McClelland Consulting Engineers, Inc.'s records, including computations and projections, related to—
  - The determination or certification of the Indirect Cost Rate, including any independent CPA audit or certification thereof;
  - Any proposal for the Agreement, subcontract, or modification;
  - Discussions conducted on the proposal(s), including those related to negotiating;

- Fees or allowable costs under the Agreement, subcontract, or modification;
  - Performance of the Agreement, subcontract or modification; or,
  - The amount and basis of any claim or dispute.
- 5.4. *Audit.* The City of Fayetteville, AHTD, FHWA, or their authorized representatives, shall have access to and the right to examine any of McClelland Consulting Engineers, Inc.'s records involving transactions related to this Agreement or a subcontract hereunder.
- 5.5. *Reports.* If McClelland Consulting Engineers, Inc. is required to furnish cost, funding, or performance reports, the City of Fayetteville, AHTD, FHWA, or their authorized representatives shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of McClelland Consulting Engineers, Inc.'s policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.
- 5.6. *Availability.* McClelland Consulting Engineers, Inc. shall retain and make available at its office at all reasonable times the records, materials, and other evidence described in this Section and Section 28, Disputes and Claims, for examination, audit, or reproduction, until five years after final payment under this Agreement, or for any longer period required by statute or by other clauses of this Agreement. In addition—
- 5.6.1. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be retained and made available for five years after the termination; and,
- 5.6.2. Records relating to any claim or dispute, or to litigation or the settlement of claims arising under or relating to this Agreement shall be retained and made available until after any such claims or litigation, including appeals, are finally resolved.
- 5.7. McClelland Consulting Engineers, Inc. shall insert a clause containing all the terms of this Section in all subcontracts under this Agreement.
- 5.8. *Freedom of Information Act.* City of Fayetteville contracts and documents prepared while performing City of Fayetteville contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, McClelland Consulting Engineers, Inc. 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.

## **6. DESCRIPTION OF THE PROJECT**

- 6.1. The City of Fayetteville is planning to rehabilitate the historic Maple Street Bridge and Lafayette Street Bridge, including related approach work, and requires the professional services from McClelland Consulting Engineers, Inc. to perform a geotechnical evaluation, survey, environmental documentation, design, and engineering management services during construction.

## **7. INFORMATION AND TITLE I SERVICES TO BE PROVIDED BY MCCLELLAND CONSULTING ENGINEERS, INC.**

### **7.1. Survey**

- Complete a detailed topographic, property, and utility survey as needed for design of the improvements as listed in Paragraph 6.1. Elevation control will be established using AHTD elevation procedures.

### **7.2. Geotechnical Investigation**

- Drill two borings adjacent to the rotated retaining wall located in the eastern approach of the Lafayette Street Bridge.
- Obtain samples of the soil strata.
- Obtain core samples of the underlying rock strata.
- Perform laboratory tests for moisture content, classifications, unit weights, unconfined compression tests.
- Interpret and evaluate geotechnical data for retaining wall design/rehabilitation and the pavement structure.
- Perform two pavement cores on each bridge approach (8 total cores) to determine existing pavement section.
- Take six concrete samples (cores) from each bridge deck and perform 30 chloride tests.
- Perform chain drag testing on each bridge deck. The City of Fayetteville will be responsible for the removal of the asphalt on the bridge decks.
- Complete Half-Cell Potential Test (2 Each if chloride content warrants).

### **7.3. Environmental Documentation**

- Environmental Data Collection - Preliminary environmental data associated with the proposed project area will be collected and assessed for the social, economic, and environmental impacts area, including:
  1. Air Quality
  2. Noise Quality
  3. Hazardous Materials
  4. Wetlands and Stream Impacts
  5. Water Quality, including Public Drinking Supplies
  6. Farmland
  7. Land Use and Land Cover
  8. Terrestrial and Aquatic Communities
  9. Endangered Species
  10. Economic
  11. Community
  12. Relocations of Homes and Businesses
  13. Environmental Justice and Title VI
  14. Recreational Areas
  15. Archeological and Historic Sites
  16. Visual
  17. Section 4(f)
  18. Secondary and Cumulative Impacts
- Coordinate with relevant regulatory agencies as required (FEMA, USACOE, SHPO, ADEQ, USFWS and others) to resolve environmental issues and obtain permits.
- Environmental Constraints Map - All environmental data collected will be transferred to appropriately scaled aerial photographs to produce a map that indicates all known environmentally sensitive areas.

- Prepare environmental document, including cultural resources clearance from the State Historic Preservation Office. A Tier 3 Categorical Exclusion is likely the required documentation. Include location studies and Section 4(f) evaluations if necessary.
- Submit draft environmental document in electronic format for review by the City of Fayetteville and AHTD.
- Perform alterations necessary to respond to comments made in the City of Fayetteville's and AHTD's reviews.
- Submit final draft to the City of Fayetteville and AHTD for FHWA approval.
- Prepare designated number of copies of environmental document after FHWA approval and distribute as directed. An electronic copy of the approved environmental document in pdf form will be provided to the AHTD.

#### 7.4. Design

- Prepare project design criteria and submit to AHTD for review before preliminary design work. AHTD Standard Specifications for Highway Construction will be used.
- Complete site visit for visual verification of previous bridge inspection.
- Develop an engineering design for the, roadway approach improvements and associated utility relocations, as needed. Submit design plans for review by the City of Fayetteville and AHTD at the 30%, 60%, and 90% stages. Submit an updated cost estimate with each design review, include costs for utilities, railroad permits, railroad personnel & equipment, etc at applicable.
  - Maple Street Bridge Design Scope
    - Complete approach design
    - Coordinate non city owned utility relocations
    - Design city owned utility relocations/extensions.
  - Lafayette Street Bridge Design Scope
    - Complete approach design
    - Coordinate non city owned utility relocations
    - Design city owned utility relocations/extensions
    - Replace or repair leaning wall at SW corner of approach using original plans to replicate existing wall – Take design from Horner and Shifrin, Inc and develop construction drawings,
- Prepare necessary exhibits, and attend all necessary public involvement meetings and public hearings (5 total).
- Coordinate design and construction with franchise utility companies' relocations to assure adequate space for all facilities and timely relocations.
- Coordinate with Railroad to obtain any permits necessary for the Contractor to perform the work.
- Prepare final construction plans and specifications for the roadway approach improvements. Plans will be completed in both Microstation and AutoCAD formats.
- Provide right of way acquisition documents and engineering services required for acquisition of rights of way and easements if needed.
- Provide a final set of signed and sealed roadway approach improvement drawings to AHTD Bridge Division for record purposes.
- When requested, clarify and technical issues that may arise from contractors preparing a bid, and provide written documentation to assist in issuing addenda, as needed.

## **8. INFORMATION TO BE PROVIDED BY THE CITY OF FAYETTEVILLE**

- 8.1.** The City of Fayetteville shall make available to McClelland Consulting Engineers, Inc. all technical data in the City of Fayetteville's possession, including laboratory tests, maps, surveys, borings, and other information required by McClelland Consulting Engineers, Inc. and relating to McClelland Consulting Engineers, Inc.'s work.

## **9. TITLE II SERVICES TO BE PROVIDED BY MCCLELLAND CONSULTING ENGINEERS, INC.**

### **9.1. Survey Control**

- McClelland Consulting Engineers, Inc. shall establish the survey control baseline(s) along with sufficient baseline control points and benchmarks at appropriate intervals along the project for use by the Contractor and McClelland Consulting Engineers, Inc. in performing verification surveys of construction layout. McClelland Consulting Engineers, Inc. shall (1) make and record such measurements as are necessary to calculate and document quantities for pay items; and (2) perform incidental engineering surveys as may be necessary to carry out the services covered by this agreement and to verify and confirm the accuracy of the Contractor's survey layout work. All survey work shall be performed under the supervision of a Surveyor registered in the State of Arkansas.

### **9.2. Engineering Management Services**

- Review of shop drawings and submittals, as requested.
- Provide design related solutions to construction problems and issues that may arise during construction.
- Assist the City of Fayetteville in preparing for any litigation or other action that may arise as a result of the Project.
- McClelland Consulting Engineers, Inc. does not make any representation as to the legal sufficiency of contracts it helps to coordinate and the City of Fayetteville if solely responsible for determining that all contracts meet its legal requirements.
- Prepare the SWPPP documents and plans, and insure that all requirements of ADEQ and the City of Fayetteville are met.

## **10. COORDINATION WITH CITY OF FAYETTEVILLE**

- 10.1.** Throughout the Project, McClelland Consulting Engineers, Inc. shall hold *monthly* conferences, if needed, in Fayetteville, Arkansas, or such other location as designated by the City of Fayetteville, with representatives of the City of Fayetteville, the AHTD, and the FHWA so that as the Project progresses, McClelland Consulting Engineers, Inc. shall have full benefit of the City of Fayetteville's knowledge of existing needs and facilities and be consistent with the City of Fayetteville's current policies and practices. The extent and character of the work to be done by McClelland Consulting Engineers, Inc. shall be subject to the general oversight and approval of the City of Fayetteville.

## **11. OFFICE LOCATION FOR REVIEW OF WORK**

- 11.1.** Review of the work as it progresses and all files and documents produced under this Agreement may be made by representatives of the City of Fayetteville, the AHTD, and the FHWA at the project office of McClelland Consulting Engineers, Inc. located in

Fayetteville or Little Rock, Arkansas or at the regional offices of McClelland Consulting Engineers, Inc. located in N/A or McClelland Consulting Engineers, Inc.'s Arkansas office located at N/A.

## **12. ACCESS TO PROPERTY**

- 12.1. McClelland Consulting Engineers, Inc.'s services to the City of Fayetteville may require entry upon private property. The City of Fayetteville will present or mail to private landowners a letter of introduction and explanation, describing the work, which shall be drafted by McClelland Consulting Engineers, Inc.. McClelland Consulting Engineers, Inc. will make reasonable attempts to notify resident landowners who are obvious and present when McClelland Consulting Engineers, Inc. is in the field. McClelland Consulting Engineers, Inc. is not expected to provide detailed contact with individual landowners. McClelland Consulting Engineers, Inc. is not expected to obtain entry by means other than the consent of the landowner. If McClelland Consulting Engineers, Inc. is denied entry to private property by the landowner, McClelland Consulting Engineers, Inc. will not enter the property. If denied entry to the property, McClelland Consulting Engineers, Inc. shall notify the City of Fayetteville and advise the City of Fayetteville of an alternate evaluation method if one is feasible. The City of Fayetteville shall decide on the course of action to obtain access to the property.

## **13. DELIVERABLES**

- 13.1. Meeting minutes, correspondence, bi-weekly project estimates, materials testing reports, environmental documents, design submittals and survey data files for the project. At the close of the project, the records will be assembled in accordance with current City of Fayetteville and AHTD policies and submitted to the City of Fayetteville and AHTD for review and approval.

## **14. SUBCONTRACTING**

- 14.1. Unless expressly disclosed in Appendix B, McClelland Consulting Engineers, Inc. may not subcontract any of the services to be provided herein without the express written approval of the City of Fayetteville. All subcontractors, including those listed in Appendix B, shall be bound by the terms of this Agreement. All subcontractors shall be subject to all contractual and legal restrictions concerning payment and determination of allowable costs, and subject to all disclosure and audit provisions contained herein and in any applicable federal or state law.
- 14.2. Unless the consent or approval specifically provides otherwise, neither consent by the City of Fayetteville to any subcontract nor approval of McClelland Consulting Engineers, Inc.'s purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve McClelland Consulting Engineers, Inc. of any responsibility, obligation, or duty under this Agreement.
- 14.3. No subcontract placed under this Agreement shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations of the FAR.
- 14.4. Furthermore, notwithstanding any other provision within this Agreement, no reimbursement or payment for any markup of the cost of any subcontract shall be

considered by the City of Fayetteville without the express written agreement of the City of Fayetteville.

- 14.5. *Prompt Payment.* McClelland Consulting Engineers, Inc. shall pay subcontractors for satisfactory performance of their subcontracts within 30 days of receipt of each payment by the City of Fayetteville to McClelland Consulting Engineers, Inc.. Any retainage payments held by McClelland Consulting Engineers, Inc. must be returned to the subcontractor within 30 days after the subcontractor's work is completed. Failure to comply with this provision shall be considered a Default by McClelland Consulting Engineers, Inc.. If McClelland Consulting Engineers, Inc. fails to comply with this provision, in addition to any other rights or remedies provided under this Agreement, the City of Fayetteville, at its sole option and discretion, may:
- make payments directly to the subcontractor and offset such payments, along with any administrative costs incurred by the City of Fayetteville, against reimbursements or payments otherwise due McClelland Consulting Engineers, Inc.;
  - notify any sureties; and/or,
  - withhold any or all reimbursements or payments otherwise due to McClelland Consulting Engineers, Inc. until McClelland Consulting Engineers, Inc. ensures that the subcontractors have been and will be promptly paid for work performed.
- 14.6. McClelland Consulting Engineers, Inc. shall insert a clause containing all the terms of this Section in all subcontracts under this Agreement.

#### **15. RESPONSIBILITY OF MCCLELLAND CONSULTING ENGINEERS, INC.**

- 15.1. Notwithstanding any review, approval, acceptance, or payment by the City of Fayetteville, McClelland Consulting Engineers, Inc. shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by McClelland Consulting Engineers, Inc. under this Agreement. McClelland Consulting Engineers, Inc. shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.
- 15.2. McClelland Consulting Engineers, Inc. shall demonstrate to the City of Fayetteville the presence and implementation of quality assurance in the performance of McClelland Consulting Engineers, Inc.'s work. McClelland Consulting Engineers, Inc. shall identify individual(s) responsible, as well as methods used to determine the completeness and accuracy of drawings, specifications, and cost estimates.
- 15.3. McClelland Consulting Engineers, Inc. further agrees that in its performance of work under this Agreement, it shall adhere to the requirements in the Design Standards of the AHTD and FHWA, which shall be incorporated herein by reference.
- 15.4. The City of Fayetteville shall have the right at any time and in its sole discretion to submit for review all or any portion of McClelland Consulting Engineers, Inc.'s work to consulting engineers engaged by the City of Fayetteville for that purpose. McClelland Consulting Engineers, Inc. shall fully cooperate with any such review.
- 15.5. McClelland Consulting Engineers, Inc. and any subcontractor shall employ qualified and competent personnel to perform the work under this Agreement.
- 15.6. Neither the City of Fayetteville's review, approval, or acceptance of, nor payment for, the services required under this Agreement shall be construed to operate as a waiver of

any rights under this Agreement, or of any cause of action arising out of the performance of this Agreement. McClelland Consulting Engineers, Inc. shall be and remain liable to the City of Fayetteville for all damages to the City of Fayetteville caused by McClelland Consulting Engineers, Inc.'s negligent performance of any of the services furnished under this Agreement.

- 15.7. The rights and remedies of the City of Fayetteville provided under this Agreement are in addition to any other rights and remedies provided by law.
- 15.8. If McClelland Consulting Engineers, Inc. is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

## **16. WARRANTY OF SERVICES**

- 16.1. *Definitions. Acceptance*, as used in this Agreement, means the act of an authorized representative of the City of Fayetteville by which the City of Fayetteville approves specific services, as partial or complete performance of the Agreement. *Correction*, as used in this Agreement, means the elimination of a defect.
- 16.2. Notwithstanding inspection and acceptance by the City of Fayetteville or any provision concerning the conclusiveness thereof, McClelland Consulting Engineers, Inc. warrants that all services performed and work product under this Agreement will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Agreement.
- 16.3. If McClelland Consulting Engineers, Inc. is required to correct or re-perform, it shall be at no cost to the City of Fayetteville, and any services corrected or re-performed by McClelland Consulting Engineers, Inc. shall be subject to this Section to the same extent as work initially performed. If McClelland Consulting Engineers, Inc. fails or refuses to correct or re-perform, the City of Fayetteville may, by contract or otherwise, correct or replace with similar services and charge to McClelland Consulting Engineers, Inc. the cost occasioned to the City of Fayetteville thereby, or make an equitable adjustment in the Contract Price.
- 16.4. If the City of Fayetteville does not require correction or re-performance, the City of Fayetteville shall make an equitable adjustment in the Contract Price.
- 16.5. Nothing within this Section shall constitute a waiver or exclusion of any other right or remedy that the City of Fayetteville may possess at law or under this Agreement.

## **17. TERM, COMMENCEMENT, AND COMPLETION**

- 17.1. This Agreement shall commence on the effective date set forth above and remain in effect until the completion of McClelland Consulting Engineers, Inc.'s Scope of Services, as defined herein, to be completed within a period of nine (9) months, unless extended or terminated by the City of Fayetteville in accordance with this Agreement.
- 17.2. McClelland Consulting Engineers, Inc. shall begin work under the terms of this Agreement within ten (10) days of receiving written notice to proceed. [If services are to be performed in subsequent phases, then each phase shall be commenced upon the City of Fayetteville's approval of the previous phase. McClelland Consulting Engineers, Inc. shall not be entitled to any compensation or reimbursement for services performed in a phase unless and until it has received approval from the City of Fayetteville to proceed with such services.]

17.3. It is further agreed that time is of the essence in performance of this Agreement. McClelland Consulting Engineers, Inc. shall complete the work, or each phase, as scheduled, and the City of Fayetteville shall provide any required approval of the work or phase meeting the requirements contained herein in a reasonable and timely manner. The Project shall be completed as follows:

Topographic Survey	6 weeks from notice to proceed
Environmental Documentation	16 weeks from notice to proceed
Geotechnical Investigation	6 weeks from notice to proceed
Submit 30% Design for Review/Comment	13 weeks from notice to proceed
Submit 60% Design for Review/Comment	4 weeks from 30% approval
Submit 90% Design for Review/Comment	11 weeks from 60% approval
Submit 100% Design for Review/Approval	7 weeks from 90% approval

## **18. TERMINATION**

18.1. The City of Fayetteville may terminate this Agreement in whole or, from time to time, in part, for the City of Fayetteville's convenience or because of the Default of McClelland Consulting Engineers, Inc..

18.2. The City of Fayetteville shall terminate this Agreement by delivering to McClelland Consulting Engineers, Inc. written notice of the termination.

18.3. Upon receipt of the notice, McClelland Consulting Engineers, Inc. shall:

- Immediately discontinue all services affected (unless the notice directs otherwise).
- Deliver to the City of Fayetteville all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement, whether completed or in process.
- Terminate all subcontracts to the extent they relate to the work terminated.
- In the sole discretion and option of the City of Fayetteville, and if and only if requested to do so, assign to the City of Fayetteville all right, title, and interest of McClelland Consulting Engineers, Inc. under the subcontracts terminated, in which case the City of Fayetteville shall have the right to settle any claim or dispute arising out of those subcontracts without waiver of any right or claim the City of Fayetteville may possess against McClelland Consulting Engineers, Inc..
- With approval or ratification by the City of Fayetteville, settle all outstanding liabilities arising from the termination of subcontracts, the cost of which would be allowable in whole or in part, under this Agreement.
- Complete performance of any work not terminated.
- Take any action that may be necessary, or that the City of Fayetteville may direct, for the protection and preservation of the property related to this Agreement which is in the possession of McClelland Consulting Engineers, Inc. and in which the City of Fayetteville has or may acquire an interest.

18.4. If the termination is for the convenience of the City of Fayetteville, the City of Fayetteville shall make an equitable adjustment in the Contract Price, subject to the

Ceiling Prices and Funding Limitations provisions, *but shall allow no anticipated fee or profit on unperformed services.*

- 18.5. If the termination is for McClelland Consulting Engineers, Inc.'s Default, the City of Fayetteville may complete the work by contract or otherwise and McClelland Consulting Engineers, Inc. shall be liable for any reasonable and necessary additional cost incurred by the City of Fayetteville to the extent caused by McClelland Consulting Engineers, Inc.'s default.
- 18.6. Disputes and claims arising from termination of this Agreement shall be governed by Section 28, Claims and Disputes (48 CFR 31.205-42(e) (2)).
- 18.7. The rights and remedies of the City of Fayetteville provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement, and shall not constitute a waiver of any other such right or remedy.

## **19. STOP WORK ORDERS**

- 19.1. The City of Fayetteville may, at any time, by written order to McClelland Consulting Engineers, Inc., require McClelland Consulting Engineers, Inc. to stop all, or any part, of the work called for by this Agreement for a period of up to 90 days after the order is delivered to McClelland Consulting Engineers, Inc., and for any further period to which the parties may agree. Upon receipt of the order, McClelland Consulting Engineers, Inc. shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to McClelland Consulting Engineers, Inc., or within any extension of that period to which the parties shall have agreed, the City of Fayetteville shall either—
  - 19.1.1. Cancel the stop work order; or
  - 19.1.2. Terminate the work pursuant to Section 18, Termination.
- 19.2. If a stop work order issued under this Section is canceled or the period of the order or any extension thereof expires, McClelland Consulting Engineers, Inc. shall resume work. The City of Fayetteville shall make an equitable adjustment in the delivery schedule or Contract Price, or both, and the Agreement shall be modified in writing accordingly, if—
  - The stop work order was not issued because of McClelland Consulting Engineers, Inc.'s Default in its performance of its obligations under any part of this Agreement; and,
  - The stop work order results in an increase in the time required for, or in McClelland Consulting Engineers, Inc.'s cost properly allocable to, the performance of any part of this Agreement; and,
  - McClelland Consulting Engineers, Inc. provides Notice of Potential Claim pursuant to Section 28, Disputes and Claims.

## **20. CHANGES**

- 20.1. The City of Fayetteville may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Agreement, including but not limited to: (1) drawings, designs, or specifications; (2) time of performance (i.e.,

hours of the day, days of the week, etc.); and (3) places of inspection, delivery, or acceptance.

20.2. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, the City of Fayetteville shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fee; and (3) other affected terms.

20.3. All claims and disputes shall be governed by the Section 28, Claims and Disputes. As provided in Section 28, McClelland Consulting Engineers, Inc. must provide written notice of its intention to make a claim for additional compensation before beginning the work on which the claim is based. If such notice is not given, McClelland Consulting Engineers, Inc. hereby agrees to waive any claim for such additional compensation.

20.4. Failure to agree to any adjustment shall be a dispute under Section 28, Disputes and Claims. *However, nothing in this Section or any other provision of this Agreement shall excuse McClelland Consulting Engineers, Inc. from proceeding with the Agreement as changed.*

## **21. OWNERSHIP OF DOCUMENTS & DATA**

21.1. All project documents and data, regardless of form and including but not limited to original drawings, disks of CADD drawings, cross-sections, estimates, files, field notes, and data, shall be the property of the City of Fayetteville. McClelland Consulting Engineers, Inc. shall further provide all documents and data to the City of Fayetteville upon the City of Fayetteville's request. McClelland Consulting Engineers, Inc. may retain reproduced copies of drawings and other documents. In the event that any patent rights or copyrights are created in any of the documents, data compilations, or any other work product, the City of Fayetteville shall have an irrevocable license to use such documents, or data compilations, or work product.

## **22. PATENT AND COPYRIGHT INFRINGEMENT**

22.1. McClelland Consulting Engineers, Inc. shall report to the City of Fayetteville, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which McClelland Consulting Engineers, Inc. has knowledge.

22.2. In the event of any claim or suit against the City of Fayetteville on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed under this Agreement, McClelland Consulting Engineers, Inc. shall furnish to the City of Fayetteville, when requested by the City of Fayetteville, all evidence and information in possession of McClelland Consulting Engineers, Inc. pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of McClelland Consulting Engineers, Inc..

22.3. McClelland Consulting Engineers, Inc. agrees to include, and require inclusion of, the provisions of this Section in all subcontracts at any tier for supplies or services.

22.4. McClelland Consulting Engineers, Inc. shall indemnify the City of Fayetteville and its officers, agents, and employees against liability, including costs and attorneys' fees, for infringement of any United States patent or copyright arising from the manufacture or

delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property under this Agreement, or out of the use or disposal by or for the account of the City of Fayetteville of such supplies or construction work.

- 22.5. This indemnity shall not apply unless McClelland Consulting Engineers, Inc. shall have been informed within ten (10) business days following the City of Fayetteville's receipt of legal notice of any suit alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the City of Fayetteville directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the Agreement not normally used by McClelland Consulting Engineers, Inc., (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of McClelland Consulting Engineers, Inc., unless required by final decree of a court of competent jurisdiction.

### **23. BANKRUPTCY**

- 23.1. In the event McClelland Consulting Engineers, Inc. enters into proceedings relating to bankruptcy, whether voluntary or involuntary, McClelland Consulting Engineers, Inc. agrees to furnish, by certified mail, written notice of the bankruptcy to the City of Fayetteville. This notice shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notice shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of AHTD job numbers and FAP numbers for all contracts with City of Fayetteville against which final payment has not been made. This obligation remains in effect until final payment under this Agreement.

### **24. FUNDING LIMITATIONS**

- 24.1. The City of Fayetteville's obligations under this Agreement are contingent upon the availability of appropriated funds from which payments under the terms of this Agreement can be made in this and each subsequent fiscal year for the duration of the Agreement. No legal liability on the part of the City of Fayetteville of any kind whatsoever under this Agreement shall arise until funds are made available to the City of Fayetteville for performance of this Agreement, including those to be appropriated and provided by the State of Arkansas and those to be provided by the United States.

### **25. SUCCESSORS AND ASSIGNS**

- 25.1. This Agreement shall be binding upon the parties and their successors and assigns, and except as expressly set forth herein, neither the City of Fayetteville nor McClelland Consulting Engineers, Inc. may assign, delegate, or transfer any benefit or obligation under this Agreement without the express written consent of the other party. Nothing herein shall be construed as a waiver of any immunity or as creating any personal liability on the part of any officer or agent of the City of Fayetteville or any other governmental entity either made a party to, or having any interest in, this Agreement.

## **26. INDEMNITY AND RESPONSIBILITY FOR CLAIMS AND LIABILITY**

- 26.1. *Indemnity.* McClelland Consulting Engineers, Inc. shall hold harmless and indemnify the City of Fayetteville and the AHTD, their officers, employees, and agents, from and for all claims and liabilities stemming from any wrongful (whether negligent, reckless, or intentional) acts or omissions on the part of McClelland Consulting Engineers, Inc. and its subcontractors, and their agents and employees.
- 26.2. *No Personal Liability.* No director, officer, manager, employee, agent, assign, or representative of the City of Fayetteville or the AHTD shall be liable to McClelland Consulting Engineers, Inc. in a personal or individual capacity under any term of this Agreement, because of any breach thereof, or for any act or omission in its execution or performance.
- 26.3. *Independent Contractor Relationship.* The parties intend that McClelland Consulting Engineers, Inc. shall be an independent contractor of the City of Fayetteville and that McClelland Consulting Engineers, Inc. shall be liable for any act or omission of McClelland Consulting Engineers, Inc. or its agents, employees, or subcontractors arising under or occurring during the performance of this Agreement. No act or direction of the City of Fayetteville shall be deemed to be an exercise of supervision or control of McClelland Consulting Engineers, Inc.'s performance.

## **27. INSURANCE**

- 27.1. *Professional Liability Insurance Coverage.* McClelland Consulting Engineers, Inc. shall maintain at all times during the performance of services under this Agreement professional liability insurance coverage for errors, omissions, and negligent acts arising out of the performance of this Agreement in an amount per claim of not less than five (5) times the original Contract Ceiling Price or \$1,000,000, whichever is less. Such insurance shall extend to McClelland Consulting Engineers, Inc. and to its legal representatives in the event of death, dissolution, or bankruptcy, and shall cover the errors, omissions, or negligent acts of McClelland Consulting Engineers, Inc.'s subcontractors, agents, and employees. Such insurance shall extend to any errors, omissions, and negligent acts in the performance of services under this Agreement committed by McClelland Consulting Engineers, Inc. or alleged to have been committed by McClelland Consulting Engineers, Inc. or any person for whom McClelland Consulting Engineers, Inc. is legally responsible.
- 27.2. *Deductible.* McClelland Consulting Engineers, Inc. may maintain a professional liability insurance policy with a deductible clause in an amount approved by the City of Fayetteville if, in the judgment and opinion of the City of Fayetteville, McClelland Consulting Engineers, Inc.'s financial resources are sufficient to adequately cover possible liability in the amount of the deductible. McClelland Consulting Engineers, Inc. shall submit promptly to the City of Fayetteville, upon request as often as quarterly, detailed financial statements and any other information requested by the City of Fayetteville to reasonably determine whether or not McClelland Consulting Engineers, Inc.'s financial resources are sufficient to adequately cover possible liability in the amount of the deductible.
- 27.3. *Worker's Compensation Insurance.* McClelland Consulting Engineers, Inc. shall at all times during the Term of this Agreement maintain Worker's Compensation and Employers Liability Insurance as required under Arkansas law.
- 27.4. *General Liability Insurance.* McClelland Consulting Engineers, Inc. shall at all times during the term of this Agreement maintain comprehensive general liability insurance

coverage for bodily injury and property damage in the combined single limit of \$1,000,000, and comprehensive automobile liability insurance coverage for bodily injury and property damage in the combined single limit of \$1,000,000, which shall cover all owned, hired, and non-owned vehicles. McClelland Consulting Engineers, Inc.'s insurance coverage shall also cover restoration of plans, drawings, field notes, and other documents in the event of their loss or destruction while in the custody of McClelland Consulting Engineers, Inc..

- 27.5. *Insurance Policies and Certificates.* McClelland Consulting Engineers, Inc. shall provide the City of Fayetteville upon request copies of its insurance policies and evidence satisfactory to the City of Fayetteville concerning the effectiveness and the specific terms of the insurance. Prior to the execution of this Agreement, McClelland Consulting Engineers, Inc. shall furnish to the City of Fayetteville certificates of insurance reflecting policies in force, and it shall also provide certificates evidencing all renewals of any expiring insurance policy required hereunder within thirty (30) days of the expiration thereof. McClelland Consulting Engineers, Inc.'s failure to provide and continue in force and effect any insurance required under this Article shall be deemed a Default for which City of Fayetteville, in its sole discretion, may terminate this Agreement immediately or on such other terms as it sees fit.
- 27.6. *Additional Insurance Requirements.* All insurance maintained by McClelland Consulting Engineers, Inc. pursuant to this Section shall be written by insurance companies licensed to do business in Arkansas, in form and substance satisfactory to the City of Fayetteville, and shall provide that the insurance will not be subject to cancellation, termination, or change during its term except upon thirty (30) days prior written notice to the City of Fayetteville.
- 27.7. *Duration of Insurance Obligations.* McClelland Consulting Engineers, Inc. shall maintain its professional insurance coverage required under this Agreement in force and effect for a period not less than five years after the final acceptance of the project or the completion of McClelland Consulting Engineers, Inc.'s services under this Agreement, whichever comes later. Comprehensive General Liability Insurance Coverage required under this Agreement shall be in full force and effect until the final acceptance or the completion of McClelland Consulting Engineers, Inc.'s services, whichever comes later. All other insurance shall be maintained in full force and effect until final acceptance of the project or completion of McClelland Consulting Engineers, Inc.'s services, whichever comes first.
- 27.8. *McClelland Consulting Engineers, Inc.'s Insurance Primary.* All insurance policies maintained by McClelland Consulting Engineers, Inc. pursuant to this Agreement shall provide that McClelland Consulting Engineers, Inc.'s insurance shall be primary and the City of Fayetteville's own insurance shall be non-contributing.
- 27.9. *Additional Insured.* All liability insurance policies, except the professional liability policy, maintained by McClelland Consulting Engineers, Inc. pursuant to this Agreement shall be endorsed to include the City of Fayetteville, its officers, directors, managers, employees, agents, assigns and representatives, individually and collectively, as additional insured, and all property damage insurance shall be endorsed with a waiver of subrogation by the insurer as to the City of Fayetteville.

## **28. DISPUTES AND CLAIMS**

- 28.1. *Notice of Potential Claim.* Whenever a McClelland Consulting Engineers, Inc. deems that any additional compensation is due, McClelland Consulting Engineers, Inc. shall notify the City of Fayetteville in writing of its intention to make a claim for additional

compensation ("Notice of Potential Claim") **before beginning the work that gives rise to the claim.**

- 28.2. *Time & Manner for Submitting Claim.* All disputes and claims shall first be submitted in writing to the City of Fayetteville within 45 calendar days after the completion or termination date. **McClelland Consulting Engineers, Inc. hereby agrees that the failure to submit the dispute or claim to the City of Fayetteville prior to 45 calendar days after the completion or termination date shall constitute a waiver of the dispute or claim.**
- 28.3. *Form.* All disputes and claims must be submitted in writing and in sufficient detail to permit the City of Fayetteville to determine the basis for entitlement and the actual allowable costs incurred. Each claim must contain:
- A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected by the claim;
  - The date the actions resulting in the claim occurred or conditions resulting in the claim became evident;
  - A copy of the "Notice of Potential Claim";
  - The name, title, and activity of each City of Fayetteville's employee knowledgeable about facts that gave rise to such claim;
  - The name, title, and activity of each McClelland Consulting Engineers, Inc., Subcontractor, or employee knowledgeable about the facts that gave rise to the claim;
  - The specific provisions of the Agreement that support the claim and a statement why such provisions support the claim;
  - The identification and substance of any relevant documents, things, or oral communications related to the claim;
  - A statement whether the claim is based on provisions of the Agreement or an alleged breach of the Agreement;
  - If an extension of time is sought, the specific number of days sought and the basis for the extension;
  - The amount of additional compensation sought and a specific cost breakdown of the amount claimed; and,
  - Any other information or documents that are relevant to the claim.
- 28.4. *Decision and Appeal.* The decision of the City of Fayetteville shall be final and conclusive.
- 28.5. *Continued Performance.* Pending final resolution of a dispute or claim, unless the City of Fayetteville has terminated this Agreement pursuant to Section 18 or issued a stop work order pursuant to Section 19, McClelland Consulting Engineers, Inc. shall proceed diligently with the performance of this Agreement in accordance with the City of Fayetteville's decisions.

28.6. The rights and remedies of the City of Fayetteville provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement, and shall not constitute a waiver of any other such right or remedy. If the City of Fayetteville decides the facts justify the action, the City of Fayetteville may, at its sole option and discretion, receive and act upon a proposal, dispute, or claim submitted at any time before final payment under this Agreement.

## **29. COVENANT AGAINST CONTINGENCY FEES**

29.1. McClelland Consulting Engineers, Inc. warrants that no person or agency has been employed or retained to solicit or obtain this Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the City of Fayetteville shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Contract Price or consideration, or otherwise recover, the full amount of the contingent fee.

29.2. *Bona fide agency*, as used in this Section, means an established commercial or selling agency, maintained by McClelland Consulting Engineers, Inc. for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds itself out as being able to obtain any government contract or contracts through improper influence.

29.3. *Bona fide employee*, as used in this Section, means a person, employed by McClelland Consulting Engineers, Inc. and subject to McClelland Consulting Engineers, Inc.'s supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds out as being able to obtain any government contract or contracts through improper influence.

29.4. *Contingent fee*, as used in this Section, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a government contract.

29.5. *Improper influence*, as used in this Section, means any influence that induces or tends to induce a government employee or officer to give consideration or to act regarding a government contract on any basis other than the merits of the matter.

## **30. TITLE VI ASSURANCES (NONDISCRIMINATION)**

During the performance of this Agreement, McClelland Consulting Engineers, Inc., for itself, successors, and assigns, certifies and agrees as follows:

30.1. *Compliance with Regulations*. McClelland Consulting Engineers, Inc. shall comply with the Regulations relative to Title VI (Nondiscrimination in Federally-assisted programs of the Department of Transportation and its operating elements, especially Title 49, Code of Federal Regulations, Part 21 and 23 Code of Federal Regulations, as amended, and hereinafter referred to as the Regulations). These regulations are herein incorporated by reference and made a part of this Agreement. Title VI provides that the recipients of Federal financial assistance will maintain and implement a policy of nondiscrimination in which no person shall, on the basis of race, color, national origin, sex, age, or disability, be excluded from participation in, denied the benefits of, or subject to discrimination under any program or activity by recipients of Federal financial assistance or their assignees and successors in interest.

- 30.2. *Nondiscrimination.* McClelland Consulting Engineers, Inc., with regard to the work performed by it during the term of this Agreement, shall not discriminate on the basis of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. McClelland Consulting Engineers, Inc. shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the USDOT Regulations.
- 30.3. *Solicitations for Subcontracts, Including Procurements of Material & Equipment.* In all solicitations, either by competitive bidding or negotiation, made by McClelland Consulting Engineers, Inc. for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by McClelland Consulting Engineers, Inc. of McClelland Consulting Engineers, Inc.'s obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.
- 30.4. *Information and Reports.* McClelland Consulting Engineers, Inc. shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities by the City of Fayetteville, the AHTD, or the USDOT and its Affiliated Modes to be pertinent to ascertain compliance with such regulations or directives. Where any information required of McClelland Consulting Engineers, Inc. is in the exclusive possession of another who fails or refuses to furnish this information, McClelland Consulting Engineers, Inc. shall so certify to the City of Fayetteville, the AHTD or the FHWA, as appropriate, and shall set forth what efforts it has made by McClelland Consulting Engineers, Inc. to obtain the information.
- 30.5. *Sanctions for Noncompliance.* In the event of McClelland Consulting Engineers, Inc.'s noncompliance with the nondiscrimination provisions of this Agreement, the City of Fayetteville shall impose such contract sanctions as it, the AHTD, or the USDOT and its Affiliated Modes may determine to be appropriate, including but not limited to, withholding of payments to McClelland Consulting Engineers, Inc. under the Agreement until McClelland Consulting Engineers, Inc. complies with the provisions and cancellation, termination, or suspension of the Agreement, in whole or in part.
- 30.6. *Incorporation of Provisions.* McClelland Consulting Engineers, Inc. shall include the terms and conditions of this section in every subcontract including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. McClelland Consulting Engineers, Inc. shall take such action with respect to any subcontract or procurement as the City of Fayetteville, the AHTD, or USDOT and its Affiliated Modes may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; *provided*, however that, in the event McClelland Consulting Engineers, Inc. becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, McClelland Consulting Engineers, Inc. may request the City of Fayetteville to enter into the litigation to protect the interests of the State and litigation to protect the interest of the United States.

### **31. DBE CLAUSE**

- 31.1. McClelland Consulting Engineers, Inc. or subcontractor shall not discriminate on the basis of race, color, national origin, sex, age, religion, or disability in the performance of this Agreement. McClelland Consulting Engineers, Inc. shall comply with the applicable

requirements of 49 C.F.R. Part 26 and perform any actions necessary to maintain compliance in the award and administration of DOT-assisted contracts. Failure by McClelland Consulting Engineers, Inc. to comply with or perform these requirements is a material breach of this Agreement, which may result in the cancellation, termination, or suspension of this Agreement in whole or in part, or such other remedy that the City of Fayetteville may determine appropriate.

- 31.2. McClelland Consulting Engineers, Inc. shall insert a clause containing all the terms of this Section in all subcontracts under this Agreement.

**32. TITLE II OF THE AMERICANS WITH DISABILITIES ACT (NONDISCRIMINATION)**

32.1 McClelland Consulting Engineers, Inc. will comply with the provisions of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act of 1964, FHWA Federal Aid Project Guidance, and any other Federal, State, and/or local laws, rules and/or regulations.

32.2 McClelland Consulting Engineers, Inc., during the term of this Agreement, shall not discriminate on the basis of race, color, sex, national origin, age, religion or disability, in admission or access to and treatment in programs and activities associated with this Agreement, or in the selection and retention of subcontractors, including procurement of material and leases of equipment. McClelland Consulting Engineers, Inc. shall not participate either directly or indirectly in any discrimination prohibited by the Regulations, including employment practices.

32.3 In accordance with Section 504 regulations 49 C.F.R. Part 27.15, the City of Fayetteville's Notice of Nondiscrimination is required in any bulletins, announcements, handbooks, pamphlets, brochures, and any other publications associated with this Agreement that are made available to the public, program participants, applicants or employees.

**33. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS**

33.1. McClelland Consulting Engineers, Inc. certifies, to the best of its knowledge and belief, that—

33.1.1. McClelland Consulting Engineers, Inc. and any of its Principals—

33.1.1.1. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal or state agency;

33.1.1.2. Have not, within a 3-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

33.1.1.3. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in Subsection 33.1.1.2; and,

- 33.1.1.4. McClelland Consulting Engineers, Inc. has not within a 3-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency.
- 33.2. *Principals*, for the purposes of this certification, means officers; directors; City of Fayettevilles; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions). This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Section 1001, Title 18, United States Code, as well as any other applicable federal and state laws.
- 33.3. McClelland Consulting Engineers, Inc. shall provide immediate written notice to the City of Fayetteville if, at any time prior to contract award, McClelland Consulting Engineers, Inc. learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 33.4. The certification in Subsection 33.1 is a material representation of fact upon which reliance was placed when making award. If it is later determined that McClelland Consulting Engineers, Inc. knowingly rendered an erroneous certification, the City of Fayetteville may terminate the contract resulting from this solicitation for default in addition to any other remedies available to the City of Fayetteville.

#### **34. MISCELLANEOUS**

- 34.1. *General Compliance with Laws*. McClelland Consulting Engineers, Inc. shall comply with all Federal, State, and local laws, regulations, and ordinances applicable to the work, including but not limited to, the Americans with Disabilities Act and Occupational Safety and Health Act as amended.
- 34.2. *Registered Professional Engineer's Endorsement*. All plans, specifications, estimates, and engineering data provided by McClelland Consulting Engineers, Inc. shall be endorsed and recommended by an authorized representative of McClelland Consulting Engineers, Inc., who shall be a registered Professional Engineer licensed in the State of Arkansas.
- 34.3. *Choice of Law*. This Agreement shall be governed by the laws of the State of Arkansas without consideration of its choice of law provisions.
- 34.4. *Choice of Forum*. McClelland Consulting Engineers, Inc. agrees that any cause of action stemming from or related to this Agreement, including but not limited to disputes or claims arising under this Agreement, for acts or omissions in the performance, suspension, or termination of this Agreement, whether sounding in contract or tort, equity or law, may only be brought in the appropriate forum within State of Arkansas.
- 34.5. *No Waiver of Immunity*. The City of Fayetteville expressly does not waive any defense of immunity that it may possess under either federal or state law, and no provision in this Agreement shall be construed to constitute such a waiver in whole or in part.
- 34.6. *Conflicts Between Laws, Regulations, and Provisions*. In the event of conflicting provisions of law, the interpretation shall be governed by the following in this order, from most controlling to least: Federal law and regulations, State law and regulations, Department and FHWA Design Standards, and this Agreement.

- 34.7. *Severability.* If any term or condition of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, all remaining terms of this Agreement shall remain valid and enforceable unless one or both of the parties would be materially prejudiced.
- 34.8. *No-Waiver.* The failure of the City of Fayetteville to strictly enforce any term of this Agreement shall not be construed as a waiver of the City of Fayetteville's right to require McClelland Consulting Engineers, Inc.'s subsequent performance of the same or similar obligation or duty.
- 34.9. *Modification and Merger.* This written Agreement and any provisions incorporated by reference reflect the entire agreement of the parties and may be modified only by the express written agreement of both parties.

### **35. CERTIFICATION OF AUTHORIZED REPRESENTATIVES**

- 35.1. This Agreement and the certifications contained herein or attached hereto constitute the whole Agreement of the parties, and each party certifies that this Agreement and any attached certification have been executed by their duly authorized representatives.

**36. NOTICE**

36.1. All notices, approvals, requests, consents, or other communications required or permitted under this Agreement shall be addressed to either the City of Fayetteville's Representative or McClelland Consulting Engineers, Inc.'s Representative, and mailed or hand-delivered to:

36.1.1. To the City of Fayetteville's Representative:

City of Fayetteville  
113 West Mountain  
Fayetteville, AR 72701

36.1.2. To McClelland Consulting Engineers, Inc.:

McClelland Consulting Engineers, Inc.  
1810 North College Avenue  
P.O. Box 1229  
Fayetteville, AR 72703/72702-1229

**IN WITNESS WHEREOF**, the parties execute this Agreement, to be effective upon the date set out above.

McClelland Consulting Engineers, Inc.

City of Fayetteville, Arkansas

BY:   
Name

BY: \_\_\_\_\_  
Name

PRESIDENT, FAYETTEVILLE  
Title

\_\_\_\_\_  
Title

**APPENDICES**

APPENDIX A	JUSTIFICATION OF FEES AND COSTS
APPENDIX B	SUBCONTRACTS – Horner & Shifrin, Inc.
APPENDIX C	STANDARD CERTIFICATIONS
APPENDIX D	GENERAL AND DETAILED SCOPE OF WORK FOR CONTROL SURVEYS, DESIGN SURVEYS, AND LAND SURVEYS –

APPENDIX C  
C-1

State Job No. 040618  
Federal Aid Project No. BRN-9142(29)

**CERTIFICATION OF MCCLELLAND CONSULTING ENGINEERS, INC.**

I hereby certify that I, Daniel Barnes, am the President, Fayetteville, Office and duly authorized representative of the firm of McClelland Consulting Engineers, Inc. whose headquarters address is 900 West Markham, Little Rock, AR 72201 and that neither I nor the above firm I here represent has:

- (a) employed or retained for a commission, brokerage, contingent fee, or other considerations, any firm or person (other than a bona fide employee working solely for me) to solicit or secure this contract,
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me) any fee contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the contract;
- (d) included any costs which are not expressly allowable under the cost principles of the FAR of 48 CFR 31, whether direct or indirect. All known material transactions or events that have occurred affecting the firm's ownership, organization and indirect cost rates have been disclosed.

except as here expressly stated (if any):

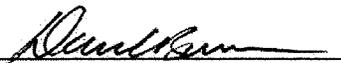
I acknowledge that this certificate is to be furnished to the Arkansas State Highway and Transportation Department and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal Aid Highway Funds, and is subject to applicable State and Federal laws, both criminal and civil.

Furthermore, as a recipient of Federal Aid Highway Funds, I certify and hereby agree to the conditions of Title VI Assurances as outlined in Section 31 of this Agreement and shall insert the Notice of Nondiscrimination Statement as shown below in all solicitation of work or procurement of materials or equipment.

**NOTICE OF NONDISCRIMINATION STATEMENT**

The Firm of McClelland Consulting Engineers, Inc. ("Consultant"), complies with all civil rights provisions of federal statutes and related authorities that prohibited discrimination in programs and activities receiving federal financial assistance. Therefore, McClelland Consulting Engineers, Inc. does not discriminate on the basis of race, sex, color, age, national origin, or disability, in the admission, access to and treatment in McClelland Consulting Engineers, Inc.'s programs and activities, as well as McClelland Consulting Engineers, Inc.'s hiring or employment practices. Complaints of alleged discrimination and inquiries regarding McClelland Consulting Engineers, Inc.'s nondiscrimination policies may be directed to Andrea McGhee(ADA/504/Title VI Coordinator), P.O. Box 34087 Little Rock, AR 72203, 501-376-4522. (Voice/TTY 711), or , the following email address: amcgree@mcclelland-engrs.com.

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.

  
Authorized Firm Representative

2-5-13  
Date

APPENDIX C  
C-3

State Job No. 040618  
Federal Aid Project No. BRN-9142(29)

**CERTIFICATION OF CITY OF FAYETTEVILLE, ARKANSAS**

I hereby certify that I am the Mayor of the City of Fayetteville, Arkansas and that the aforementioned consulting firm or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay, or agree to pay, to any firm, person, or organization, any fee contributions donation, or consideration of any kind:

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Arkansas Highway and Transportation Department and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal-Aid Highway Funds, and is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mayor, City of Fayetteville, Arkansas

