

City of Fayetteville Staff Review Form

2014-0535

Legistar File ID

12/2/2014

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Chris Brown

11/14/2014

Engineering /
Development Services Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of Contract Amendment No. 2 with McGoodwin Williams and Yates for additional services on the Recycling and Trash Collection Office Expansion and Site Improvements

Budget Impact:

5500.5080.5314.00		Solid Waste	
<hr/> Account Number		<hr/> Fund	
13021.2000		Solid Waste Office & Trans Station	
<hr/> Project Number		<hr/> Project Title	
Budgeted Item?	<u>Yes</u>	Current Budget	\$ 1,063,999.00
		Funds Obligated	\$ 406,200.00
		Current Balance	\$ 657,799.00
Does item have a cost?	<u>Yes</u>	Item Cost	\$ 47,527.00
Budget Adjustment Attached?	<u>No</u>	Budget Adjustment	
#		Remaining Budget	\$ 610,272.00

V20140710

Previous Ordinance or Resolution # 133-13, 57-14

Original Contract Number: _____

Approval Date: _____

Comments:



CITY COUNCIL AGENDA MEMO

MEETING OF DECEMBER 2, 2014

TO: Mayor and City Council

THRU: Don Marr, Chief of Staff
Terry Gulley, Transportation Services Dept. Director
Jeff Coles, Recycling and Trash Collection Division Head

FROM: Chris Brown, P.E., City Engineer *CB*

DATE: November 14, 2014

SUBJECT: **Approval of a Contract Amendment No. 2 with McGoodwin Williams and Yates for design services on the Recycling and Trash Collection Facility Expansion**

RECOMMENDATION:

Staff recommends approval of Contract Amendment No. 2 with McGoodwin Williams and Yates for additional items of design work necessary on the Recycling and Trash Collection Facility Expansion and Improvements project. The Water, Sewer, and Solid Waste Committee reviewed this proposal at their meeting on November 13th, and the attending members recommended approval as well.

BACKGROUND:

The Recycling and Trash Collection Division is in need of engineering services to design expansion/improvements to their facility on Happy Hollow Road, to include improvements to their offices and transfer station building, parking areas, access drives, and other site elements. In accordance with City policy, a selection committee consisting of city staff and one City Council member was formed and selected McGoodwin, Williams and Yates (MWY) of Fayetteville as the design consultant. MWY designed the existing transfer station and office building, and their staff has extensive knowledge and background on the existing building.

The original contract with MWY provided for the development of a master plan. The master plan identified improvements that are necessary accommodate current space and site needs. Contract Amendment No. 1 provided for detailed design services for the building expansion and associated site improvements in accordance with the Master plan.

DISCUSSION:

When the detailed design contract was negotiated with MWY, staff intended to also select a Construction Manager that would ultimately act as the construction contractor on the project. However, the recent experience with the Spring Street Parking Deck, where a construction management arrangement was used, has not exhibited the expected benefits, due in part to the

current construction climate that is not a competitive as is has been over the past few years. Therefore, a more typical contractor bid process is now planned for this project. The proposed amendment to the contract with MWY is for cost estimating services (\$18,750) and for bid phase services (\$28,777); both of which are services that would have been provided by the Construction Manager, and would have been a negotiated fee to be paid to the CM. The total proposed amendment is \$47,527.

BUDGET/STAFF IMPACT:

This project will be funded from the Solid Waste Office and Transfer Station Expansion project in the Solid Waste Fund.

Attachments:

Amendment No. 2 with MWY

Original Contract and Amendment No. 1 with MWY

AMENDMENT NO. 2
To
AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES
Between
CITY OF FAYETTEVILLE, ARKANSAS
And
McGOODWIN, WILLIAMS, AND YATES, INC.

SOLID WASTE BUILDING EXPANSION AND SITE IMPROVEMENTS

WHEREAS, on June 18, 2013, the City of Fayetteville, Arkansas (CITY OF FAYETTEVILLE) and McGoodwin, Williams and Yates, Inc. of Fayetteville, Arkansas (ENGINEER) entered into an Agreement for architectural and engineering services in connection with the Solid Waste Building Expansion and Site Improvements (the "Project"); and

WHEREAS, on March 4, 2014, the CITY OF FAYETTEVILLE and the ENGINEER entered into Amendment No. 1 providing for amounts and methods of compensation for ENGINEER for detailed design and preparation of construction drawings and specifications for the Project; and

WHEREAS, the scope of services for the ENGINEER as set forth by the current Agreement as amended does not include bid phase services or development of opinions of probable construction costs; and

WHEREAS, the CITY OF FAYETTEVILLE requests that the scope of work for the ENGINEER be amended to add development of opinions of probable construction costs and bid phase services for two (2) construction contract sections; and

WHEREAS, the current Agreement as amended must now be amended to provide the additional scope and amount of compensation to the Engineer;

NOW THEREFORE, in consideration of the mutual covenants and Agreements herein contained, CITY OF FAYETTEVILLE and MWY, the parties hereto, stipulate and agree that the Agreement for Engineering Services dated June 18, 2013, and amended on March 4, 2014, is hereby further amended in the following particulars:

APPENDIX A – SCOPE OF SERVICES

A.2 Specific Scope of Services

Delete the amended Paragraph 2 in Section A2.2 "Detailed Design and Preparation of Construction Plans and Specifications" that states:

2. Assist the CITY OF FAYETTEVILLE with the procurement of a construction manager and coordinate with the selected construction manager during the design phase to identify constructability issues, identify potential cost-reduction options, and review construction cost estimates provided by the construction manager at appropriate design intervals.

and replace with the following:

2. Prepare an opinion of probable cost of the authorized construction for each contract section at 60%, 90% and final design stages. It is understood and agreed that this

opinion will be prepared for planning and budgetary purposes only and that ENGINEER makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

Add the following Section A2.3 “Bidding and Preconstruction Services”:

A2.3 Bidding and Preconstruction Services

ENGINEER will provide technical interpretation of the plans and specifications as needed, prepare addenda as required, attend a pre-bid conference and the bid opening, provide an engineering analysis of the bids received, make recommendations concerning the award of the construction contract and assist in the preparation of contract documents. Supporting documents will be prepared and submitted to the CITY OF FAYETTEVILLE. The scope of services includes bidding and preconstruction services for two (2) separate construction contracts.

A.3 Project Deliverables

Add the following sentence at the end of Section A.3.2:

A.3.2 Deliverables for Detailed Design of Construction Plans and Specifications

6. Opinion of Probable Cost at 60%, 90%, and final design stages for Contract Sections I and II.

A.4 Compensation

Replace Sentence 3 of Section A.4.2 with the revision below. For clarification purposes, this amendment adds \$18,750 to the current compensation amount for the additional scope of work under Section A.2.2 described in this Amendment.

3. The maximum not-to-exceed amount authorized for services, including reimbursables, under Section A4.2 is \$424,950.

Replace the entire Section A.4.3 with the following:

A.4.3 Bidding and Preconstruction Services for Contract Section I and Contract Section II):

1. Compensation shall be paid to ENGINEER on the basis of ENGINEER'S standard hourly rates in effect at the time the work is performed, plus reimbursable expenses. Rates are adjusted annually at the beginning of each calendar year. ENGINEER agrees to keep the CITY OF FAYETTEVILLE apprised in a timely manner of costs incurred.
2. The reimbursable expenses for which ENGINEER will be reimbursed shall include travel expenses when traveling outside Northwest Arkansas in connection with the project, rental expenses for special equipment needed for completion of the work, purchase of material, review and/or certification fees, and other expenses directly attributable to the project, including any work performed by subcontractors. ENGINEER shall charge the CITY OF FAYETTEVILLE for reimbursable expenses at actual cost plus ten percent (10%).
3. The maximum not-to-exceed amount authorized for services, including reimbursables, under Section A4.3 is \$28,777.


All other provisions of the original Agreement remain in full force and effect.

IN WITNESS WHEREOF, CITY OF FAYETTEVILLE, ARKANSAS by and through its Mayor, and ENGINEER, by its authorized officer have caused this Amendment to be duly executed this _____ day of _____, 2014.

CITY OF FAYETTEVILLE, ARKANSAS

McGOODWIN, WILLIAMS, AND YATES

By: _____
Mayor, Lioneld Jordan

By:  _____
Brad B. Hammond, P.E.

ATTEST:

By: _____
City Clerk

Title: President

END OF AMENDMENT NO. 2 TO
AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

RESOLUTION NO. 133-13

A RESOLUTION AWARDING RFQ #13-01 AND APPROVING A CONTRACT WITH MCGOODWIN, WILLIAMS AND YATES, INC. IN AN AMOUNT NOT TO EXCEED \$109,000.00 FOR ENGINEERING DESIGN SERVICES AT THE SOLID WASTE TRANSFER STATION ON HAPPY HOLLOW ROAD, AND APPROVING A BUDGET ADJUSTMENT

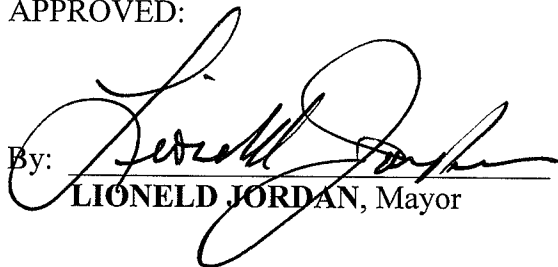
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby awards RFQ # 13-01 and approves a contract with McGoodwin, Williams and Yates, Inc. in an amount not to exceed \$109,000.00, a copy of which is attached as Exhibit "A", for architectural design services at the solid waste transfer station on Happy Hollow Road.

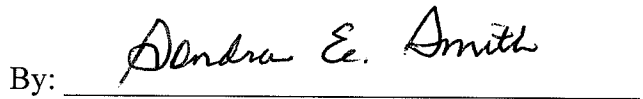
Section 2: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment, a copy of which is attached to this Resolution as Exhibit "B".

PASSED and APPROVED this 18th day of June, 2013.

APPROVED:

By: 
LIONELD JORDAN, Mayor

ATTEST:

By: 
SONDRA E. SMITH, City Clerk/Treasurer



City of Fayetteville Staff Review Form

**City Council Agenda Items
and
Contracts, Leases or Agreements**

6/18/2013

City Council Meeting Date
Agenda Items Only

Terry Gulley
Submitted By

Solid Waste
Division

Trans. Services
Department

Action Required:

Approval of an Engineering Contract with McGoodwin Williams and Yates, Inc. of Fayetteville for design services at the Solid Waste Transfer Station property on Happy Hollow Road

\$ 109,000.00

Cost of this request

\$ 1,173,000.00

Category / Project Budget

Solid Waste Office & Trans Station

Program Category / Project Name

5500.5080.5314.00

Account Number

\$ -

Funds Used to Date

Solid Waste

Program / Project Category Name

13021.2000

Project Number

\$ 1,173,000.00

Remaining Balance

Solid Waste Improvements

Fund Name

Budgeted Item

Budget Adjustment Attached

Terry J. Gulley
Department Director

5-31-13
Date

Previous Ordinance or Resolution # _____

Ch. Kelly
City Attorney

5-31-13
Date

Original Contract Date: _____

Original Contract Number: _____

Paul A. Becher
Finance and Internal Services Director

6-3-2013
Date

Received in City Clerk's Office 05-31-13 P12:55 RCVD
dm

Don Man
Chief of Staff

6-3-13
Date

Received in Mayor's Office

ENTERED
5/31/13
7/1

Donald Johnson
Mayor

6/3/13
Date

Comments:

Council Meeting of June 18, 2013

To: Mayor and City Council

Thru: Don Marr, Chief of Staff *DM*
Terry Gulley, Transportations Services Director *TGG*

From: Chris Brown, P.E., City Engineer *CB*

Date: May 30, 2013

Subject: Solid Waste Building Expansion and Site Improvements

PROPOSAL:

The Solid Waste Division is in need of engineering services to design expansion/improvements to their facility on Happy Hollow Road, to include improvements to their offices and transfer station building, auxiliary buildings, parking areas, access drives, and other site elements. In accordance with City policy, a selection committee consisting of city staff and one City Council member was formed and has selected McGoodwin, Williams and Yates (MWY) of Fayetteville as the design consultant. MWY designed the existing transfer station and office building, and their staff has extensive knowledge and background on the existing building. MWY will provide the engineering and architectural services needed for the project, and will use a sub-consultant, Brown Engineers of Little Rock, for the mechanical systems (plumbing, electrical, heating and air conditioning).

MWY has presented a proposal for development of a Master Plan for building and site improvements, to include:

- Review of existing buildings, and development of building programs and preliminary floor plans for buildings on the site, to include expansion of offices, addition of a break/conference/training room, and upgrade/replacement of heating and air systems.
- Expansion and improvement/paving of parking areas and access driveways.
- Review of overall traffic flow on the site, including the scale area and the entrance to the compost area.
- Preparation of cost estimates for the various elements identified in the site plan
- Preparation of a preliminary design and construction schedule for these elements, and recommendations for packaging elements together for construction.

This Master Plan will allow the Solid Waste Division to develop a capital improvement plan for the solid waste facility. This plan will be used to guide the continued development and expansion of the site, and is also a necessary element of the upcoming rate study.

The Master Plan development is scheduled to be completed in late 2013. At that time, staff will negotiate amendments to the contract with MWY for development of construction plans for selected elements, based on priority of elements and available funding. It may be necessary to develop multiple construction contracts over a period of time. The packaging of various elements for construction will be developed during the master planning process.

The total fee for the development of the Master Plan is \$109,000.

RECOMMENDATION:

Staff recommends approval of a contract with McGoodwin, Williams, and Yates, Inc. of Fayetteville in the amount of \$109,000 for development of a Master Plan and conceptual designs for improvements to the Solid Waste Facility on Happy Hollow Road.

BUDGET IMPACT:

This project will be funded from the Solid Waste Office and Transfer Station Expansion project in the Solid Waste Fund.

RESOLUTION NO. _____

A RESOLUTION AWARDDING RFQ #13-01 AND APPROVING A CONTRACT WITH MCGOODWIN, WILLIAMS AND YATES, INC. IN AN AMOUNT NOT TO EXCEED \$109,000.00 FOR ENGINEERING DESIGN SERVICES AT THE SOLID WASTE TRANSFER STATION ON HAPPY HOLLOW ROAD, AND APPROVING A BUDGET ADJUSTMENT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby awards RFQ # 13-01 and approves a contract with McGoodwin, Williams and Yates, Inc. in an amount not to exceed \$109,000.00, a copy of which is attached as Exhibit "A", for architectural design services at the solid waste transfer station on Happy Hollow Road.

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 "B".

PASSED and APPROVED this 18th day of June, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

AGREEMENT
For
PROFESSIONAL ENGINEERING SERVICES
Between
CITY OF FAYETTEVILLE, ARKANSAS
And
MCGOODWIN, WILLIAMS, AND YATES, INC.

SOLID WASTE BUILDING EXPANSION AND SITE IMPROVEMENTS

THIS AGREEMENT is made as of June 18, 2013, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and McGoodwin, Williams, and Yates, Inc. (hereinafter called ENGINEER).

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

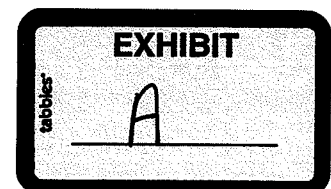
ENGINEER shall serve as CITY OF FAYETTEVILLE's professional engineering consultant in those assignments to which this Agreement applies, and shall give consultation and advice to CITY OF FAYETTEVILLE during the performance of ENGINEER's services. All services shall be performed under the direction of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

SECTION 5 - PAYMENTS TO ENGINEER

- 5.1 The maximum not-to-exceed amount authorized for this Agreement is **\$109,000**. The CITY OF FAYETTEVILLE shall compensate ENGINEER based on a Unit Price or Lump Sum basis as described in Appendix A.
- 5.2 Statements
 - 5.2.1 Monthly statements for each calendar month shall be submitted to CITY OF FAYETTEVILLE or such parties as CITY OF FAYETTEVILLE may designate for professional services consistent with ENGINEER's normal billing schedule. Once established, the billing schedule shall be maintained throughout the duration of the Project. Applications for payment shall be made in accordance with a format to be developed by ENGINEER and approved by CITY OF FAYETTEVILLE. Applications for payment shall be accompanied each month by the updated project schedule as the basis for determining the

value earned as the work is accomplished. Final payment for professional services shall be made upon CITY OF FAYETTEVILLE's approval and acceptance with the satisfactory completion of the study and report for the Project.

5.3 Payments

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

5.4 Final Payment

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

SECTION 6 - GENERAL CONSIDERATIONS

6.1 Insurance

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

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

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

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

6.2 Professional Responsibility

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

6.3 Cost Opinions and Projections

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

6.4 Changes

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

6.5 Termination

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

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

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

6.5.2 This Agreement may be terminated in whole or in part in writing by CITY OF FAYETTEVILLE for its convenience, provided that ENGINEER is given:

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

- 6.5.2.2 An opportunity for consultation with the terminating party prior to termination.
- 6.5.3 If termination for default is effected by CITY OF FAYETTEVILLE, an equitable adjustment in the price provided for in this Agreement shall be made, but
 - 6.5.3.1 No amount shall be allowed for anticipated profit on unperformed services or other work,
 - 6.5.3.2 Any payment due to ENGINEER at the time of termination may be adjusted to cover any additional costs to CITY OF FAYETTEVILLE because of ENGINEER's default.
- 6.5.4 If termination for default is effected by ENGINEER, or if termination for convenience is effected by CITY OF FAYETTEVILLE, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by ENGINEER relating to commitments which had become firm prior to the termination.
- 6.5.5 Upon receipt of a termination action under Paragraphs 6.5.1 or 6.5.2 above, ENGINEER shall:
 - 6.5.5.1 Promptly discontinue all affected work (unless the notice directs otherwise),
 - 6.5.5.2 After payment in accordance with Paragraphs 6.5.3 and 6.5.4 above, deliver or otherwise make available to CITY OF FAYETTEVILLE all project deliverables at the latest stage of completion (e.g. 30%, 90%, etc.) CITY OF FAYETTEVILLE shall have the limited right to use the deliverables subject to the provisions of Paragraph 6.12.2.
- 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 The CITY OF FAYETTEVILLE acknowledges the Engineer's plans and specifications, including all documents on electronic media ("delivered documents"), as instruments of professional service. Nevertheless, the delivered documents prepared under this Agreement shall be delivered to and become the property of the CITY OF FAYETTEVILLE upon completion of the services and payment in full of all monies due to the Engineer. Except for the Engineer's services provided for by this Agreement as related to the construction and completion of the Project, the ENGINEER accepts no liability arising from any reuse of the delivered documents by the CITY OF FAYETTEVILLE, unless the Engineer is retained by CITY OF FAYETTEVILLE to make modifications or otherwise reuse the delivered documents. Except where the CITY OF FAYETTEVILLE reuses the delivered documents subsequent to the completion of the Project, nothing contained in this paragraph shall alter the Engineer's responsibilities and obligations under this Agreement.

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:
302 E. Millsap Road
Fayetteville, Arkansas 72703

6.14 Successor and Assigns

- 6.14.1 CITY OF FAYETTEVILLE and ENGINEER each binds himself and his successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither CITY OF FAYETTEVILLE nor ENGINEER shall assign, sublet, or transfer his interest in the Agreement without the written consent of the other.
- 6.15 Controlling Law
- 6.15.1 This Agreement shall be subject to, interpreted and enforced according to the laws of the State of Arkansas without regard to any conflicts of law provisions.
- 6.16 Entire Agreement
- 6.16.1 This Agreement represents the entire Agreement between ENGINEER and CITY OF FAYETTEVILLE relative to the Scope of Services herein. Since terms contained in purchase orders do not generally apply to professional services, in the event CITY OF FAYETTEVILLE issues to ENGINEER a purchase order, no preprinted terms thereon shall become a part of this Agreement. Said purchase order document, whether or not signed by ENGINEER, shall be considered as a document for CITY OF FAYETTEVILLE's internal management of its operations.

SECTION 7 - SPECIAL CONDITIONS

7.1 Additional Responsibilities of ENGINEER

- 7.1.1 CITY OF FAYETTEVILLE's review, approval, or acceptance of design drawings, specifications, reports and other services furnished hereunder shall not in any way relieve ENGINEER of responsibility for the technical adequacy of the work. Neither CITY OF FAYETTEVILLE's review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- 7.1.2 ENGINEER shall be and shall remain liable, in accordance with applicable law, for all damages to CITY OF FAYETTEVILLE caused by ENGINEER's negligent performance of any of the services furnished under this Agreement except for errors, omissions or other deficiencies to the extent attributable to CITY OF FAYETTEVILLE or CITY OF FAYETTEVILLE-furnished data.
- 7.1.3 ENGINEER's obligations under this clause are in addition to ENGINEER's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that CITY OF FAYETTEVILLE may have against ENGINEER for faulty materials, equipment, or work.

7.2 Remedies

- 7.2.1 Except as may be otherwise provided in this Agreement, all claims, counter-claims, disputes and other matters in question between CITY OF FAYETTEVILLE and ENGINEER arising out of or relating to this Agreement or the breach thereof will be decided in a court of competent jurisdiction within Arkansas.

7.3 Audit: Access to Records

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

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

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

7.3.3.1 Negotiated prime agreements:

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

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

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

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

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

7.4 Covenant Against Contingent Fees

7.4.1 ENGINEER warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage or 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.

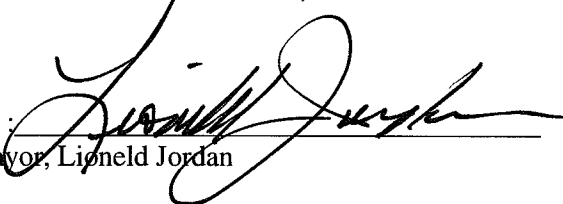
7.6 Arkansas Freedom of Information Act

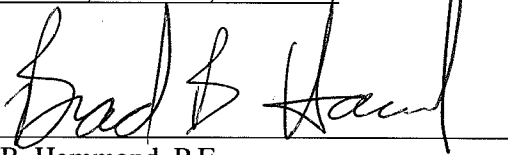
7.6.1 City contracts and documents, including internal documents and documents of subcontractors and sub-consultants, prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act (FOIA). If a Freedom of Information Act request is presented to the CITY OF FAYETTEVILLE, ENGINEER will 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.

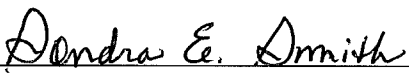
CITY OF FAYETTEVILLE, ARKANSAS

McGoodwin, Williams, and Yates

By: 
Mayor, Lioneld Jordan

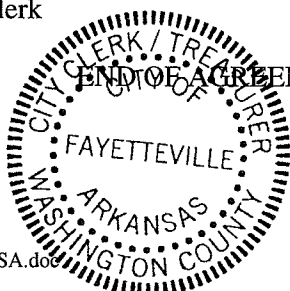
By: 
Brad B. Hammond, P.E.

ATTEST:

By: 

Title: President

City Clerk



END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

**CITY OF FAYETTEVILLE
AGREEMENT FOR ENGINEERING SERVICES**

APPENDIX A – SCOPE OF SERVICES

This is **Appendix A**, consisting of 6 pages, referred to in and part of the **Agreement For Professional Engineering Services** between CITY OF FAYETTEVILLE, ARKANSAS and McGOODWIN, WILLIAMS, AND YATES, INC. dated _____.

Initial:

CITY OF FAYETTEVILLE _____

McGOODWIN, WILLIAMS, AND YATES, INC. 

The following contains additional Scope of Services tasks.

A.1 General Scope

The work covered by this agreement includes a master site/facility plan and report, detailed design, preparation of construction drawings and specifications, bidding and construction administration and observation for the **Solid Waste Building Expansion and Site Improvements**. The project generally includes the following:

1. Changes to the division office building including renovation and new construction of five new offices, large storage room, and adding structural support if required.
2. Renovation of front office area including customer check-in, information center for service materials, built-in cabinets, furniture, and addition of storage space.
3. Renovation of ceilings and floors of entire office building. Renovations may include elimination or renovating the existing tile floors (tile or decorative).
4. Evaluation of required bathroom facilities to determine if building expansion meets code requirements.
5. Evaluation of existing HVAC system and efficient design of system for full office building.
6. Design of separate employee entrance at appropriate location away from main customer entrance.
7. Design a new breakroom with kitchen facilities and vending area to accommodate division staff of 70 employees with ability of space to be configured for all staff events, training session, and employee meetings. The breakroom will include full media equipment (TV, video, computers, and audio) and employee computer, kiosk, and time-clock stations.
8. Design a new locker room for approximate 70 lockers for personal storage only. No dressing areas will be required.
9. Design a new training/conference room for approximately 15-20 participants with full media equipment (TV, video, computers, and audio).
10. Replacement of any parking spaces lost as a result of office building expansion.
11. Expansion of MRF building to include covering and enclosing the current outdoor storage area.
12. Front entrance landscape design.
13. Renovation of scale house and possible relocation of scale house building and scales to accommodate entering and exiting traffic.
14. Assist CITY OF FAYETTEVILLE with obtaining all necessary permits.
15. Grading and paving of gravel parking lot where the recycle fleet parks in order to provide adequate stormwater runoff for necessary permits.
16. Concrete paving the access road from the compost pad to the entrance gate of the container maintenance and compost drop-off area.

17. Employee parking lot expansion and re-striping, adding 16-20 new car/truck employee parking spaces and five motorcycle spaces.
18. Site and design a "hot load" area with concrete floor, drains and water capabilities for processing hot/burning refuse loads.
19. Design stormwater collection system that controls runoff of leachate that is tracked out of transfer station by trucks to keep the division compliant with ADEQ concerns.
20. Automatic gate at compost site entrance.
21. Incorporation of sustainable design and low-impact development (LID) features as practical and appropriate.
22. Mitigation of odors entering office area.
23. Reconfiguring the stormwater sump area.
24. Evaluate and recommend improvements to the Compost Building and check-in road.
25. Investigate possibility of utility incentives/rebates.

A.2 Specific Scope of Services

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

A2.1 Preliminary Design Phase – Master Site and Facility Plan

1. Meet with the CITY OF FAYETTEVILLE to understand the project needs.
2. Develop a conceptual design for the building renovation/addition, including:
 - a. Building program
 - b. Code review
 - c. Existing facility assessment
 - d. Conceptual design drawings, including a floorplan and exterior elevations, to illustrate recommended additions/renovations to the building.
3. Develop a conceptual design for the site improvements, including a "master plan" drawing illustrating recommended improvements.
4. Meet with the CITY OF FAYETTEVILLE to review concept drawings and revise drawings based on input from the CITY OF FAYETTEVILLE.
5. Attend a review meeting with the city planning staff.
6. Develop a preliminary opinion of probable cost for the project, including itemized construction packaging recommendations. It is understood and agreed that this opinion will be prepared for planning and budgeting purposes only and that McGOODWIN, WILLIAMS, AND YATES makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.
7. Meet with the CITY OF FAYETTEVILLE to review the preliminary opinion of probable cost. If necessary, identify alternatives to reduce the probable construction cost and make revisions to the conceptual plans and opinion of probable cost. The scope of work under

this agreement includes no more than two (2) revisions to the conceptual drawings and opinion of probable cost.

8. Prepare a draft Preliminary Design Report describing recommended improvements, including the conceptual design drawings and the preliminary opinion of probable cost and submit to the CITY OF FAYETTEVILLE for review.
9. Prepare and transmit a final Preliminary Design Report after receiving comments from the CITY OF FAYETTEVILLE.

A2.2 Detailed Design and Preparation of Construction Plans and Specifications

1. Prepare final design for the project based on the conceptual design plans developed under Section A2.1, including detailed construction specifications and drawings. It is understood that final designs may be developed for multiple construction contracts. Scopes of work for each construction package will be developed after completion of the Preliminary Design Report, and an appropriate amendment to this agreement will be developed at that time.
2. Prepare an opinion of probable cost of the authorized construction. It is understood and agreed that this opinion will be prepared for planning and budgeting purposes only and that McGOODWIN, WILLIAMS, AND YATES makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.
3. Submit, on behalf of the CITY OF FAYETTEVILLE, construction specifications, drawings and design criteria for approval to the Arkansas Department of Health and other agencies, if required.
4. Prepare necessary environmental and other permitting applications, including SWPPP and BMP plans, and assist with submittal to appropriate federal, state and local agencies. Permitting fees will be paid directly by the CITY OF FAYETTEVILLE and are not included in the professional design fees. An industrial stormwater permit, if required, will be prepared by the CITY OF FAYETTEVILLE and is not included in the scope of work.
5. Develop and submit documents in accordance with the CITY OF FAYETTEVILLE's planning requirements, and attend necessary public meetings to present the project.

A2.3. Bidding and Preconstruction Services

McGOODWIN, WILLIAMS, AND YATES will provide technical interpretation of the plans and specifications as needed, prepare addenda as required, attend a pre-bid conference and the bid opening, provide an engineering analysis of the bids received, make recommendations concerning award of the construction contract and assist in the preparation of contract documents. Supporting documents will be prepared and submitted to the CITY OF FAYETTEVILLE. The scope of services does not include dividing construction contracts into multiple projects and/or bids.

A2.4 Construction Phase Services

1. Attend a preconstruction conference. At the time of the preconstruction conference, a Notice to Proceed will be issued.
2. Furnish professional engineers to make visits to the site at appropriate intervals to observe the progress and quality of the executed work and to determine in general

if the work is proceeding in accordance with the contract documents. In performing these services, the Engineer shall have no control over nor responsibility for the Contractor's means, methods, sequence, techniques or procedures in performing the work, or for safety programs in connection with the work. These are solely the responsibilities of the Contractor, who is also responsible for complying with all health and safety precautions as required by any regulatory agencies.

3. Furnish the services of other field personnel for on-the-site observation of construction and for the performance of required construction layout surveys when requested by the Owner. The authority and duties of such Project Representatives are limited to examining the material furnished and observing the work done and to reporting their findings to the Engineer. The Engineer will use the usual degree of care and prudent judgment in the selection of competent Project Representatives, and the Engineer will use diligence to see that the Project Representatives are on the job to perform their required duties.
4. The required construction layout surveys will include the establishment of baselines for locating the work, with a suitable number of benchmarks for site elevation references as shown in the plans and specifications.
5. Consult with and advise the Owner; issue all instructions to the contractor requested by the Owner; and prepare routine change orders as required.
6. Review submittals by the Contractor at the request of the Owner. This review is for the benefit of the Owner to ensure general conformance with the design concept of the project and general compliance by the contractor with the information given in the contract documents. It does not relieve the contractor of any responsibility such as dimensions to be confirmed and correlated at the job site, appropriate safety measures to protect workers and the public, or the necessity to construct a complete and workable facility in accordance with the contract documents.
7. Review monthly and final estimates for payments to the Contractor prepared by the Owner.
8. Attend, in company with the City of Fayetteville's Representative, a final inspection of the project. This inspection will be for conformance with the design concept of the project and compliance with the contract documents.
9. Furnish to the Owner two copies of the record drawings for the project.

A.3 Project Deliverables

The following will be submitted to the CITY OF FAYETTEVILLE, or others indicated, by the McGOODWIN, WILLIAMS, AND YATES as part of the Project.

A.3.1 Deliverables for Preliminary Design Phase – Master Site and Facility Plan

1. Four (4) copies of Draft Conceptual Design Drawings
2. Four (4) copies of the draft version of the Preliminary Design Report
3. Four (4) copies of the final version of the Preliminary Design Report
4. Electronic files in accordance with the Agreement

A.4 Compensation

In consideration of the performance of the foregoing services by McGOODWIN, WILLIAMS, AND YATES, the CITY OF FAYETTEVILLE shall pay to McGOODWIN, WILLIAMS, AND YATES compensation as follows:

A4.1 Preliminary Design Report Phase

1. Compensation shall be paid to McGOODWIN, WILLIAMS, AND YATES on the basis of McGOODWIN, WILLIAMS, AND YATES's standard hourly rates in effect at the time the work is performed, plus reimbursable expenses. Rates are adjusted annually at the beginning of each calendar year. McGOODWIN, WILLIAMS, AND YATES agrees to keep the CITY OF FAYETTEVILLE apprised in a timely manner of costs incurred.
2. The reimbursable expenses for which McGOODWIN, WILLIAMS, AND YATES will be reimbursed shall include travel expenses when traveling outside Northwest Arkansas in connection with the project, rental expenses for special equipment needed for completion of the work, purchase of material, and other expenses directly attributable to the project, including any work performed by subcontractors. McGOODWIN, WILLIAMS, AND YATES shall charge the CITY OF FAYETTEVILLE for reimbursable expenses at actual cost plus ten percent (10%).
3. The maximum not-to-exceed amount authorized by this contract is \$109,000.

A4.2 Detailed Design and Preparation of Construction Plans and Specifications

1. Compensation shall be established by an amendment to this agreement after completion of the Preliminary Design Phase.

A4.3 Bidding and Preconstruction Services

1. Compensation shall be established by an amendment to this agreement after completion of the Preliminary Design Phase or the Detailed Design and Preparation of Construction Plans and Specifications.

A4.4 Construction Phase Services

1. Compensation shall be established by an amendment to this agreement after completion of the Preliminary Design Phase or the Detailed Design and Preparation of Construction Plans and Specifications.

A.5 Project Design Schedule

McGOODWIN, WILLIAMS, AND YATES shall begin work under this Agreement within two (2) working days of a Notice to Proceed (NTP) and shall complete the work described in Section A2 above in accordance with the schedule below on the

condition that any requested input and/or comments from the CITY OF FAYETTEVILLE is received in writing by McGOODWIN, WILLIAMS, AND YATES within seven (7) calendar days after the request or submittal is received by the CITY OF FAYETTEVILLE.

A.5.1 Preliminary Design Phase – Master Site and Facility Plan

1. Submit conceptual design drawings
 - 70 Calendar days after NTP
2. Revise conceptual drawings and submit preliminary Opinion of Probable Cost and tentative projected timeline for design/construction for each recommended construction package
 - 15 Calendar days after receipt of written comments from the City of Fayetteville regarding conceptual design drawings and input from the City of Fayetteville Planning Division
3. Deliver draft Preliminary Design Report
 - 15 Calendar days after receipt of written comments from the City of Fayetteville regarding revised conceptual design drawings and opinion of probable cost
4. Deliver final Preliminary Design Report
 - 15 Calendar days after receipt of written comments from the City of Fayetteville regarding draft report

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

V12.0724

Budget Year 2013	Division: Solid Waste & Recycling Department: Transportation Services	Request Date 5/30/2013	Adjustment Number
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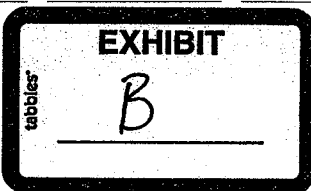
BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION

Create two new solid waste sub-projects. Sub-project 1000 is for site improvements. Sub-project 2000 is for new office space at Solid Waste. This BA will move \$109,000.00 from sub-project 1 into sub-project 2000 for professional services that will be provided by McGoodwin, William & Yates.

<i>Terry D. Gully</i> Division Head	5-31-13 Date	Prepared By: <u>Peggy Bell</u>	<i>kspringer</i>
<i>Terry D. Gully</i> Budget Director	5-30-13 Date	Reference: _____	
<i>Terry D. Gully</i> Department Director	5-31-13 Date	Budget & Research Use Only	
<i>Paul A. Bahr</i> Finance Director	6-3-2013 Date	Type: A B C <u>D</u> E P	
<i>Don Man</i> Chief of Staff	6-3-13 Date	General Ledger Date _____	
<i>Leonell Jordan</i> Mayor	6/3/13 Date	Posted to General Ledger _____	Initial _____ Date _____
		Checked / Verified _____	Initial _____ Date _____

TOTAL BUDGET ADJUSTMENT

Account Name	Account Number	Increase / (Decrease)		Project.Sub Number
		Expense	Revenue	
Solid Waste improvements	5500.5080.5816.00	⇒ (109,000)		13021 . 1
Professional services	5500.5080.5314.00	⇒ 109,000		13021 . 2000



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AGREEMENT
For
PROFESSIONAL ENGINEERING SERVICES
Between
CITY OF FAYETTEVILLE, ARKANSAS
And
MCGOODWIN, WILLIAMS, AND YATES, INC.

SOLID WASTE BUILDING EXPANSION AND SITE IMPROVEMENTS

THIS AGREEMENT is made as of _____, 2012, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and McGoodwin, Williams, and Yates, Inc. (hereinafter called ENGINEER).

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

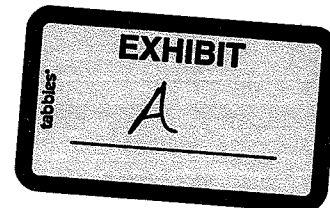
ENGINEER shall serve as CITY OF FAYETTEVILLE's professional engineering consultant in those assignments to which this Agreement applies, and shall give consultation and advice to CITY OF FAYETTEVILLE during the performance of ENGINEER's services. All services shall be performed under the direction of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

SECTION 5 - PAYMENTS TO ENGINEER

- 5.1 The maximum not-to-exceed amount authorized for this Agreement is **\$109,000**. The CITY OF FAYETTEVILLE shall compensate ENGINEER based on a Unit Price or Lump Sum basis as described in Appendix A.
- 5.2 Statements
 - 5.2.1 Monthly statements for each calendar month shall be submitted to CITY OF FAYETTEVILLE or such parties as CITY OF FAYETTEVILLE may designate for professional services consistent with ENGINEER's normal billing schedule. Once established, the billing schedule shall be maintained throughout the duration of the Project. Applications for payment shall be made in accordance with a format to be developed by ENGINEER and approved by CITY OF FAYETTEVILLE. Applications for payment shall be accompanied each month by the updated project schedule as the basis for determining the

value earned as the work is accomplished. Final payment for professional services shall be made upon CITY OF FAYETTEVILLE's approval and acceptance with the satisfactory completion of the study and report for the Project.

5.3 Payments

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

5.4 Final Payment

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

SECTION 6 - GENERAL CONSIDERATIONS

6.1 Insurance

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

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

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

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

6.2 Professional Responsibility

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

6.3 Cost Opinions and Projections

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

6.4 Changes

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

6.5 Termination

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

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

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

6.5.2 This Agreement may be terminated in whole or in part in writing by CITY OF FAYETTEVILLE for its convenience, provided that ENGINEER is given:

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

- 6.5.2.2 An opportunity for consultation with the terminating party prior to termination.
- 6.5.3 If termination for default is effected by CITY OF FAYETTEVILLE, an equitable adjustment in the price provided for in this Agreement shall be made, but
 - 6.5.3.1 No amount shall be allowed for anticipated profit on unperformed services or other work,
 - 6.5.3.2 Any payment due to ENGINEER at the time of termination may be adjusted to cover any additional costs to CITY OF FAYETTEVILLE because of ENGINEER's default.
- 6.5.4 If termination for default is effected by ENGINEER, or if termination for convenience is effected by CITY OF FAYETTEVILLE, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by ENGINEER relating to commitments which had become firm prior to the termination.
- 6.5.5 Upon receipt of a termination action under Paragraphs 6.5.1 or 6.5.2 above, ENGINEER shall:
 - 6.5.5.1 Promptly discontinue all affected work (unless the notice directs otherwise),
 - 6.5.5.2 After payment in accordance with Paragraphs 6.5.3 and 6.5.4 above, deliver or otherwise make available to CITY OF FAYETTEVILLE all project deliverables at the latest stage of completion (e.g. 30%, 90%, etc.) CITY OF FAYETTEVILLE shall have the limited right to use the deliverables subject to the provisions of Paragraph 6.12.2.
- 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 The CITY OF FAYETTEVILLE acknowledges the Engineer's plans and specifications, including all documents on electronic media ("delivered documents"), as instruments of professional service. Nevertheless, the delivered documents prepared under this Agreement shall be delivered to and become the property of the CITY OF FAYETTEVILLE upon completion of the services and payment in full of all monies due to the Engineer. Except for the Engineer's services provided for by this Agreement as related to the construction and completion of the Project, the ENGINEER accepts no liability arising from any reuse of the delivered documents by the CITY OF FAYETTEVILLE, unless the Engineer is retained by CITY OF FAYETTEVILLE to make modifications or otherwise reuse the delivered documents. Except where the CITY OF FAYETTEVILLE reuses the delivered documents subsequent to the completion of the Project, nothing contained in this paragraph shall alter the Engineer's responsibilities and obligations under this Agreement.

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:
302 E. Millsap Road
Fayetteville, Arkansas 72703

6.14 Successor and Assigns

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

6.15 Controlling Law

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

6.16 Entire Agreement

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

SECTION 7 - SPECIAL CONDITIONS

7.1 Additional Responsibilities of ENGINEER

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

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

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

7.2 Remedies

7.2.1 Except as may be otherwise provided in this Agreement, all claims, counter-claims, disputes and other matters in question between CITY OF FAYETTEVILLE and ENGINEER arising out of or relating to this Agreement or the breach thereof will be decided in a court of competent jurisdiction within Arkansas.

7.3 Audit: Access to Records

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

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

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

7.3.3.1 Negotiated prime agreements:

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

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

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

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

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

7.4 Covenant Against Contingent Fees

7.4.1 ENGINEER warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage or 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

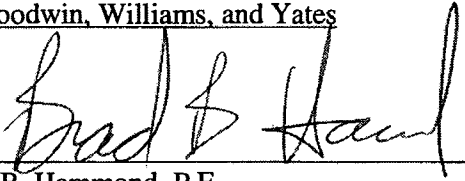
7.6.1 City contracts and documents, including internal documents and documents of subcontractors and sub-consultants, prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act (FOIA). If a Freedom of Information Act request is presented to the CITY OF FAYETTEVILLE, ENGINEER will 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

McGoodwin, Williams, and Yates

By: _____
Mayor, Lioneld Jordan

By: 
Brad B. Hammond, P.E.

ATTEST:

By: _____

City Clerk

Title: President

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

**CITY OF FAYETTEVILLE
AGREEMENT FOR ENGINEERING SERVICES**

APPENDIX A – SCOPE OF SERVICES

This is **Appendix A**, consisting of 6 pages, referred to in and part of the **Agreement For Professional Engineering Services** between CITY OF FAYETTEVILLE, ARKANSAS and McGOODWIN, WILLIAMS, AND YATES, INC. dated _____.

Initial:

CITY OF FAYETTEVILLE _____
McGOODWIN, WILLIAMS, AND YATES, INC. BBH

The following contains additional Scope of Services tasks.

A.1 General Scope

The work covered by this agreement includes a master site/facility plan and report, detailed design, preparation of construction drawings and specifications, bidding and construction administration and observation for the **Solid Waste Building Expansion and Site Improvements**. The project generally includes the following:

1. Changes to the division office building including renovation and new construction of five new offices, large storage room, and adding structural support if required.
2. Renovation of front office area including customer check-in, information center for service materials, built-in cabinets, furniture, and addition of storage space.
3. Renovation of ceilings and floors of entire office building. Renovations may include elimination or renovating the existing tile floors (tile or decorative).
4. Evaluation of required bathroom facilities to determine if building expansion meets code requirements.
5. Evaluation of existing HVAC system and efficient design of system for full office building.
6. Design of separate employee entrance at appropriate location away from main customer entrance.
7. Design a new breakroom with kitchen facilities and vending area to accommodate division staff of 70 employees with ability of space to be configured for all staff events, training session, and employee meetings. The breakroom will include full media equipment (TV, video, computers, and audio) and employee computer, kiosk, and time-clock stations.
8. Design a new locker room for approximate 70 lockers for personal storage only. No dressing areas will be required.
9. Design a new training/conference room for approximately 15-20 participants with full media equipment (TV, video, computers, and audio).
10. Replacement of any parking spaces lost as a result of office building expansion.
11. Expansion of MRF building to include covering and enclosing the current outdoor storage area.
12. Front entrance landscape design.
13. Renovation of scale house and possible relocation of scale house building and scales to accommodate entering and exiting traffic.
14. Assist CITY OF FAYETTEVILLE with obtaining all necessary permits.
15. Grading and paving of gravel parking lot where the recycle fleet parks in order to provide adequate stormwater runoff for necessary permits.
16. Concrete paving the access road from the compost pad to the entrance gate of the container maintenance and compost drop-off area.

17. Employee parking lot expansion and re-striping, adding 16-20 new car/truck employee parking spaces and five motorcycle spaces.
18. Site and design a "hot load" area with concrete floor, drains and water capabilities for processing hot/burning refuse loads.
19. Design stormwater collection system that controls runoff of leachate that is tracked out of transfer station by trucks to keep the division compliant with ADEQ concerns.
20. Automatic gate at compost site entrance.
21. Incorporation of sustainable design and low-impact development (LID) features as practical and appropriate.
22. Mitigation of odors entering office area.
23. Reconfiguring the stormwater sump area.
24. Evaluate and recommend improvements to the Compost Building and check-in road.
25. Investigate possibility of utility incentives/rebates.

A.2 Specific Scope of Services

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

A2.1 Preliminary Design Phase – Master Site and Facility Plan

1. Meet with the CITY OF FAYETTEVILLE to understand the project needs.
2. Develop a conceptual design for the building renovation/addition, including:
 - a. Building program
 - b. Code review
 - c. Existing facility assessment
 - d. Conceptual design drawings, including a floorplan and exterior elevations, to illustrate recommended additions/renovations to the building.
3. Develop a conceptual design for the site improvements, including a "master plan" drawing illustrating recommended improvements.
4. Meet with the CITY OF FAYETTEVILLE to review concept drawings and revise drawings based on input from the CITY OF FAYETTEVILLE.
5. Attend a review meeting with the city planning staff.
6. Develop a preliminary opinion of probable cost for the project, including itemized construction packaging recommendations. It is understood and agreed that this opinion will be prepared for planning and budgeting purposes only and that McGOODWIN, WILLIAMS, AND YATES makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.
7. Meet with the CITY OF FAYETTEVILLE to review the preliminary opinion of probable cost. If necessary, identify alternatives to reduce the probable construction cost and make revisions to the conceptual plans and opinion of probable cost. The scope of work under

this agreement includes no more than two (2) revisions to the conceptual drawings and opinion of probable cost.

8. Prepare a draft Preliminary Design Report describing recommended improvements, including the conceptual design drawings and the preliminary opinion of probable cost and submit to the CITY OF FAYETTEVILLE for review.
9. Prepare and transmit a final Preliminary Design Report after receiving comments from the CITY OF FAYETTEVILLE.

A2.2 Detailed Design and Preparation of Construction Plans and Specifications

1. Prepare final design for the project based on the conceptual design plans developed under Section A2.1, including detailed construction specifications and drawings. It is understood that final designs may be developed for multiple construction contracts. Scopes of work for each construction package will be developed after completion of the Preliminary Design Report, and an appropriate amendment to this agreement will be developed at that time.
2. Prepare an opinion of probable cost of the authorized construction. It is understood and agreed that this opinion will be prepared for planning and budgeting purposes only and that McGOODWIN, WILLIAMS, AND YATES makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.
3. Submit, on behalf of the CITY OF FAYETTEVILLE, construction specifications, drawings and design criteria for approval to the Arkansas Department of Health and other agencies, if required.
4. Prepare necessary environmental and other permitting applications, including SWPPP and BMP plans, and assist with submittal to appropriate federal, state and local agencies. Permitting fees will be paid directly by the CITY OF FAYETTEVILLE and are not included in the professional design fees. An industrial stormwater permit, if required, will be prepared by the CITY OF FAYETTEVILLE and is not included in the scope of work.
5. Develop and submit documents in accordance with the CITY OF FAYETTEVILLE's planning requirements, and attend necessary public meetings to present the project.

A2.3. Bidding and Preconstruction Services

McGOODWIN, WILLIAMS, AND YATES will provide technical interpretation of the plans and specifications as needed, prepare addenda as required, attend a pre-bid conference and the bid opening, provide an engineering analysis of the bids received, make recommendations concerning award of the construction contract and assist in the preparation of contract documents. Supporting documents will be prepared and submitted to the CITY OF FAYETTEVILLE. The scope of services does not include dividing construction contracts into multiple projects and/or bids.

A2.4 Construction Phase Services

1. Attend a preconstruction conference. At the time of the preconstruction conference, a Notice to Proceed will be issued.
2. Furnish professional engineers to make visits to the site at appropriate intervals to observe the progress and quality of the executed work and to determine in general

if the work is proceeding in accordance with the contract documents. In performing these services, the Engineer shall have no control over nor responsibility for the Contractor's means, methods, sequence, techniques or procedures in performing the work, or for safety programs in connection with the work. These are solely the responsibilities of the Contractor, who is also responsible for complying with all health and safety precautions as required by any regulatory agencies.

3. Furnish the services of other field personnel for on-the-site observation of construction and for the performance of required construction layout surveys when requested by the Owner. The authority and duties of such Project Representatives are limited to examining the material furnished and observing the work done and to reporting their findings to the Engineer. The Engineer will use the usual degree of care and prudent judgment in the selection of competent Project Representatives, and the Engineer will use diligence to see that the Project Representatives are on the job to perform their required duties.
4. The required construction layout surveys will include the establishment of baselines for locating the work, with a suitable number of benchmarks for site elevation references as shown in the plans and specifications.
5. Consult with and advise the Owner; issue all instructions to the contractor requested by the Owner; and prepare routine change orders as required.
6. Review submittals by the Contractor at the request of the Owner. This review is for the benefit of the Owner to ensure general conformance with the design concept of the project and general compliance by the contractor with the information given in the contract documents. It does not relieve the contractor of any responsibility such as dimensions to be confirmed and correlated at the job site, appropriate safety measures to protect workers and the public, or the necessity to construct a complete and workable facility in accordance with the contract documents.
7. Review monthly and final estimates for payments to the Contractor prepared by the Owner.
8. Attend, in company with the City of Fayetteville's Representative, a final inspection of the project. This inspection will be for conformance with the design concept of the project and compliance with the contract documents.
9. Furnish to the Owner two copies of the record drawings for the project.

A.3 Project Deliverables

The following will be submitted to the CITY OF FAYETTEVILLE, or others indicated, by the McGOODWIN, WILLIAMS, AND YATES as part of the Project.

A.3.1 Deliverables for Preliminary Design Phase – Master Site and Facility Plan

1. Four (4) copies of Draft Conceptual Design Drawings
2. Four (4) copies of the draft version of the Preliminary Design Report
3. Four (4) copies of the final version of the Preliminary Design Report
4. Electronic files in accordance with the Agreement

A.4 Compensation

In consideration of the performance of the foregoing services by McGOODWIN, WILLIAMS, AND YATES, the CITY OF FAYETTEVILLE shall pay to McGOODWIN, WILLIAMS, AND YATES compensation as follows:

A4.1 Preliminary Design Report Phase

1. Compensation shall be paid to McGOODWIN, WILLIAMS, AND YATES on the basis of McGOODWIN, WILLIAMS, AND YATES's standard hourly rates in effect at the time the work is performed, plus reimbursable expenses. Rates are adjusted annually at the beginning of each calendar year. McGOODWIN, WILLIAMS, AND YATES agrees to keep the CITY OF FAYETTEVILLE apprised in a timely manner of costs incurred.
2. The reimbursable expenses for which McGOODWIN, WILLIAMS, AND YATES will be reimbursed shall include travel expenses when traveling outside Northwest Arkansas in connection with the project, rental expenses for special equipment needed for completion of the work, purchase of material, and other expenses directly attributable to the project, including any work performed by subcontractors. McGOODWIN, WILLIAMS, AND YATES shall charge the CITY OF FAYETTEVILLE for reimbursable expenses at actual cost plus ten percent (10%).
3. The maximum not-to-exceed amount authorized by this contract is \$109,000.

A4.2 Detailed Design and Preparation of Construction Plans and Specifications

1. Compensation shall be established by an amendment to this agreement after completion of the Preliminary Design Phase.

A4.3 Bidding and Preconstruction Services

1. Compensation shall be established by an amendment to this agreement after completion of the Preliminary Design Phase or the Detailed Design and Preparation of Construction Plans and Specifications.

A4.4 Construction Phase Services

1. Compensation shall be established by an amendment to this agreement after completion of the Preliminary Design Phase or the Detailed Design and Preparation of Construction Plans and Specifications.

A.5 Project Design Schedule

McGOODWIN, WILLIAMS, AND YATES shall begin work under this Agreement within two (2) working days of a Notice to Proceed (NTP) and shall complete the work described in Section A2 above in accordance with the schedule below on the

condition that any requested input and/or comments from the CITY OF FAYETTEVILLE is received in writing by McGOODWIN, WILLIAMS, AND YATES within seven (7) calendar days after the request or submittal is received by the CITY OF FAYETTEVILLE.

A.5.1 Preliminary Design Phase – Master Site and Facility Plan

1. Submit conceptual design drawings
 - 70 Calendar days after NTP
2. Revise conceptual drawings and submit preliminary Opinion of Probable Cost and tentative projected timeline for design/construction for each recommended construction package
 - 15 Calendar days after receipt of written comments from the City of Fayetteville regarding conceptual design drawings and input from the City of Fayetteville Planning Division
3. Deliver draft Preliminary Design Report
 - 15 Calendar days after receipt of written comments from the City of Fayetteville regarding revised conceptual design drawings and opinion of probable cost
4. Deliver final Preliminary Design Report
 - 15 Calendar days after receipt of written comments from the City of Fayetteville regarding draft report

RESOLUTION NO. 57-14

A RESOLUTION TO APPROVE AMENDMENT NO. 1 TO THE AGREEMENT WITH MCGOODWIN, WILLIAMS AND YATES, INC. FOR DESIGN SERVICES ASSOCIATED WITH THE RECYCLING AND TRASH COLLECTION DIVISION OFFICE BUILDING EXPANSION AND SITE IMPROVEMENTS

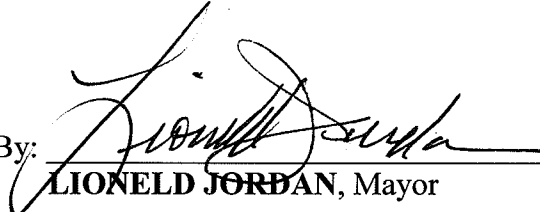
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves Amendment No. 1, a copy of which is attached as Exhibit "A", to the agreement with McGoodwin, Williams and Yates, Inc. for design services associated with the Recycling and Trash Collection Division Office Building Expansion and Site Improvements.

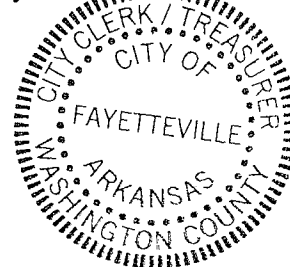
PASSED and APPROVED this 4th day of March, 2014.

APPROVED:

ATTEST:

By: 
LIONELD JORDAN, Mayor

By: 
SONDRA E. SMITH, City Clerk/Treasurer



AMENDMENT NO. 1
To
AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES
Between
CITY OF FAYETTEVILLE, ARKANSAS
And
McGOODWIN, WILLIAMS, AND YATES, INC.

SOLID WASTE BUILDING EXPANSION AND SITE IMPROVEMENTS

WHEREAS, on June 18, 2013, the City of Fayetteville, Arkansas (CITY OF FAYETTEVILLE) and McGoodwin, Williams and Yates, Inc. of Fayetteville, Arkansas (ENGINEER) entered into an Agreement for architectural and engineering services in connection with the Solid Waste Building Expansion and Site Improvements (the "Project"); and

WHEREAS, the scope of services under the Agreement included a master site/facility plan and report, detailed design, preparation of construction drawings and specifications, bidding and construction administration and observation services; and

WHEREAS, the ENGINEER has completed the master site/facility plan and report under the terms of the original agreement; and

WHEREAS, the CITY OF FAYETTEVILLE concurs with the master site/facility plan and report and is ready to proceed with the detailed design, preparation of construction drawings and specifications for Package One, including Contract Section I – Armstrong Drive and Scale Facilities and Contract Section II – Office Building and Parking Expansion; and

WHEREAS, the original Agreement provided that the method and amount of compensation for these services would be established after the determination by the Owner to proceed with these further development steps; and

WHEREAS, the original Agreement must now be amended to provide these amounts and methods of compensation to the Engineer;

NOW THEREFORE, in consideration of the mutual covenants and Agreements herein contained, CITY OF FAYETTEVILLE and MWY, the parties hereto, stipulate and agree that the Agreement for Engineering Services dated June 18, 2013, is hereby amended in the following particulars:

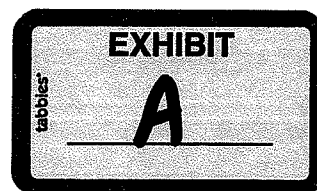
SECTION 5 – PAYMENTS TO ENGINEER

Delete Paragraph 5.1 and replace with the following:

5.1 The CITY OF FAYETTEVILLE shall compensate ENGINEER based on a Unit Price or Lump Sum basis as described in Appendix A. The maximum not-to-exceed amounts authorized for this Agreement for each phase of work are described in Appendix A.

APPENDIX A – SCOPE OF SERVICES

A.2 Specific Scope of Services



Delete Paragraph 2 in Section A2.2 “Detailed Design and Preparation of Construction Plans and Specifications” and replace with the following:

2. Assist the CITY OF FAYETTEVILLE with the procurement of a construction manager and coordinate with the selected construction manager during the design phase to identify constructability issues, identify potential cost-reduction options, and review construction cost estimates provided by the construction manager at appropriate design intervals.

Add the following Paragraph 6 to Section A2.2:

6. Incorporate energy efficient and sustainable design elements as required by the CITY OF FAYETTEVILLE ordinances. If requested, assist the CITY OF FAYETTEVILLE with pursuing Leadership in Energy and Environmental Design (LEED) certification for the facility, including identification of potential LEED credits, coordinating LEED design charrettes, performing data entry, and assisting with registration and coordination.

Delete entire Section A2.3 “Bidding and Preconstruction Services”

A.3 Project Deliverables

Add the following paragraph A.3.2:

A.3.2 Deliverables for Detailed Design of Construction Plans and Specifications

1. Preliminary Checklist of Potential LEED Credits
 - a. Updated Checklists at each design stage of 60%, 90% & 100%
2. Completed Right-Of-Way Vacation Documents
3. Required Large Scale Development (LSD) documents, including the following. It is anticipated that both Contract Sections I and II will be included in one set of LSD documents.
 - a. LSD Plans (Including boundary information but not including full boundary survey)
 - b. LSD Presentation Boards
 - c. Drainage Report
 - d. Individual Easements (Acquisition of easements and production of an easement plat not included)
4. Construction Documents at 60%, 90%, and final design stages for Contract Sections I and II
5. Documents listed above include up to four (4) printed copies of each as well as one copy of electronic files in accordance with the Agreement, including files in AutoCad and Adobe format

A.4 Compensation

Replace the entire Section A.4.2 with the following:

- A.4.2 Detailed Design and Preparation of Construction Plans and Specifications for Contract Section I (Armstrong Drive and Scale Facilities) and Contract Section II (Office Building, Parking and Truck Turning):

1. Compensation shall be paid to ENGINEER on the basis of ENGINEER'S standard hourly rates in effect at the time the work is performed, plus reimbursable expenses. Rates are adjusted annually at the beginning of each calendar year. ENGINEER agrees to keep the CITY OF FAYETTEVILLE apprised in a timely manner of costs incurred.
2. The reimbursable expenses for which ENGINEER will be reimbursed shall include travel expenses when traveling outside Northwest Arkansas in connection with the project, rental expenses for special equipment needed for completion of the work, purchase of material, review and/or certification fees, and other expenses directly attributable to the project, including any work performed by subcontractors. ENGINEER shall charge the CITY OF FAYETTEVILLE for reimbursable expenses at actual cost plus ten percent (10%).
3. The maximum not-to-exceed amount authorized for services, including reimbursables, under Section A4.2 is \$406,200.
4. Invoices from ENGINEER will include itemized totals for major tasks as follows. Tasks will be itemized for information purposes only, and it is recognized that fees for some tasks may be more or less than original itemized estimates. However, the total amount invoiced for all tasks under Section A4.2 shall not exceed the total amount described in Paragraph 3 above.
 - a. Basic Design Services (Project Code extension BD)
 - b. Additional Miscellaneous Services (Project Code Extension MS)
 - c. Additional LEED and/or Green Design Services (Project Code Extension GD)
 - d. Additional LSD Services (Project Code Extension LSD)

A.5 Project Design Schedule

Add the following Section A.5.2:

A.5.2.1 Detailed Design and Preparation of Construction Plans and Specifications for Contract Section I (Armstrong Drive and Scale Facilities)

1. Submit LSD Documents
 - o 60 Calendar days after NTP
2. Deliver 60% Design Stage Construction Documents to CITY OF FAYETTEVILLE
 - o 30 Calendar days after approval of LSD by the city planning commission
3. Deliver 90% Design Stage Construction Documents to CITY OF FAYETTEVILLE
 - o 30 Calendar days after receipt of written comments from the City of Fayetteville regarding the 60% design stage documents
4. Deliver Final Design Stage Construction Documents to CITY OF FAYETTEVILLE
 - o 30 Calendar days after receipt of written comments from the City of Fayetteville regarding the 90% design stage documents

A.5.2.1 Detailed Design and Preparation of Construction Plans and Specifications for Contract Section II (Office Building, Parking and Truck Turning):

1. Submit LSD Documents
 - o 60 Calendar days after NTP
2. Deliver 60% Design Stage Construction Documents to CITY OF FAYETTEVILLE
 - o 90 Calendar days after approval of LSD by the city planning commission

3. Deliver 90% Design Stage Construction Documents to CITY OF FAYETTEVILLE
 - o 90 Calendar days after receipt of written comments from the City of Fayetteville regarding the 60% design stage documents
4. Deliver Final Design Stage Construction Documents to CITY OF FAYETTEVILLE
 - o 30 Calendar days after receipt of written comments from the City of Fayetteville regarding the 90% design stage documents

All other provisions of the original Agreement remain in full force and effect.

IN WITNESS WHEREOF, CITY OF FAYETTEVILLE, ARKANSAS by and through its Mayor, and ENGINEER, by its authorized officer have caused this Amendment to be duly executed this 4th day of March, 2014.

CITY OF FAYETTEVILLE, ARKANSAS

By: *Lionel Jordan*
 Mayor, Lioneld Jordan

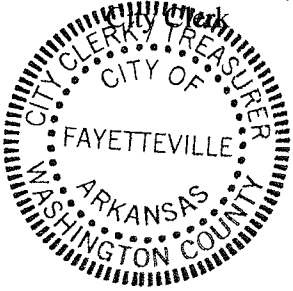
McGOODWIN, WILLIAMS, AND YATES

By: *Brad B. Hammond*
 Brad B. Hammond, P.E.

ATTEST:

By: *Dondra E. Smith*

Title: President



END OF AMENDMENT NO. 1 TO
 AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

City of Fayetteville Item Review Form

2014-0089

Legistar File Number

March 4, 2014

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

Chris Brown

Submitted By

Development Services

Department

Action Required:

Recycling and Trash Collection Division Office Building Expansion and Site Improvements Contract Amendment #1 with McGoodwin, Williams & Yates for design services.

Does this item have a cost? Yes

\$406,200.00

Cost of this request

\$1,173,000.00

Category or Project Budget

Solid Waste Office & Trans Station Exp

Program or Project Name

5500.5080.5314.00

Account Number

\$109,000.00

Funds Used to Date

Solid Waste Improvements

Program or Project Category

13021 / (various sub-projects)

Project Number

\$657,800.00

Remaining Balance

Solid Waste

Fund Name

Budgeted Item? Yes

Budget Adjustment Attached? No

Previous Ordinance or Resolution #

133-13

Original Contract Number:

2287

V20130812 ENTERED 2/14/14

ENTERED 2/19/14

Comments:

[Signature]

Paul a Barber

[Signature]

Council Meeting of March 4, 2014

To: Mayor and City Council

Thru: Don Marr, Chief of Staff
Terry Gulley, Transportation Services Director

From: Chris Brown, P.E., City Engineer

Date: February 14, 2014

Subject: Recycling and Trash Collection Division Office Building Expansion and Site Improvements
Contract Amendment with McGoodwin Williams and Yates for Design Services

BACKGROUND:

The Recycling and Trash Collection Division is in need of engineering services to design expansion/improvements to their facility on Happy Hollow Road, to include improvements to their offices and transfer station building, auxiliary buildings, parking areas, access drives, and other site elements. In accordance with City policy, a selection committee consisting of city staff and one City Council member was formed and selected McGoodwin, Williams and Yates (MWY) of Fayetteville as the design consultant. MWY designed the existing transfer station and office building, and their staff has extensive knowledge and background on the existing building. The original contract with MWY provided for the development of a master plan, which has been completed and will be presented at the City Council Agenda Session. The master plan has identified improvements that are necessary accommodate current space and site needs.

PROPOSAL:

MWY has provided a proposed contract amendment for design services of immediate site and building improvements identified in the master plan. MWY will provide the engineering and architectural services needed for the project, and will use a sub-consultants for the mechanical systems (plumbing, electrical, heating and air conditioning), landscape design, interior design, and systems testing and commissioning.

The proposed fee for design services is \$406,200. Major task items include:

- Basic Design Services: \$240,580
- Additional Services (landscape architect, interior designer, geotechnical): \$43,030
- “Green” Design Services (LEED related fees): \$81,740
- City Planning Approval (Large Scale Development) Services: \$40,850

The Design schedule provides for 5 months of design time for completion of the site design package (scales, new driveway and site paving) and 9 months of design time for completion of the building design package. These design schedules do not account for review time by the City, so time frames to begin construction will be longer than these time frames, and will be dependent on the City review time between design phases.

RECOMMENDATION:

Staff recommends approval of a contract amendment with McGoodwin, Williams, and Yates, Inc. of Fayetteville in the amount of \$406,200 for development of site and building construction plans for the Recycling and Trash Collection facility on Happy Hollow Road.

BUDGET IMPACT:

This project will be funded from the Solid Waste Office and Transfer Station Expansion project in the Solid Waste Fund.

RESOLUTION NO. _____

A RESOLUTION TO APPROVE AMENDMENT NO. 1 TO THE AGREEMENT WITH MCGOODWIN, WILLIAMS AND YATES, INC. FOR DESIGN SERVICES ASSOCIATED WITH THE RECYCLING AND TRASH COLLECTION DIVISION OFFICE BUILDING EXPANSION AND SITE IMPROVEMENTS

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 Amendment No. 1, a copy of which is attached as Exhibit "A", to the agreement with McGoodwin, Williams and Yates, Inc. for design services associated with the Recycling and Trash Collection Division Office Building Expansion and Site Improvements.

PASSED and APPROVED this 4th day of March, 2014.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

RESOLUTION NO. 133-13

A RESOLUTION AWARDDING RFQ #13-01 AND APPROVING A CONTRACT WITH MCGOODWIN, WILLIAMS AND YATES, INC. IN AN AMOUNT NOT TO EXCEED \$109,000.00 FOR ENGINEERING DESIGN SERVICES AT THE SOLID WASTE TRANSFER STATION ON HAPPY HOLLOW ROAD, AND APPROVING A BUDGET ADJUSTMENT

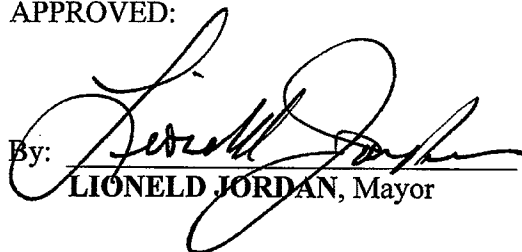
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby awards RFQ # 13-01 and approves a contract with McGoodwin, Williams and Yates, Inc. in an amount not to exceed \$109,000.00, a copy of which is attached as Exhibit "A", for architectural design services at the solid waste transfer station on Happy Hollow Road.

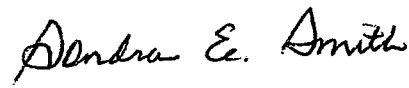
Section 2: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment, a copy of which is attached to this Resolution as Exhibit "B".

PASSED and **APPROVED** this 18th day of June, 2013.

APPROVED:

By: 
LIONELD JORDAN, Mayor

ATTEST:

By: 
SONDRA E. SMITH, City Clerk/Treasurer



City of Fayetteville Staff Review Form

**City Council Agenda Items
and
Contracts, Leases or Agreements**

6/18/2013

City Council Meeting Date
Agenda Items Only

Terry Gulley Submitted By	Solid Waste Division	Trans. Services Department
-------------------------------------	--------------------------------	--------------------------------------

Action Required:

Approval of an Engineering Contract with McGoodwin Williams and Yates, Inc. of Fayetteville for design services at the Solid Waste Transfer Station property on Happy Hollow Road

\$ 109,000.00 Cost of this request	\$ 1,173,000.00 Category / Project Budget	Solid Waste Office & Trans Station Program Category / Project Name
5500.5080.5314.00 Account Number	\$ - Funds Used to Date	Solid Waste Program / Project Category Name
13021.2000 Project Number	\$ 1,173,000.00 Remaining Balance	Solid Waste Improvements Fund Name

Budgeted Item Budget Adjustment Attached XX

Terry G. Gulley 5-31-13 Previous Ordinance or Resolution # _____
Department Director Date

[Signature] 5-31-13 Original Contract Date: _____
City Attorney Date

Paul A. Beuler 6-3-2013 Original Contract Number: _____
Finance and Internal Services Director Date

Received in City 05-31-13 P12:55 RCVD
Clerk's Office *dm*

[Signature] 6-3-13
Chief of Staff Date

Received in Mayor's Office 

[Signature] 6/3/13
Mayor Date

Comments:

Council Meeting of June 18, 2013

To: Mayor and City Council

Thru: Don Marr, Chief of Staff *DM*
Terry Gulley, Transportations Services Director *TG*

From: Chris Brown, P.E., City Engineer *CB*

Date: May 30, 2013

Subject: Solid Waste Building Expansion and Site Improvements

PROPOSAL:

The Solid Waste Division is in need of engineering services to design expansion/improvements to their facility on Happy Hollow Road, to include improvements to their offices and transfer station building, auxiliary buildings, parking areas, access drives, and other site elements. In accordance with City policy, a selection committee consisting of city staff and one City Council member was formed and has selected McGoodwin, Williams and Yates (MWY) of Fayetteville as the design consultant. MWY designed the existing transfer station and office building, and their staff has extensive knowledge and background on the existing building. MWY will provide the engineering and architectural services needed for the project, and will use a sub-consultant, Brown Engineers of Little Rock, for the mechanical systems (plumbing, electrical, heating and air conditioning).

MWY has presented a proposal for development of a Master Plan for building and site improvements, to include:

- Review of existing buildings, and development of building programs and preliminary floor plans for buildings on the site, to include expansion of offices, addition of a break/conference/training room, and upgrade/replacement of heating and air systems.
- Expansion and improvement/paving of parking areas and access driveways.
- Review of overall traffic flow on the site, including the scale area and the entrance to the compost area.
- Preparation of cost estimates for the various elements identified in the site plan
- Preparation of a preliminary design and construction schedule for these elements, and recommendations for packaging elements together for construction.

This Master Plan will allow the Solid Waste Division to develop a capital improvement plan for the solid waste facility. This plan will be used to guide the continued development and expansion of the site, and is also a necessary element of the upcoming rate study.

The Master Plan development is scheduled to be completed in late 2013. At that time, staff will negotiate amendments to the contract with MWY for development of construction plans for selected elements, based on priority of elements and available funding. It may be necessary to develop multiple construction contracts over a period of time. The packaging of various elements for construction will be developed during the master planning process.

The total fee for the development of the Master Plan is \$109,000.

RECOMMENDATION:

Staff recommends approval of a contract with McGoodwin, Williams, and Yates, Inc. of Fayetteville in the amount of \$109,000 for development of a Master Plan and conceptual designs for improvements to the Solid Waste Facility on Happy Hollow Road.

BUDGET IMPACT:

This project will be funded from the Solid Waste Office and Transfer Station Expansion project in the Solid Waste Fund.

RESOLUTION NO. _____

A RESOLUTION AWARDDING RFQ #13-01 AND APPROVING A CONTRACT WITH MCGOODWIN, WILLIAMS AND YATES, INC. IN AN AMOUNT NOT TO EXCEED \$109,000.00 FOR ENGINEERING DESIGN SERVICES AT THE SOLID WASTE TRANSFER STATION ON HAPPY HOLLOW ROAD, AND APPROVING A BUDGET ADJUSTMENT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby awards RFQ # 13-01 and approves a contract with McGoodwin, Williams and Yates, Inc. in an amount not to exceed \$109,000.00, a copy of which is attached as Exhibit "A", for architectural design services at the solid waste transfer station on Happy Hollow Road.

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 "B".

PASSED and APPROVED this 18th day of June, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

AGREEMENT
For
PROFESSIONAL ENGINEERING SERVICES
Between
CITY OF FAYETTEVILLE, ARKANSAS
And
MCGOODWIN, WILLIAMS, AND YATES, INC.

SOLID WASTE BUILDING EXPANSION AND SITE IMPROVEMENTS

THIS AGREEMENT is made as of June 18, 2013, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and McGoodwin, Williams, and Yates, Inc. (hereinafter called ENGINEER).

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

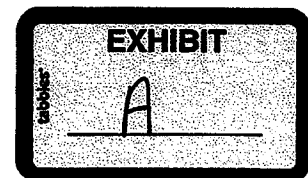
ENGINEER shall serve as CITY OF FAYETTEVILLE's professional engineering consultant in those assignments to which this Agreement applies, and shall give consultation and advice to CITY OF FAYETTEVILLE during the performance of ENGINEER's services. All services shall be performed under the direction of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

SECTION 5 - PAYMENTS TO ENGINEER

- 5.1 The maximum not-to-exceed amount authorized for this Agreement is **\$109,000**. The CITY OF FAYETTEVILLE shall compensate ENGINEER based on a Unit Price or Lump Sum basis as described in Appendix A.
- 5.2 Statements
 - 5.2.1 Monthly statements for each calendar month shall be submitted to CITY OF FAYETTEVILLE or such parties as CITY OF FAYETTEVILLE may designate for professional services consistent with ENGINEER's normal billing schedule. Once established, the billing schedule shall be maintained throughout the duration of the Project. Applications for payment shall be made in accordance with a format to be developed by ENGINEER and approved by CITY OF FAYETTEVILLE. Applications for payment shall be accompanied each month by the updated project schedule as the basis for determining the

value earned as the work is accomplished. Final payment for professional services shall be made upon CITY OF FAYETTEVILLE's approval and acceptance with the satisfactory completion of the study and report for the Project.

5.3 Payments

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

5.4 Final Payment

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

SECTION 6 - GENERAL CONSIDERATIONS

6.1 Insurance

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

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

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

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

6.2 Professional Responsibility

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

6.3 Cost Opinions and Projections

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

6.4 Changes

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

6.5 Termination

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

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

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

6.5.2 This Agreement may be terminated in whole or in part in writing by CITY OF FAYETTEVILLE for its convenience, provided that ENGINEER is given:

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

- 6.5.2.2 An opportunity for consultation with the terminating party prior to termination.
- 6.5.3 If termination for default is effected by CITY OF FAYETTEVILLE, an equitable adjustment in the price provided for in this Agreement shall be made, but
 - 6.5.3.1 No amount shall be allowed for anticipated profit on unperformed services or other work,
 - 6.5.3.2 Any payment due to ENGINEER at the time of termination may be adjusted to cover any additional costs to CITY OF FAYETTEVILLE because of ENGINEER's default.
- 6.5.4 If termination for default is effected by ENGINEER, or if termination for convenience is effected by CITY OF FAYETTEVILLE, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by ENGINEER relating to commitments which had become firm prior to the termination.
- 6.5.5 Upon receipt of a termination action under Paragraphs 6.5.1 or 6.5.2 above, ENGINEER shall:
 - 6.5.5.1 Promptly discontinue all affected work (unless the notice directs otherwise),
 - 6.5.5.2 After payment in accordance with Paragraphs 6.5.3 and 6.5.4 above, deliver or otherwise make available to CITY OF FAYETTEVILLE all project deliverables at the latest stage of completion (e.g. 30%, 90%, etc.) CITY OF FAYETTEVILLE shall have the limited right to use the deliverables subject to the provisions of Paragraph 6.12.2.
- 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 The CITY OF FAYETTEVILLE acknowledges the Engineer's plans and specifications, including all documents on electronic media ("delivered documents"), as instruments of professional service. Nevertheless, the delivered documents prepared under this Agreement shall be delivered to and become the property of the CITY OF FAYETTEVILLE upon completion of the services and payment in full of all monies due to the Engineer. Except for the Engineer's services provided for by this Agreement as related to the construction and completion of the Project, the ENGINEER accepts no liability arising from any reuse of the delivered documents by the CITY OF FAYETTEVILLE, unless the Engineer is retained by CITY OF FAYETTEVILLE to make modifications or otherwise reuse the delivered documents. Except where the CITY OF FAYETTEVILLE reuses the delivered documents subsequent to the completion of the Project, nothing contained in this paragraph shall alter the Engineer's responsibilities and obligations under this Agreement.

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:
302 E. Millsap Road
Fayetteville, Arkansas 72703

6.14 Successor and Assigns

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

6.15 Controlling Law

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

6.16 Entire Agreement

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

SECTION 7 - SPECIAL CONDITIONS

7.1 Additional Responsibilities of ENGINEER

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

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

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

7.2 Remedies

7.2.1 Except as may be otherwise provided in this Agreement, all claims, counter-claims, disputes and other matters in question between CITY OF FAYETTEVILLE and ENGINEER arising out of or relating to this Agreement or the breach thereof will be decided in a court of competent jurisdiction within Arkansas.

7.3 Audit: Access to Records

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

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

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

7.3.3.1 Negotiated prime agreements:

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

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

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

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

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

7.4 Covenant Against Contingent Fees

7.4.1 ENGINEER warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage or 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 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

McGoodwin, Williams, and Yates

By: 
Mayor, Lionel Jordan

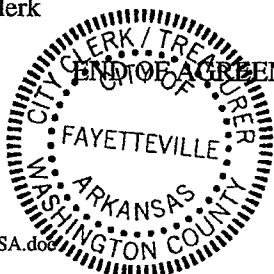
By: 
Brad B. Hammond, P.E.

ATTEST:

By: 
City Clerk

Title: President

City Clerk



**CITY OF FAYETTEVILLE
AGREEMENT FOR ENGINEERING SERVICES**

APPENDIX A – SCOPE OF SERVICES

This is **Appendix A**, consisting of 6 pages, referred to in and part of the **Agreement For Professional Engineering Services** between CITY OF FAYETTEVILLE, ARKANSAS and McGOODWIN, WILLIAMS, AND YATES, INC. dated _____.

Initial:

CITY OF FAYETTEVILLE _____

McGOODWIN, WILLIAMS, AND YATES, INC. RPW

The following contains additional Scope of Services tasks.

A.1 General Scope

The work covered by this agreement includes a master site/facility plan and report, detailed design, preparation of construction drawings and specifications, bidding and construction administration and observation for the **Solid Waste Building Expansion and Site Improvements**. The project generally includes the following:

1. Changes to the division office building including renovation and new construction of five new offices, large storage room, and adding structural support if required.
2. Renovation of front office area including customer check-in, information center for service materials, built-in cabinets, furniture, and addition of storage space.
3. Renovation of ceilings and floors of entire office building. Renovations may include elimination or renovating the existing tile floors (tile or decorative).
4. Evaluation of required bathroom facilities to determine if building expansion meets code requirements.
5. Evaluation of existing HVAC system and efficient design of system for full office building.
6. Design of separate employee entrance at appropriate location away from main customer entrance.
7. Design a new breakroom with kitchen facilities and vending area to accommodate division staff of 70 employees with ability of space to be configured for all staff events, training session, and employee meetings. The breakroom will include full media equipment (TV, video, computers, and audio) and employee computer, kiosk, and time-clock stations.
8. Design a new locker room for approximate 70 lockers for personal storage only. No dressing areas will be required.
9. Design a new training/conference room for approximately 15-20 participants with full media equipment (TV, video, computers, and audio).
10. Replacement of any parking spaces lost as a result of office building expansion.
11. Expansion of MRF building to include covering and enclosing the current outdoor storage area.
12. Front entrance landscape design.
13. Renovation of scale house and possible relocation of scale house building and scales to accommodate entering and exiting traffic.
14. Assist CITY OF FAYETTEVILLE with obtaining all necessary permits.
15. Grading and paving of gravel parking lot where the recycle fleet parks in order to provide adequate stormwater runoff for necessary permits.
16. Concrete paving the access road from the compost pad to the entrance gate of the container maintenance and compost drop-off area.

17. Employee parking lot expansion and re-striping, adding 16-20 new car/truck employee parking spaces and five motorcycle spaces.
18. Site and design a "hot load" area with concrete floor, drains and water capabilities for processing hot/burning refuse loads.
19. Design stormwater collection system that controls runoff of leachate that is tracked out of transfer station by trucks to keep the division compliant with ADEQ concerns.
20. Automatic gate at compost site entrance.
21. Incorporation of sustainable design and low-impact development (LID) features as practical and appropriate.
22. Mitigation of odors entering office area.
23. Reconfiguring the stormwater sump area.
24. Evaluate and recommend improvements to the Compost Building and check-in road.
25. Investigate possibility of utility incentives/rebates.

A.2 Specific Scope of Services

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

A2.1 Preliminary Design Phase – Master Site and Facility Plan

1. Meet with the CITY OF FAYETTEVILLE to understand the project needs.
2. Develop a conceptual design for the building renovation/addition, including:
 - a. Building program
 - b. Code review
 - c. Existing facility assessment
 - d. Conceptual design drawings, including a floorplan and exterior elevations, to illustrate recommended additions/renovations to the building.
3. Develop a conceptual design for the site improvements, including a "master plan" drawing illustrating recommended improvements.
4. Meet with the CITY OF FAYETTEVILLE to review concept drawings and revise drawings based on input from the CITY OF FAYETTEVILLE.
5. Attend a review meeting with the city planning staff.
6. Develop a preliminary opinion of probable cost for the project, including itemized construction packaging recommendations. It is understood and agreed that this opinion will be prepared for planning and budgeting purposes only and that McGOODWIN, WILLIAMS, AND YATES makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.
7. Meet with the CITY OF FAYETTEVILLE to review the preliminary opinion of probable cost. If necessary, identify alternatives to reduce the probable construction cost and make revisions to the conceptual plans and opinion of probable cost. The scope of work under

this agreement includes no more than two (2) revisions to the conceptual drawings and opinion of probable cost.

8. Prepare a draft Preliminary Design Report describing recommended improvements, including the conceptual design drawings and the preliminary opinion of probable cost and submit to the CITY OF FAYETTEVILLE for review.
9. Prepare and transmit a final Preliminary Design Report after receiving comments from the CITY OF FAYETTEVILLE.

A2.2 Detailed Design and Preparation of Construction Plans and Specifications

1. Prepare final design for the project based on the conceptual design plans developed under Section A2.1, including detailed construction specifications and drawings. It is understood that final designs may be developed for multiple construction contracts. Scopes of work for each construction package will be developed after completion of the Preliminary Design Report, and an appropriate amendment to this agreement will be developed at that time.
2. Prepare an opinion of probable cost of the authorized construction. It is understood and agreed that this opinion will be prepared for planning and budgeting purposes only and that McGOODWIN, WILLIAMS, AND YATES makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.
3. Submit, on behalf of the CITY OF FAYETTEVILLE, construction specifications, drawings and design criteria for approval to the Arkansas Department of Health and other agencies, if required.
4. Prepare necessary environmental and other permitting applications, including SWPPP and BMP plans, and assist with submittal to appropriate federal, state and local agencies. Permitting fees will be paid directly by the CITY OF FAYETTEVILLE and are not included in the professional design fees. An industrial stormwater permit, if required, will be prepared by the CITY OF FAYETTEVILLE and is not included in the scope of work.
5. Develop and submit documents in accordance with the CITY OF FAYETTEVILLE's planning requirements, and attend necessary public meetings to present the project.

A2.3 Bidding and Preconstruction Services

McGOODWIN, WILLIAMS, AND YATES will provide technical interpretation of the plans and specifications as needed, prepare addenda as required, attend a pre-bid conference and the bid opening, provide an engineering analysis of the bids received, make recommendations concerning award of the construction contract and assist in the preparation of contract documents. Supporting documents will be prepared and submitted to the CITY OF FAYETTEVILLE. The scope of services does not include dividing construction contracts into multiple projects and/or bids.

A2.4 Construction Phase Services

1. Attend a preconstruction conference. At the time of the preconstruction conference, a Notice to Proceed will be issued.
2. Furnish professional engineers to make visits to the site at appropriate intervals to observe the progress and quality of the executed work and to determine in general

if the work is proceeding in accordance with the contract documents. In performing these services, the Engineer shall have no control over nor responsibility for the Contractor's means, methods, sequence, techniques or procedures in performing the work, or for safety programs in connection with the work. These are solely the responsibilities of the Contractor, who is also responsible for complying with all health and safety precautions as required by any regulatory agencies.

3. Furnish the services of other field personnel for on-the-site observation of construction and for the performance of required construction layout surveys when requested by the Owner. The authority and duties of such Project Representatives are limited to examining the material furnished and observing the work done and to reporting their findings to the Engineer. The Engineer will use the usual degree of care and prudent judgment in the selection of competent Project Representatives, and the Engineer will use diligence to see that the Project Representatives are on the job to perform their required duties.
4. The required construction layout surveys will include the establishment of baselines for locating the work, with a suitable number of benchmarks for site elevation references as shown in the plans and specifications.
5. Consult with and advise the Owner; issue all instructions to the contractor requested by the Owner; and prepare routine change orders as required.
6. Review submittals by the Contractor at the request of the Owner. This review is for the benefit of the Owner to ensure general conformance with the design concept of the project and general compliance by the contractor with the information given in the contract documents. It does not relieve the contractor of any responsibility such as dimensions to be confirmed and correlated at the job site, appropriate safety measures to protect workers and the public, or the necessity to construct a complete and workable facility in accordance with the contract documents.
7. Review monthly and final estimates for payments to the Contractor prepared by the Owner.
8. Attend, in company with the City of Fayetteville's Representative, a final inspection of the project. This inspection will be for conformance with the design concept of the project and compliance with the contract documents.
9. Furnish to the Owner two copies of the record drawings for the project.

A.3 Project Deliverables

The following will be submitted to the CITY OF FAYETTEVILLE, or others indicated, by the McGOODWIN, WILLIAMS, AND YATES as part of the Project.

A.3.1 Deliverables for Preliminary Design Phase – Master Site and Facility Plan

1. Four (4) copies of Draft Conceptual Design Drawings
2. Four (4) copies of the draft version of the Preliminary Design Report
3. Four (4) copies of the final version of the Preliminary Design Report
4. Electronic files in accordance with the Agreement

A.4 Compensation

In consideration of the performance of the foregoing services by McGOODWIN, WILLIAMS, AND YATES, the CITY OF FAYETTEVILLE shall pay to McGOODWIN, WILLIAMS, AND YATES compensation as follows:

A4.1 Preliminary Design Report Phase

1. Compensation shall be paid to McGOODWIN, WILLIAMS, AND YATES on the basis of McGOODWIN, WILLIAMS, AND YATES's standard hourly rates in effect at the time the work is performed, plus reimbursable expenses. Rates are adjusted annually at the beginning of each calendar year. McGOODWIN, WILLIAMS, AND YATES agrees to keep the CITY OF FAYETTEVILLE apprised in a timely manner of costs incurred.
2. The reimbursable expenses for which McGOODWIN, WILLIAMS, AND YATES will be reimbursed shall include travel expenses when traveling outside Northwest Arkansas in connection with the project, rental expenses for special equipment needed for completion of the work, purchase of material, and other expenses directly attributable to the project, including any work performed by subcontractors. McGOODWIN, WILLIAMS, AND YATES shall charge the CITY OF FAYETTEVILLE for reimbursable expenses at actual cost plus ten percent (10%).
3. The maximum not-to-exceed amount authorized by this contract is \$109,000.

A4.2 Detailed Design and Preparation of Construction Plans and Specifications

1. Compensation shall be established by an amendment to this agreement after completion of the Preliminary Design Phase.

A4.3 Bidding and Preconstruction Services

1. Compensation shall be established by an amendment to this agreement after completion of the Preliminary Design Phase or the Detailed Design and Preparation of Construction Plans and Specifications.

A4.4 Construction Phase Services

1. Compensation shall be established by an amendment to this agreement after completion of the Preliminary Design Phase or the Detailed Design and Preparation of Construction Plans and Specifications.

A.5 Project Design Schedule

McGOODWIN, WILLIAMS, AND YATES shall begin work under this Agreement within two (2) working days of a Notice to Proceed (NTP) and shall complete the work described in Section A2 above in accordance with the schedule below on the

condition that any requested input and/or comments from the CITY OF FAYETTEVILLE is received in writing by McGOODWIN, WILLIAMS, AND YATES within seven (7) calendar days after the request or submittal is received by the CITY OF FAYETTEVILLE.

A.5.1 Preliminary Design Phase – Master Site and Facility Plan

1. Submit conceptual design drawings
 - 70 Calendar days after NTP
2. Revise conceptual drawings and submit preliminary Opinion of Probable Cost and tentative projected timeline for design/construction for each recommended construction package
 - 15 Calendar days after receipt of written comments from the City of Fayetteville regarding conceptual design drawings and input from the City of Fayetteville Planning Division
3. Deliver draft Preliminary Design Report
 - 15 Calendar days after receipt of written comments from the City of Fayetteville regarding revised conceptual design drawings and opinion of probable cost
4. Deliver final Preliminary Design Report
 - 15 Calendar days after receipt of written comments from the City of Fayetteville regarding draft report

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

V12.0724

Budget Year 2013	Division: Solid Waste & Recycling Department: Transportation Services	Request Date 5/30/2013	Adjustment Number
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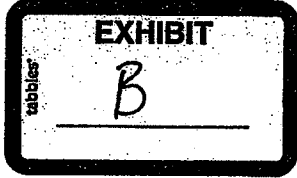
BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION

Create two new solid waste sub-projects. Sub-project 1000 is for site improvements. Sub-project 2000 is for new office space at Solid Waste. This BA will move \$109,000.00 from sub-project 1 into sub-project 2000 for professional services that will be provided by McGoodwin, William & Yates.

<i>Terry D. Gully</i> Division Head	5-31-13 Date	Prepared By: Peggy Bell	
<i>Terry D. Gully</i> Budget Director	5-30-13 Date	Reference:	<i>kspringer</i>
<i>Terry D. Gully</i> Department Director	5-31-13 Date	Budget & Research Use Only	
<i>Paul A. Baker</i> Finance Director	6-3-2013 Date	Type: A B C <u>D</u> E P	
<i>Alan Alan</i> Chief of Staff	6-3-13 Date	General Ledger Date	
<i>Donald Jordan</i> Mayor	6/3/13 Date	Posted to General Ledger	Initial Date
		Checked / Verified	Initial Date

TOTAL BUDGET ADJUSTMENT

Account Name	Account Number	Increase / (Decrease)		Project.Sub Number
		Expense	Revenue	
Solid Waste improvements	5500.5080.5816.00	⇒ (109,000)		13021 . 1
Professional services	5500.5080.5314.00	⇒ 109,000		13021 . 2000

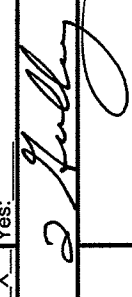


City of Fayetteville - Purchase Order (PO) Request

(Not a Purchase Order)
 All purchases under \$2500 shall be used on a P-Card unless medical or 1099 service related. (Call x256 with questions)
 All PO Request shall be scanned to the Purchasing e-mail: Purchasing@ci.fayetteville.ar.us

Requisition No.: _____ Date: **2/13/2014**
 P.O Number: _____ Expected Delivery Date: _____
 Vendor Name: **McGoodwin, Williams & Yates**
 Address: **7550**
302 E. Millsap Road
 City: **Fayetteville** State: **AR**
 Requester: **Chris Brown**
 Fob Point: _____
 Zip Code: **72703**
 Ship to code: _____
 Requester's Employee #: **2695**

Item Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Inventory #	Fixed Asset #
1							
2 Professional Services	1		346,050.00	\$346,050.00	5500.5080.5314.00	13021.2000	
3 Professional Services	1		60,150.00	\$60,150.00	5500.5080.5314.00	13021.1000	
4			\$0.00	\$0.00			
5 Please reference previous PO 13-0290 on new PO			\$0.00	\$0.00			
6			\$0.00	\$0.00			
7			\$0.00	\$0.00			
8			\$0.00	\$0.00			
9			\$0.00	\$0.00			
10			\$0.00	\$0.00			
* Shipping/Handling		Lot		\$0.00			

Mail Yes: _____ No: _____
 Taxable Yes: _____ No: X
 Quotes Attached Yes: _____ No: _____
 Division Head Approval: 
 Extension: **8207**
 Project/Subproject #: _____
 Subtotal: **\$406,200.00**
 Tax: _____
 Total: **\$406,200.00**

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