

City of Fayetteville Item Review Form

2014-0191

Legistar File Number

5/6/14

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

Chris Brown

Submitted By

Development Services

Department

Action Required:

Approval of a resolution awarding an Engineering Contract to McClelland Consulting Engineers, Inc. in an amount not to exceed \$371,396.00 for preliminary and final design and related services for Zion Road, from Vantage Drive to Crossover Road.

Does this item have a cost? Yes

\$371,396.00

Cost of this request

\$371,396.00

Category or Project Budget

Engineering

Program or Project Name

4520.9555.5314.00

Account Number

\$0.00

Funds Used to Date

Development Services

Program or Project Category

060350.2700

Project Number

\$0.00

Remaining Balance

Transportation Bonds

Fund Name

Budgeted Item? Yes

Budget Adjustment Attached? No

V20130812

Previous Ordinance or Resolution # _____

Original Contract Number: _____

Comments:

Handwritten signature
4/18/14

Paul A. Bisher 4-22-2014

Handwritten signature
4-22-14

ENTERED
4/21/14 BRP

CITY COUNCIL AGENDA MEMO

MEETING OF MAY 6, 2014

TO: Mayor and City Council

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

FROM: Chris Brown, City Engineer

DATE: April 18, 2014

SUBJECT: A resolution awarding an Engineering Contract to McClelland Consulting Engineers, Inc. in an amount not to exceed \$371,396.00 for preliminary and final design and related services for Zion Road, from Vantage Drive to Crossover Road.

RECOMMENDATION:

Staff recommends approval of a Contract with McClelland Consulting Engineers, Inc. in the amount of \$371,396.00 for preliminary and final design and related services for Zion Road, from Vantage Drive to Crossover Road.

BACKGROUND:

Zion Road from College Avenue to Highway 265 is included in the Transportation Improvement Bond Program.

The first phase of construction between College Avenue and Vantage Drive was completed in 2008. In 2013, the second phase, between Vantage Drive and Highway 265, was approved for funding through the bond program. Zion Road is shown on the City of Fayetteville Master Street Plan as a collector street running between College Avenue (Highway 71B) and Crossover Road (Highway 265) and provides an east-west connection between these two highways. The cross section will be a two and three lane section with bike lanes and 5' sidewalks on both sides.

DISCUSSION:

Under this contract, McClelland Consulting Engineers, Inc. will provide preliminary and final design and related services for Zion Road, from Vantage Drive to Crossover Road. McClelland Consulting Engineers, Inc. will also provide property surveys, legal descriptions for right of way and easements to be acquired, and related services to support property acquisition by the City. The contract amount will not exceed \$371,396.00.

BUDGET/STAFF IMPACT:

This contract will be paid from funds available in the Transportation Improvement Bond Program. The total budget for this project is \$4.65 million.

Attachments:

Concept Drawing

Engineering Agreement

RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE A PROFESSIONAL ENGINEERING SERVICES AGREEMENT WITH MCCLELLAND CONSULTING ENGINEERS, INC. IN THE AMOUNT OF \$371,396.00 FOR DESIGN AND RELATED SERVICES FOR IMPROVEMENTS TO ZION ROAD

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 authorizes the Mayor to sign a professional engineering services agreement with McClelland Consulting Engineers in the amount of \$371,396.00 for design and related services for improvements to Zion Road between Vantage Drive and Crossover Road.

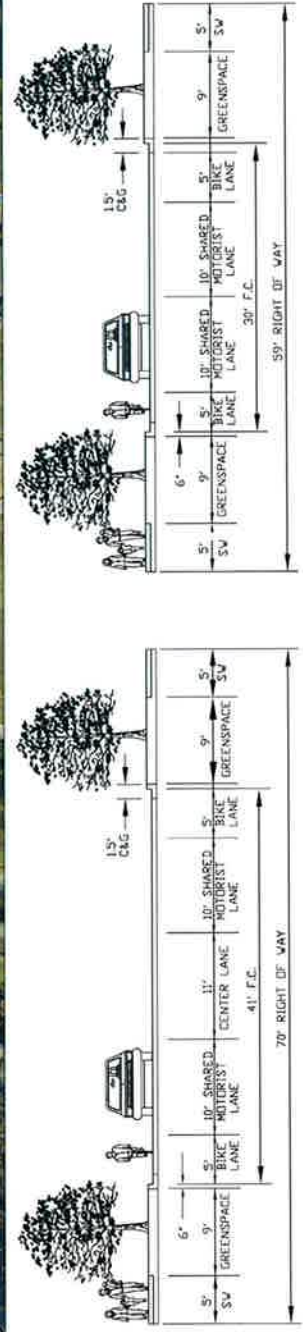
PASSED and APPROVED this 6th day of May, 2014.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



Project Summary
 - Future project to be constructed when funding is available.

(16) ZION ROAD IMPROVEMENTS CONCEPT PLAN

COLLECTOR (THROUGH)

COLLECTOR (INTERSECTION)

AGREEMENT
For
PROFESSIONAL ENGINEERING SERVICES
Between
CITY OF FAYETTEVILLE, ARKANSAS
And
ENGINEER

THIS AGREEMENT is made as of _____, 2014, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and McClelland Consulting Engineers, Inc. (hereinafter called ENGINEER).

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

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

SECTION 1 - AUTHORIZATION OF SERVICES

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

SECTION 2 - BASIC SERVICES OF ENGINEER

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

SECTION 3 - RESPONSIBILITIES OF CITY OF FAYETTEVILLE

- 3.1 CITY OF FAYETTEVILLE shall, within a reasonable time, so as not to delay the services of ENGINEER.
 - 3.1.1 Provide full information as to CITY OF FAYETTEVILLE's requirements for the Project.
 - 3.1.2 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.
 - 3.1.3 Assist ENGINEER in obtaining access to property reasonably necessary for ENGINEER to perform its services under this Agreement.
 - 3.1.4 Examine all studies, reports, sketches, cost opinions, proposals, and other documents presented by ENGINEER and render in writing decisions pertaining thereto.
 - 3.1.5 The City Engineer is the CITY OF FAYETTEVILLE's project representative with respect to the services to be performed under this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define CITY OF FAYETTEVILLE's policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.
 - 3.1.6 CITY OF FAYETTEVILLE and/or its representative will review all documents and provide written comments to ENGINEER in a timely manner.

SECTION 4 - PERIOD OF SERVICE

- 4.1 This Agreement will become effective upon the first written notice by CITY OF FAYETTEVILLE authorizing services hereunder.
- 4.2 The provisions of this Agreement have been agreed to in anticipation of the orderly progress of the Project through completion of the services stated in the Agreement. ENGINEER will proceed with providing the authorized services immediately upon receipt of written authorization from CITY OF FAYETTEVILLE. Said authorization shall include the scope of the services authorized and the time in which the services are to be completed. The anticipated schedule for this project is included as Appendix B.

SECTION 5 - PAYMENTS TO ENGINEER

- 5.1 The maximum not-to-exceed amount authorized for this Agreement is \$ 371,396.00. The CITY OF FAYETTEVILLE shall compensate ENGINEER based on a hourly NTE basis as described in Appendix C.
- 5.2 Statements
 - 5.2.1 Monthly statements for each calendar month shall be submitted to CITY OF FAYETTEVILLE or such parties as CITY OF FAYETTEVILLE may designate for professional services consistent with ENGINEER's normal billing schedule. Once established, the billing schedule shall be maintained throughout the duration of the Project. Applications for payment shall be made in accordance with a format to be developed by ENGINEER and approved by CITY OF FAYETTEVILLE. Applications for payment shall

be accompanied each month by the updated project schedule as the basis for determining the value earned as the work is accomplished. Final payment for professional services shall be made upon CITY OF FAYETTEVILLE's approval and acceptance with the satisfactory completion of the study and report for the Project.

5.3 Payments

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

5.4 Final Payment

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

SECTION 6 - GENERAL CONSIDERATIONS

6.1 Insurance

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

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

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

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

6.2 Professional Responsibility

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

6.3 Cost Opinions and Projections

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

6.4 Changes

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

6.5 Termination

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

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

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

- 6.5.2 This Agreement may be terminated in whole or in part in writing by CITY OF FAYETTEVILLE for its convenience, provided that ENGINEER is given:
- 6.5.2.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,
- 6.5.2.2 An opportunity for consultation with the terminating party prior to termination.
- 6.5.3 If termination for default is effected by CITY OF FAYETTEVILLE, an equitable adjustment in the price provided for in this Agreement shall be made, but
- 6.5.3.1 No amount shall be allowed for anticipated profit on unperformed services or other work,
- 6.5.3.2 Any payment due to ENGINEER at the time of termination may be adjusted to cover any additional costs to CITY OF FAYETTEVILLE because of ENGINEER's default.
- 6.5.4 If termination for default is effected by ENGINEER, or if termination for convenience is effected by CITY OF FAYETTEVILLE, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by ENGINEER relating to commitments which had become firm prior to the termination.
- 6.5.5 Upon receipt of a termination action under Paragraphs 6.5.1 or 6.5.2 above, ENGINEER shall:
- 6.5.5.1 Promptly discontinue all affected work (unless the notice directs otherwise),
- 6.5.5.2 Deliver or otherwise make available to CITY OF FAYETTEVILLE all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by ENGINEER in performing this Agreement, whether completed or in process.
- 6.5.6 Upon termination under Paragraphs 6.5.1 or 6.5.2 above CITY OF FAYETTEVILLE may take over the work and may award another party an agreement to complete the work under this Agreement.
- 6.5.7 If, after termination for failure of ENGINEER to fulfill contractual obligations, it is determined that ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of CITY OF FAYETTEVILLE. In such event, adjustments of the agreement price shall be made as provided in Paragraph 6.5.4 of this clause.
- 6.6 Delays
- 6.6.1 In the event the services of ENGINEER are suspended or delayed by CITY OF FAYETTEVILLE or by other events beyond ENGINEER's reasonable control, ENGINEER shall be entitled to additional compensation and time for reasonable costs incurred by ENGINEER in temporarily closing down or delaying the Project.

6.7 Rights and Benefits

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

6.8 Dispute Resolution

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

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

6.8.3 Notice of Dispute

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

6.8.3.2 For disputes arising within one year after the making of final payment, CITY OF FAYETTEVILLE shall give ENGINEER written Notice at the address listed in Paragraph 6.14 within thirty (30) days after occurrence of any incident, accident, or first observance of defect or damage. In both instances, the Notice shall specify the nature and amount of relief sought, the reason relief should be granted, and the appropriate portions of this Agreement that authorize the relief requested.

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

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

6.10 Publications

6.10.1 Recognizing the importance of professional development on the part of ENGINEER's employees and the importance of ENGINEER's public relations, ENGINEER may prepare publications, such as technical papers, articles for periodicals, and press releases, pertaining to ENGINEER's services for the Project. Such publications will be provided to CITY OF FAYETTEVILLE in draft form for CITY OF FAYETTEVILLE's advance review. CITY OF FAYETTEVILLE shall review such drafts promptly and provide CITY OF FAYETTEVILLE's comments to ENGINEER. CITY OF FAYETTEVILLE may require

deletion of proprietary data or confidential information from such publications, but otherwise CITY OF FAYETTEVILLE will not unreasonably withhold approval. The cost of ENGINEER's activities pertaining to any such publication shall be for ENGINEER's account.

6.11 Indemnification

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

6.12 Ownership of Documents

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

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

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

6.13 Notices

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

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

ENGINEER's address:
1810 N. College Avenue
Fayetteville, Arkansas 72701

6.14 Successor and Assigns

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

6.15 Controlling Law

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

6.16 Entire Agreement

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

SECTION 7 - SPECIAL CONDITIONS

7.1 Additional Responsibilities of ENGINEER

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

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

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

7.2 Remedies

7.2.1 Except as may be otherwise provided in this Agreement, all claims, counter-claims, disputes and other matters in question between CITY OF FAYETTEVILLE and ENGINEER arising

out of or relating to this Agreement or the breach thereof will be decided in a court of competent jurisdiction within Arkansas.

7.3 Audit: Access to Records

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

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

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

7.3.3.1 Negotiated prime agreements:

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

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

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

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

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

7.4 Covenant Against Contingent Fees

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

contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

7.5 Gratuities

7.5.1 If CITY OF FAYETTEVILLE finds after a notice and hearing that ENGINEER or any of ENGINEER's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of CITY OF FAYETTEVILLE, in an attempt to secure an agreement or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, CITY OF FAYETTEVILLE may, by written notice to ENGINEER terminate this Agreement. CITY OF FAYETTEVILLE may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which CITY OF FAYETTEVILLE bases such finding shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

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

7.6 Arkansas Freedom of Information Act

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

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

CITY OF FAYETTEVILLE, ARKANSAS

ENGINEER

By: _____
Mayor, Lioneld Jordan

By:  _____

ATTEST:

By: _____
City Clerk

Title: PRINCIPAL / PARTNER

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

APPENDIX 'A'

SCOPE OF SERVICES

PROFESSIONAL SERVICES AGREEMENT

CITY OF FAYETTEVILLE, ARKANSAS

ZION ROAD;

NORTH VANTAGE DRIVE TO NORTH CROSSOVER ROAD (HWY 265)

1. Scope of Project

- a. Construct, reconstruct, widen and overlay Zion Road between North Vantage Drive located to the west and North Crossover Road, aka. Hwy 265, to the east, a distance of approximately 5, 500 linear feet.
- b. Design as a collector street having a combination of two (2) and three (3) lane sections, with turn lanes. Two lane sections shall be 30' wide F.O.C, to include two 5' wide bike lanes. Both driving lanes shall be 10' wide. Three lane sections shall be 41' wide F.O.C, to include two 5' wide bike lanes. Both driving lanes shall be 10' wide and the center lane 11' wide.
- c. Evaluate an alternative intersection to the existing "T" intersection at Old Missouri Road, in the way of a mini roundabout.
- d. Street improvements are to include an asphalt street surface, concrete curb and gutters, an underground drainage system, bike lanes and sidewalks.
- e. The relocation and/or installation of a new 12" water line facility owned by the CITY OF FAYETTEVILLE is to be included in the design and street construction contract.
- f. Coordinate street design and construction facilities with franchise utility companies' relocations to ensure adequate space for all facilities and timely relocations.
- g. Related regulatory agency permits (including Arkansas Highway and Transportation Department and others) and resolving environmental issues (including wetlands and others) are included, as needed.
- h. Prepare construction phasing plans necessary to maintain continued traffic flow at all times, unless agreed otherwise with the CITY OF FAYETTEVILLE.

- i. Prepare exhibits and documentation for public meetings to obtain citizen input and to obtain alignment approval by the CITY OF FAYETTEVILLE.
- j. Provide related design services including but not limited to design surveys, property surveys, geotechnical investigations and right of way acquisition documents.

2. **Basic Services**

The Scope of Services of the ENGINEER as described in the Agreement are further defined and described hereinafter.

3. **Topographic Surveys**

- a. Survey control shall be established on the State Plane Coordinate System.
- b. Locate all structures, streets, driveways, storm drains and other features within 40 feet of centerline plus additional structures from parcels from which acquisition will be made.
- c. Cross section centerline at 50 foot intervals, plus breaks, for a width of 80 feet to define existing conditions. Cross section intersecting streets for the lengths designated for inclusion in the project.
- d. Profile existing driveways.
- e. Cross section areas in the vicinity of drainage channels. Determine flow line elevations of all drainage facilities (pipes, inlets, ditches, etc.).
- f. Set temporary bench marks at approximately 1,000 foot intervals.
- g. All survey work will be conducted with the standards of care as outlined in the Standards of Practice No. 1 (Revised May 21, 2009, updated 8-25-08) Arkansas Standards of Practice for Property Boundary Surveys and Plats.

4. **Right-of-Way Surveys**

- a. CITY OF FAYETTEVILLE will provide ownership information for properties along project route including copies of recorded plats, legal descriptions for unplatted tracts and easements and right of way information.

- b. Perform field surveys to determine existing monumentation and establish land lines, ownership lines, rights-of-way and easements.
- c. Reference existing monuments for replacement after construction.
- d. Stake proposed right-of-way and easements at intervals which will provide intervisible points for appraisal and acquisition purposes. Larger tracts shall be staked at property lines and at intervisible points.
- e. All survey work and related right-of-way work will be conducted with the standards of care as outlined in the Standards of Practice No. 1 (Revised May 21, 2009, updated 8-25-08) Arkansas Standards of Practice for Property Boundary Surveys and Plats.

5. Utility Surveys and Coordination

- a. Request location and size of existing overhead and underground utilities from the utility companies.
- b. Field locate known, marked and/or observable utilities within the project area. Where conflicts with new construction will or may occur, determine elevations of existing utilities by excavation methods. Excavation and exposure of the utility facilities will be provided by the owner of the utility. In the event the utility owner cannot or will not perform the excavation to expose the utility facilities, the ENGINEER will arrange to have the necessary excavation performed. Prior to performing the excavation, the ENGINEER will coordinate the excavation operations with the utility owner and require that a representative of the utility owner be present during the excavation activities. The costs associated with this work shall be reimbursed by the CITY OF FAYETTEVILLE.
- c. Using utility field survey data, plot existing utilities on plans.
- d. Attend meetings with each affected utility company to discuss necessary adjustments or relocations and later to discuss their methods and schedule to accomplish the work. A CITY OF FAYETTEVILLE representative will arrange all meetings with utility companies, unless otherwise agreed.
- e. Review utility adjustment plans and costs with CITY OF FAYETTEVILLE to determine most feasible combination of street and drainage construction and/or utility relocation to be utilized. Prepare construction plans as directed by CITY OF FAYETTEVILLE to accommodate utility relocations, including identification of utility easements on right-of-way plans. Final plans shall indicate the location and extent of proposed utility relocations.

6. Geotechnical Investigations

- a. Perform geotechnical investigations in accordance with AASHTO, AHTD, and CITY OF FAYETTEVILLE criteria.
- b. Perform sampling of subgrade soils by boring and excavation of test pits. A minimum of five (5) test pits shall be provided for in the areas of full street reconstruction. In areas of road widening, a portion of the tests shall be taken in ditch lines, or adjacent thereto, over which pavement structure may be constructed. Four (4) borings shall be drilled within the existing roadway to terminal depths of five (5) feet below existing grade. Existing pavement sections and encountered subgrade soils will be sampled by the test pits and borings.
- c. Perform soil tests to determine soil classifications, moisture content, gradations, and other appropriate tests. Soil classifications (both Unified and AASHTO) to be determined for each type of soil encountered in each boring for depths between subgrade and 8 to 10 feet below. Determine if an impervious soil layer exists (and depth thereto) which would inhibit or prevent free drainage of subgrade soils. Note and inform CITY OF FAYETTEVILLE of suspected hazardous substances encountered.
- d. From soil samples, determine locations for further sampling (anticipate fill areas and inadequate soil removal areas are to be excluded) for load bearing strength (CBR) tests. CBR tests are to be done on representative subgrade soils.
- e. After establishment of final profile grades, review soil data to determine the adequacy of the in-situ soils as a pavement subgrade assuming wet weather conditions and construction season. Make recommendations as to anticipated soil conditions and reactions to be encountered, amount of undercut to be required, utilization of geotextile/geogrid materials for stabilization, and/or other construction methods or materials to achieve a stable subgrade.
- f. Analyze the data, develop recommendations for structural foundations, slope stability, excavations, embankments, pavement geotechnical investigations not listed above, and pavement designs, and prepare a geotechnical report for the Project.

7. Conceptual Design Phase

- a. Prepare plan and profile drawings showing all existing facilities. Horizontal scale of drawings to be 1 inch equals 20 feet or larger and vertical scale to be 1 inch equals 5 feet.

- b. Prepare plans and data including the following information:
- (1) Survey data, centerline and stations, existing improvements, boring locations, bench marks, existing and proposed right-of-way, temporary construction easements and structures.
 - (2) Proposed centerline, pavement configuration, and profile grades for streets. Identify bike lane, greenspace and sidewalk locations.
 - (3) Establish typical pavement sections.
 - (4) Soils boring information including existing pavement sections. Soils laboratory data, including CBR tests, are not required in the concept phase.
 - (5) Drainage information on concept plans shall include approximate location, size and type of structures and storm drain systems. A drainage area map shall be furnished. Preliminary hydrology data shall include runoff quantities for the 10, 25, 50 and 100 year design storms. CITY OF FAYETTEVILLE will provide storm water data, as available, for primary drainage ways.
 - (6) Prepare opinions of probable costs for primary and alternate designs including unit cost and total cost.
 - (7) Identify water and sanitary sewer facilities requiring relocation.
 - (8) Provide report outlining recommendations, summarizing criteria, calculations, and other project information.
 - (9) Prepare exhibits for public meeting to show final street alignment, curb lines, intersections with cross streets, typical paving sections with sidewalks and other improvements, cross sections at crucial intervals to depict extent of cut and fill slopes, and other pertinent information . Exhibits are to be scroll maps on existing aerial photos at a scale of 1 inch equals 100 feet.
 - (10) Attend and conduct one public meeting to provide information, answer questions and obtain input from the public.
 - (11) Prepare and provide a summary of public input obtained at meeting and alternative actions to address and/or resolve issues presented by the public.

8. Preliminary Design Phase

- a. Prepare plan and profile drawings showing all existing facilities. Horizontal scale of drawings to be 1 inch equals 20 feet or larger and vertical scale to be 1 inch equals 5 feet. Prepare preliminary plans, documents and data to include the following:
- (1) Design and layout all proposed street horizontal and vertical alignment on plan and profile sheets. Show curb and gutters, bike lanes, greenspace, sidewalks, driveways, drainage facilities, and other proposed features and elements.
 - (2) Design and prepare typical street paving sections for all streets.
 - (3) Plot existing cross sections, including driveway and cross streets.
 - (4) Prepare plans of intersecting streets which depict all construction required to provide a smooth transition from the proposed to the existing pavement. Show top of curb elevations or edge of pavement elevations.
 - (5) Perform drainage design calculations and show all existing and proposed drainage facilities on the plans, on both the plan and profile. Show horizontal and vertical location, elevations, grades and structure details. A drainage area map shall be furnished. Preliminary hydrology data shall include runoff quantities for the 10, 25, 50, and 100 year design storms.
 - (6) Prepare plans and details of water and sanitary sewer facilities which require relocation to accommodate construction of the street and drainage improvements.
 - (7) Provide list of Engineer-developed details to be incorporated into plans.
 - (8) Draft preliminary notes on plans to fully describe the construction work to be performed.
 - (9) Prepare recommendations for sequence of construction and prepare preliminary layout of construction phasing and detours.
 - (10) Prepare preliminary storm water and erosion control plans.
 - (11) Prepare draft copy of special provisions (special conditions) to the construction specifications.
 - (12) Prepare cost estimates for preliminary design.

- (13) Provide design documentation including calculations and support data.
- b. Prepare right-of-way plans to include the following:
 - (1) Plans to be drawn at 1" = 50' scale or larger scale.
 - (2) Identify property subdivisions, existing and proposed rights-of-way and easements, ownership names, addresses, utility easements, temporary construction easements and related information.
 - (3) Provide complete information on plans for, and prepare legal descriptions for, acquisition of rights-of-way and easements including residual or severed tracts. Prepare easement and right of way acquisition documents utilizing standard CITY OF FAYETTEVILLE forms.
 - (4) Provide tabulation of tracts, ownerships, and areas (permanent and temporary construction easements) for each acquisition.
- c. Attend monthly design progress meetings with CITY OF FAYETTEVILLE.
- d. Provide written response to design review comments provided by CITY OF FAYETTEVILLE.

9. Final Design Phase

- a. Prepare final design calculations, plans, profiles, details, paving sections, cross sections, pavement designs, detours and other items.
- b. Prepare construction details which depict all typical items, including but not limited to, curbs, drainage inlets and junction boxes, underdrains, driveways, sidewalks and pavement markings utilizing the CITY OF FAYETTEVILLE format and standard detail drawings where applicable
- c. Prepare final special provisions (special conditions) to the construction contract for items not included in the CITY OF FAYETTEVILLE Standard Construction Specifications, including building demolition.
- d. Calculate construction quantities in accordance with the CITY OF FAYETTEVILLE standard construction specifications and format and submit copy of calculations.

- e. Provide construction bid proposal form. Provide a computer disk containing the bid proposal form in accordance with CITY OF FAYETTEVILLE format(s).
- f. Prepare a recommendation of construction contract time.
- g. Prepare schedule of construction quality control testing.
- h. Revise and update the summary of pay quantities sheet as necessary.
- i. Prepare opinions of probable costs.
- j. Compile design summary to include complete calculations and design data.
- k. Attend monthly design progress meeting with CITY OF FAYETTEVILLE.
- l. Prepare written response to design review comments provided by CITY OF FAYETTEVILLE.

10. Project Deliverables

- a. Two copies of the Geotechnical Report.
- b. Two copies of the hydraulic modeling calculations and drainage design
- c. Three copies of the Concept Plans, design report and cost estimates.
- d. Three copies of the Preliminary Plans, design report, cost estimates and other supporting documents.
- e. One copy of the Preliminary Plans to each potentially affected utility company.
- f. Three copies of the Final Plans, design report, cost estimates and other supporting documents.
- g. Three copies of the revised Final Plans, design summary, cost estimates and other supporting documents.
- h. Provide one copy of the construction bid proposal on a computer disc.
- i. Provide one copy of the revised Final Plans to each potentially affected utility company.

- j. Three copies of the Final Plans and Specifications to the Contractor.
- k. Three copies of the right-of-way plans, easements and acquisition documents.
- l. Two copies of the approved shop drawings and submittals from the Contractor.
- m. One hard copy set of Record Drawings.
- n. Electronic files as requested.

11. General

- a. All street construction shall follow the guidelines described in the CITY OF FAYETTEVILLE Street Design Standards.
 - b. Plans shall be reducible, and legible, to scalable half size plans on 11" x17" sheets. One set of reproducible plans will be provided for right-of-way. In addition, provide preliminary and final plans on computer disk in a format compatible with the current AutoCAD release used by the CITY OF FAYETTEVILLE.
 - c. Record drawings shall be provided on computer disc in AutoCAD format in addition to the reproducible drawings.
 - d. Attendance at one public meeting for discussion of route, design, and construction is included.
 - e. Attend meetings with Owner and Agencies for plan review, project coordination and right-of-way.
- 12.** The services specified for the various phases of the Agreement shall be completed and all stipulated documents shall be submitted to the OWNER in accordance with the project schedule included as Appendix "B".
- 13.** The ENGINEER should anticipate a 60 calendar day review period by the CITY OF FAYETTEVILLE between the completion of one phase and the beginning of the following phase. Additional time may be required for review by agencies.
- 14.** The plans, specifications and contract documents authorized by this Agreement shall be prepared to allow construction bids to be received and construction to be performed under one construction contract. Demolition of building structures, if required, will be included in the construction contract.

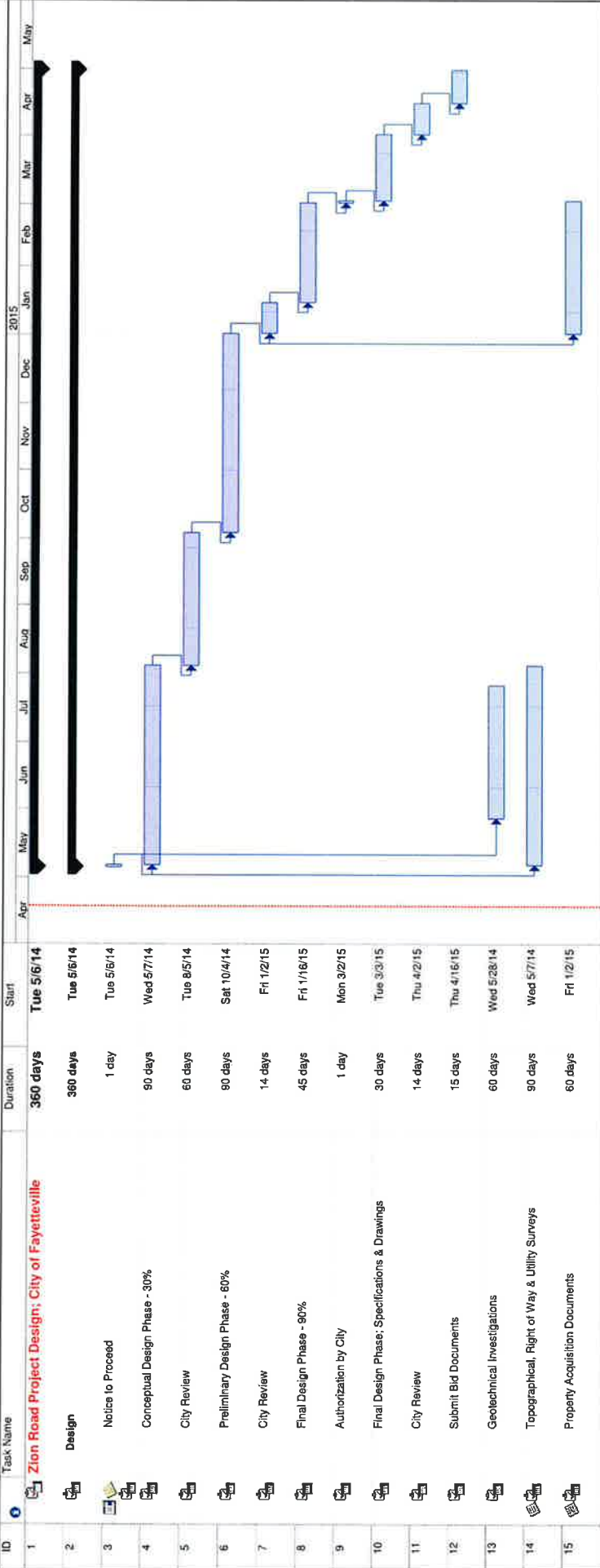
- 15** The ENGINEER will provide construction contract administration including advertisement and opening of bids.
- 16.** The ENGINEER will provide construction observation services if requested by the CITY OF FAYETTEVILLE. Full time observation shall be provided during installation of water and sanitary sewer lines, all other observation services shall be as required by the nature of the construction activities, minimum 50% attendance. Services may include;
1. Attend pre-construction meeting
 2. General construction administration.
 3. Change order preparation and review.
 4. Pay request review.
 5. Submittal review.
 6. Final inspection.

Provision of this service is not included within the scope of this contract and, if required, shall be negotiated as a contract amendment between The CITY OF FAYETTEVILLE and the ENGINEER when required.

- 17.** Subcontracting of services by the ENGINEER shall have prior approval of the OWNER.

APPENDIX B

**City of Fayetteville - Zion Road,
North Vantage Drive to North Crossover Road
Design Schedule**



Progress
 Milestone
 Summary
 Project Summary
 External Task
 External Milestone
 Deadline

\\192.168.1.2\K\2014\1-21-18- Zion Road Phase II; Vantage to Crossover\Contracts\Zion Road Project Design Schedule.mpp, Fri 4/18/14

Project: Zion Road Project Design Sc
Date: Fri 4/18/14

APPENDIX B

**City of Fayetteville - Zion Road.
North Vantage Drive to North Crossover Road
Design Schedule**

- 3 **Notice to Proceed**
Estimated date for Notice To Proceed - May 16th, 2014.
- 14 **Topographical, Right of Way & Utility Surveys**
Topographic Survey can proceed immediately Notice To Proceed is issued.
- 15 **Property Acquisition Documents**
Detailed ROW/ Easement acquisition documents will be provided once the Preliminary Design has been completed and approved.

APPENDIX "C"

COMPENSATION

PROFESSIONAL SERVICES AGREEMENT

CITY OF FAYETTEVILLE, ARKANSAS

**ZION ROAD;
NORTH VANTAGE DRIVE TO NORTH CROSSOVER ROAD (HWY 265)**

- CITY OF FAYETTEVILLE shall pay ENGINEER for Basic Services rendered an amount equal to the cumulative hours charged to the Project for each class of ENGINEER's employees multiplied by ENGINEER'S Hourly Rates as shown on the attached Exhibit "1", plus approved Reimbursable Expenses and ENGINEER's Consultant charges, if any. ENGINEER's Hourly Rates as shown on the attached Exhibit "1" shall be adjusted annually each January 1. For ENGINEER's Consultant charges, the CITY OF FAYETTEVILLE shall pay the ENGINEER the amount billed to the ENGINEER times a factor of 1.00.
- Basic Services: Payment by CITY OF FAYETTEVILLE based on ENGINEER's Hourly Rates shall approximate the following schedule. Payment for a specific phase shall not exceed the scheduled amount prior to completion of that phase. Underruns in one phase may be used to offset overruns in another phase as long as the contract amount is not exceeded.

Topographic, Boundary Mapping and Construction Layout for ROW & Easements	\$ 77,104
Environmental Surveys and Permits	\$ (N/A)
Geotechnical Investigation/ Report	\$ 6,500
Hydrological Evaluation	\$ 3,500
Conceptual Design Phase	\$ 66,392
Preliminary Design Phase	\$ 68,214
Final Design Phase	\$ 34,930
Water Relocation Design	\$ 24,000
Property Acquisition Documents	\$ 36,000
Easement Research & ARKUPS	\$ 5,000
Bidding Services	\$ 7,500

Construction Administration	\$ 32,256
Construction Observation	\$ (N/A)
SUB-TOTAL Basic Services	\$ 361,396

- Additional Services: Any and all Additional Services must be approved, and maximum amount to be paid for said services agreed to, in writing by CITY OF FAYETTEVILLE prior to rendering of same. CITY OF FAYETTEVILLE shall pay ENGINEER for Additional Services rendered an amount equal to the cumulative hours charged to the Project for each class of ENGINEER's employees multiplied by ENGINEER'S Hourly Rates as shown on the Attached Exhibit "1", plus approved Reimbursable Expenses and ENGINEER'S Consultant charges, if any. For ENGINEER's Consultant charges, the CITY OF FAYETTEVILLE shall pay the ENGINEER the amount billed to the ENGINEER times a factor of 1.00.
- CITY OF FAYETTEVILLE shall pay ENGINEER the actual cost of Reimbursable Expenses incurred in connection with Basic and Additional Services. Reimbursable Expenses must be approved by the CITY OF FAYETTEVILLE prior to the incurrence of such expenses. The estimated amount of Reimbursable Expenses to be incurred in connection with Basic Services is:

SUB-TOTAL Reimbursable Expenses	\$ 10,000
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- The maximum payment to the ENGINEER for Basic Services and Reimbursable Expenses under this Agreement shall not exceed **\$ 371,396.**
- ENGINEER shall submit invoices monthly for services rendered and expenses borne. The invoices shall be accompanied by a copy of the timesheets for all ENGINEER's personnel working on the project.
- The Hourly Rates used as a basis for payment mean salaries and wages (basic and incentive) paid to all personnel engaged directly on the PROJECT, including, but not limited to, engineers, architects, surveyors, designers, draftsman, specification writers, estimators, other technical personnel, stenographers, typists and clerks; plus the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto; plus operating margin or profit, non-project operating costs, and all general and administrative overhead costs, including but not limited to, furnishing and maintaining office facilities, furniture, utilities, vehicles and equipment.

Reimbursable Expenses mean the actual expenses incurred directly or indirectly in connection with the PROJECT for printing and reproduction costs and ENGINEER's consultant charges. Any and all expenditures for reimbursable expenses must be approved by the CITY OF FAYETTEVILLE prior to rendering or obtaining same. Overtime salary costs are not considered Reimbursable Expenses.

2013 - 2014
McCLELLAND CONSULTING ENGINEERS, INC.
***STANDARD HOURLY RATES**
 As of December 1, 2013

Clerical	\$45.00 - \$65.00
Construction Observer	\$55.00 - \$97.00
Chief Draftsman	\$68.00 - \$78.00
Draftsman	\$50.00 - \$69.00
Engineering Technician	\$55.00 - \$95.00
Geotech Engineer	\$84.00 - \$127.00
Principal Engineer	\$127.00 - \$175.00
Project Engineer	\$82.00 - \$128.00
Sr. Project Engineer	\$110.00 - \$120.00
Environmental Scientist/Designer	\$93.00 - \$105.00
Landscape Architect	\$60.00 - \$109.00
Media Specialist	\$55.00 - \$65.00
Project Accountant	\$60.00 - \$105.00
Project Manager	\$115.00 - \$135.00
Sr. Project Manager	\$127.00 - \$143.00
Registered Land Surveyor	\$100.00 - \$110.00
Soils Lab Supervisor	\$75.00 - \$127.00
Soils Lab Technician	\$42.00 - \$56.00
Specification Writer	\$48.00 - \$61.00
Survey Party Chief	\$75.00 - \$80.00
Survey (2 man or Robotic) Crew	\$107.00 - \$143.00
Survey (3 man) Crew	\$135.00 - \$175.00
Survey Field (1 Man or Rodman)	\$76.00 - \$80.00
Survey Technician	\$75.00 - \$95.00
Water Lab Supervisor	\$68.00 - \$85.00
Expenses	@ Cost
Mileage	56.5/mi
	current IRS rate

** Standard Hourly Rates may be adjusted annually in accordance with the normal salary review practices of McClelland Consulting Engineers.*