

City of Fayetteville Staff Review Form

2014-0583

Legistar File ID

1/20/2015

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

Jim Beavers

12/29/2014

Utilities Director /
Utilities Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Resolution to approve a Professional Engineering Service Contract with Garver LLC for \$149,900.00 for engineering and construction observation to paint the exterior and interior of the Baxter Water Tank and the Mount Sequoyah Water Tank.

Budget Impact:

5400.5600.5314.00	Water/Sewer																														
Account Number	Fund																														
14010.1 and 14010.1501	Water Tank Improvements																														
Project Number	Project Title																														
<table border="0" style="width: 100%;"> <tr> <td style="width: 30%;">Budgeted Item?</td> <td style="width: 10%; text-align: center;">Yes</td> <td style="width: 30%; border-bottom: 1px solid black;">Current Budget</td> <td style="width: 10%; text-align: right;">\$</td> <td style="width: 10%; text-align: right;">850,000.00</td> </tr> <tr> <td></td> <td></td> <td style="border-bottom: 1px solid black;">Funds Obligated</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">-</td> </tr> <tr> <td></td> <td></td> <td style="border-bottom: 1px solid black;">Current Balance</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">850,000.00</td> </tr> </table>	Budgeted Item?	Yes	Current Budget	\$	850,000.00			Funds Obligated	\$	-			Current Balance	\$	850,000.00	<table border="0" style="width: 100%;"> <tr> <td style="width: 30%;">Does item have a cost?</td> <td style="width: 10%; text-align: center;">Yes</td> <td style="width: 30%; border-bottom: 1px solid black;">Item Cost</td> <td style="width: 10%; text-align: right;">\$</td> <td style="width: 10%; text-align: right;">149,900.00</td> </tr> <tr> <td>Budget Adjustment Attached?</td> <td style="text-align: center;">No</td> <td style="border-bottom: 1px solid black;">Budget Adjustment</td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td style="border-bottom: 1px solid black;">Remaining Budget</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">700,100.00</td> </tr> </table>	Does item have a cost?	Yes	Item Cost	\$	149,900.00	Budget Adjustment Attached?	No	Budget Adjustment					Remaining Budget	\$	700,100.00
Budgeted Item?	Yes	Current Budget	\$	850,000.00																											
		Funds Obligated	\$	-																											
		Current Balance	\$	850,000.00																											
Does item have a cost?	Yes	Item Cost	\$	149,900.00																											
Budget Adjustment Attached?	No	Budget Adjustment																													
		Remaining Budget	\$	700,100.00																											

V20140710

Previous Ordinance or Resolution # _____

Original Contract Number: _____

Approval Date: _____

Comments:



MEETING OF JANUARY 20, 2015

TO: Mayor Jordan and City Council Members

THRU: Water, Sewer and Solid Waste Committee
Don Marr, Chief of Staff
Tim Nyander, Interim Utility Director

FROM: Jim Beavers, P.E. Utilities Engineer

DATE: December 29, 2014

SUBJECT: Resolution to approve a Professional Engineering Service Contract with Garver LLC for \$149,900.00 for engineering and construction observation to paint the exterior and interior of the Baxter Water Tank and Mount Sequoyah Water Tank.

RECOMMENDATION:

City Administration recommends approving a Professional Engineering Service Contract with Garver LLC for \$149,900.00 for engineering and construction observation to paint the exterior and interior of the Baxter Water Tank and the Mount Sequoyah Water Tank.

BACKGROUND:

The proposed tank maintenance contract will provide for the engineering and construction observation to paint the exterior and interior of the 5 MG tank on Baxter, the beneficial demolition and sale of the 1 MG tank on Baxter, and to paint the exterior and interior of the Mount Sequoyah tank. The Baxter tanks and the Mount Sequoyah tank were inspected by Garver LLC engineers in 2014. The inspection reports recommend painting the interior and exterior of all tanks. Based upon the 2011 Water Study and the current water model it is proposed to demolish the 1 MG tank on Baxter and sell the tank or steel. The engineering contract for the two tanks are being combined into one contract to save City funding as certain designs specifications and details will apply to both tank location.

DISCUSSION:

Garver LLC, was selected for this project through the City's formal section procedure and purchasing requirements. The scope of work and the proposed fee have been reviewed and negotiated by Utilities Division. The proposed Professional Engineering Services Contract with Garver LLC is not to exceed \$149,900.00.

BUDGET/STAFF IMPACT:

Budgeted funds are available in the Baxter Water Tank Painting project. This project was originally approved in the 2014 CIP for both Baxter tanks to be painted. It is proposed to demolish the 1 MG tank on Baxter. With this change to the project, the painting of the Mount Sequoyah tank has been added to this project to save City funding.

ATTACHMENTS:

1. Staff Review Form
2. Purchase Order
3. Proposed Contract with Garver LLC
4. Location Map

City Of Fayetteville

(Not a Purchase Order)

Requisition No.:	Date: 1/20/2015
P.O Number:	Expected Delivery Date:

Vendor #: 52650	Vendor Name: Garver Engineers	Mail Yes: <input checked="" type="checkbox"/> No: <input type="checkbox"/>
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Address: 2049 E Joyce Blvd Ste 400	Fob Point:	Taxable Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/>	Quotes Attached Yes: <input type="checkbox"/> No: <input type="checkbox"/>
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City: Fayetteville	State: AR	Zip Code: 72703	Ship to code: Fay	Divison Head Approval:
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Requester: Cheryl Partain	Requester's Employee #: 2548	Extension: 8224
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Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	Professional Engineering Services-Design and Construction Observation for the Baxter and Mount Sequoyah Water Tanks	1	EA	74,950.00	74,950.00	5400.5600.5314.00	14010.1		
2	Professional Engineering Services-Design and Construction Observation for the Baxter and Mount Sequoyah Water Tanks	1	EA	74,950.00	74,950.00	5400.5600.5314.00	14010.1501		
3					\$0.00				
4					\$0.00				
5					\$0.00				
6					\$0.00				
7					\$0.00				
8					\$0.00				
9					\$0.00				
10					\$0.00				
	Shipping/Handling		Lot		\$0.00				

Special Instructions: _____	<table style="width: 100%;"> <tr> <td style="width: 60%;">Subtotal:</td> <td style="text-align: right;"><u>\$149,900.00</u></td> </tr> <tr> <td>Tax:</td> <td style="text-align: right;"><u>\$0.00</u></td> </tr> <tr> <td>Total:</td> <td style="text-align: right;"><u><u>\$149,900.00</u></u></td> </tr> </table>	Subtotal:	<u>\$149,900.00</u>	Tax:	<u>\$0.00</u>	Total:	<u><u>\$149,900.00</u></u>
Subtotal:	<u>\$149,900.00</u>						
Tax:	<u>\$0.00</u>						
Total:	<u><u>\$149,900.00</u></u>						

Approvals:

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

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

THIS AGREEMENT is made as of _____, _____, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and GARVER, LLC (hereinafter called ENGINEER).

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

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

SECTION 1 - AUTHORIZATION OF SERVICES

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

SECTION 2 - BASIC SERVICES OF ENGINEER

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

SECTION 3 - RESPONSIBILITIES OF CITY OF FAYETTEVILLE

- 3.1 CITY OF FAYETTEVILLE shall, within a reasonable time, so as not to delay the services of ENGINEER:

- 3.1.1 Provide full information as to CITY OF FAYETTEVILLE's requirements for the Project.
- 3.1.2 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.
- 3.1.3 Assist ENGINEER in obtaining access to property reasonably necessary for ENGINEER to perform his services under this Agreement.
- 3.1.4 Examine all studies, reports, sketches, cost opinions, proposals, and other documents presented by ENGINEER and render in writing decisions pertaining thereto.
- 3.1.5 Provide such professional legal, accounting, financial, and insurance counseling services as may be required for the Project.
- 3.1.6 The 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.
- 3.1.7 CITY OF FAYETTEVILLE and/or its representative will review all documents and provide written comments to ENGINEER in a timely manner.

SECTION 4 - PERIOD OF SERVICE

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

SECTION 5 - PAYMENTS TO ENGINEER

- 5.1 The maximum not-to-exceed amount authorized for this Agreement shall be based upon 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 as 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	Statutory
Employers' Liability	\$500,000 Each Accident
Commercial General Liability	
Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Automobile Liability:	
Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Professional Liability Insurance	\$1,000,000 Each Claim

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

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

6.2 Professional Responsibility

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

6.3 Cost Opinions and Projections

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

6.4 Changes

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

6.5 Termination

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

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

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

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

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

6.7 Rights and Benefits

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

6.8 Dispute Resolution

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

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

6.8.3 Notice of Dispute

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

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

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

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

6.10 Publications

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

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

6.11 Indemnification

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

6.12 Ownership of Documents

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

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

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

6.13 Notices

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

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

ENGINEER's address:
2049 E. Joyce Blvd, Suite 400
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 do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

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

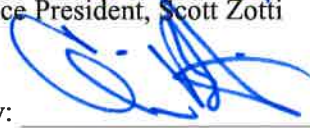
CITY OF FAYETTEVILLE, ARKANSAS

ENGINEER

By: _____
Mayor, Lioneld Jordan

By:  _____
Vice President, Scott Zotti

ATTEST:
By: _____
City Clerk

 _____
Project Manager

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES



APPENDIX A – SCOPE OF SERVICES

2.1 General

Generally, the scope of services includes, design, bidding services, and construction support services for repairs and painting the City of Fayetteville five (5) million gallon Baxter ground storage tank and two hundred and fifty (250) thousand gallon Mount Sequoyah elevated tank and demolition of the one (1) million gallon Baxter ground storage tank.

2.2 Surveys

2.2.1 Design and Property Surveys – Not Used

Garver will utilize City of Fayetteville GIS data and supplement with field measurements as required herein. Design and property surveys are considered Extra Work.

2.3 Geotechnical Services – Not Used

2.4 Coordination

Garver will furnish PDF plans to all known utility owners potentially affected by the project at each stage of development.

Garver will furnish final plans, specifications and opinion of probable construction cost to the Arkansas Department of Health (ADH) for review and approval. Garver will pay the \$500 ADH review fee.

2.4 Preliminary Design

The preliminary design phase submittal will include construction plans and details, front end and technical specifications, and an opinion of probable construction cost. The drawings will include a cover sheet with sheet index and location map, general notes sheet, existing and proposed site plans, and detail sheets. The specifications will include two bid schedules where bidders can bid both or each project site. The preliminary design phase will represent approximately 60 percent of final construction contract plans. Garver will not begin final design until the preliminary design is approved by the Owner.

The design will be based upon the previous tank inspections and reports prepared by Garver.

The work will include:

2.4.1 Baxter

1. Five (5) MG Ground Storage Tank
 - a. Design removal and replacement of interior and exterior coating with high performance multi-layer epoxy coating, including repairs and hazardous waste disposal. The tank color(s) will be selected by the City of Fayetteville.
 - b. Design interior ladder safety climb
 - c. Design handrail and landing at top of tank man-way
 - d. Design grout seal base of tank
 - e. Design for repair tank foundation



- f. Design for replacement of cathodic protection hand holes
- 2. One (1) MG Ground Storage Tank
 - a. Design for demolition of the 1 million gallon ground storage tank. A credit to the City of Fayetteville for profitable resale or beneficial demolition will be included in the bid form.
 - b. Design yard piping modifications as required to abandon 1 million gallon tank
 - c. Design for minor grading, excluding retaining walls, for constructability.

2.4.2 Mount Sequoyah

- 1. Design removal and replacement of interior and exterior coating with high performance multi-layer epoxy coating, including repairs and hazardous waste disposal. The tank color(s) will be selected by the City of Fayetteville.
- 2. Design tank logo, if approved by the City of Fayetteville
- 3. Design for repair of the railing
- 4. Design interior ladder safety climb
- 5. Design for repair of tank pier footings
- 6. Design for removal of doghouse at tank top near man-way access
- 7. Design for replacement vent hood
- 8. Design handrail and landing at top of tank man-way
- 9. Design for properly secure cables, conduits, and antenna

2.5 Final Design

During the final design phase of the project, Garver will conduct final designs to prepare construction plans and specifications, for a maximum of two construction contracts, including final construction details and quantities, special provisions, and opinion of probable construction cost. Garver will also make final field inspection with the City of Fayetteville, make any needed plan changes as a result of the final field inspection, and prepare the construction documents as required to advertise for bids.

2.6 Bidding Services

During the bidding phase of the project, Garver will:

- 1. Prepare and submit Advertisement for Bids to newspaper(s) for publication by the CITY OF FAYETTEVILLE. The CITY OF FAYETTEVILLE will pay advertising costs outside of this contract. Both sites will be bid at the same time as one set of specifications and one set of drawings, where bidders can bid either or both sites.
- 2. Dispense construction contract documents to prospective bidders using Garver's on-line plan room. Garver will furnish construction contract documents to up to six other regional plan rooms.
- 3. Respond to bidder questions in writing and support the contract documents by preparing addenda as appropriate.
- 4. Participate in a pre-bid meeting if necessary.
- 5. Attend the bid opening.
- 6. Prepare bid tabulation.
- 7. Evaluate bids and recommend award.
- 8. Prepare up to two construction contracts for execution by the CITY OF FAYETTEVILLE.



2.7 Construction Phase Services

During the construction phase of work, Garver will accomplish the following:

1. Issue a Notice to Proceed letter to the Contractor and attend preconstruction meeting.
2. Attend monthly progress/coordination meetings with the Owner/Contractor.
3. Evaluate and respond to construction material submittals and shop drawings. Corrections or comments made by Garver on the shop drawings during this review will not relieve Contractor from compliance with requirements of the drawings and specifications. The check will only be for review of general conformance with the design concept of the project and general compliance with the information given in the contract documents. The Contractor will be responsible for confirming and correlating all quantities and dimensions, selecting fabrication processes and techniques of construction, coordinating his work with that of all other trades, and performing his work in a safe and satisfactory manner. Garver's review shall not constitute approval of safety precautions or constitute approval of construction means, methods, techniques, sequences, procedures, or assembly of various components. When certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, either directly or implied for a complete and workable system, Garver shall be entitled to rely upon such submittal or implied certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.
4. Issue instructions to the Contractor on behalf of the Owner and issue necessary clarifications (respond to RFIs) regarding the construction contract documents.
5. Review monthly Contractor's progress payment requests based on the actual quantities of contract items completed and accepted, and will make a recommendation to the Owner regarding payment. Garver's recommendation for payment shall not be a representation that Garver has made exhaustive or continuous inspections to (1) check the quality or exact quantities of the Work; (2) to review billings from Subcontractors and material suppliers to substantiate the Contractor's right to payment; or (3) to ascertain how the Contractor has used money previously paid to the Contractor.
6. Maintain a set of working drawings and prepare and furnish record drawings.
7. Provide part-time resident construction observation services during the construction contract performance time. The proposed fee is based on approximately 2 hours per day, 5 days per week, during the 120-calendar-day construction contract performance time at the Baxter location and approximately 2 hours per day, 5 days per week, during the 90-calendar-day construction contract performance time at the Mount Sequoyah location. If the construction time extends beyond the time established in this agreement or if the Owner wishes to increase the time or frequency of the observation, it will be considered Extra Work, and the Owner will pay Garver an additional fee agreed to by the Owner and Garver.
8. When authorized by the Owner, prepare change orders for changes in the work from that originally provided for in the construction contract documents. If redesign or substantial engineering or surveying is required in the preparation of these change order documents, the Owner will pay Garver an additional fee to be agreed upon by the Owner and Garver.
9. Participate in final project inspection, prepare punch list, review final project closing documents, and submit final pay request.

Construction observation services will be provided by Garver's Resident Project Representative, who will provide or accomplish the following:

- Consult with and advise the Owner during the construction period.



- Maintain a file of quantities incorporated into the work, test reports, certifications, shop drawings and submittals, and other appropriate information.
- Maintain a project diary which will contain information pertinent to each site visit.

In performing construction observation services, Garver will endeavor to protect the Owner against defects and deficiencies in the work of the Contractor(s); but Garver cannot guarantee the performance of the Contractor(s), nor be responsible for the actual supervision of construction operations or for the safety measures that the Contractor(s) takes or should take. However, if at any time during construction Garver observes that the Contractor's work does not comply with the construction contract documents, Garver will notify the Contractor of such non-compliance and instruct him to correct the deficiency and/or stop work, as appropriate for the situation. Garver will also record the observance, the discussion, and the actions taken. If the Contractor continues without satisfactory corrective action, Garver will notify the Owner immediately, so that appropriate action under the Owner's contract with the Contractor can be taken.

2.8 Project Deliverables

The following will be submitted to the Owner, or others as indicated, by Garver:

1. Three copies of the Preliminary Design drawings, specifications and opinion of probable construction cost and electronic copies to each potentially affected utility.
2. Three copies of the Final Design drawings, specifications and opinion of probable construction cost and electronic copies to each potentially affected utility.
3. Electronic copies of all correspondence.
4. One copy of the issued for bid documents.
5. Three copies of the contract documents for execution for two contracts if required.
6. Three copies of the contract documents for the contractor for two contracts if required and two copies for the City of Fayetteville.
7. One electronic copy of approved shop drawings/submittals from the Contractor.
8. One copy of Record Drawings and CD with PDF and AutoCAD format record drawings.
9. Electronic files as requested.

2.9 Extra Work

The following items are not included under this agreement but will be considered as extra work:

1. Redesign for the Owner's convenience or due to changed conditions after previous alternate direction and/or approval.
2. Foundation or pier design beyond repairs specified above.
3. Submittals or deliverables in addition to those listed herein.
4. Geotechnical services.
5. Design of any utilities relocation.
6. Retaining walls or other significant structural design beyond that required for tanks.
7. Preparation of a Storm Water Pollution Prevention Plan (SWPPP).
8. Construction materials testing.
9. Environmental Handling and Documentation, including wetlands identification or mitigation plans or other work related to environmentally or historically (culturally) significant items.
10. Services after construction, such as warranty follow-up, operations support, etc.
11. Preparation of a Stormwater Pollution Prevention Plan.
12. Hydraulic water modeling.
13. Tank mixing evaluation and design.



14. Start-up or operational assistance.

Extra Work will be as directed by the Owner in writing for an additional fee as agreed upon by the Owner and Garver.

2.10 Schedule

Garver shall begin work under this Agreement within ten (10) days of a Notice to Proceed and shall complete the work in accordance with the schedule below:

Phase Description	Calendar Days
Preliminary Design	60 days from notice to proceed
Final Design	30 days from CITY OF FAYETTEVILLE comments and authorization to proceed

3.0 Payment

For the work described herein the CITY OF FAYETTEVILLE will pay GARVER on an hourly rate basis. The CITY OF FAYETTEVILLE represents that funding sources are in place with the available funds necessary to pay GARVER.

If any payment due GARVER under this agreement is not received within 60 days from date of invoice, GARVER may elect to suspend services under this agreement without penalty or liquidated damages assessed from the CITY OF FAYETTEVILLE.

The table below presents a summary of the fee amounts and fee types for this contract.

WORK DESCRIPTION	FEE AMOUNT	FEE TYPE
Preliminary Design	\$33,700	Hourly Rate + Expenses
Final Design (Including \$500 ADH Review)	\$23,400	
Bidding Services	\$14,500	
Construction Services	\$78,300	
TOTAL FEE	\$149,900	

The CITY OF FAYETTEVILLE will pay GARVER, for time spent on the project, at the rates shown in Appendix B for each classification of GARVER's personnel (may include contract staff classified at GARVER's discretion) plus reimbursable expenses including but not limited to printing, courier service, reproduction, and travel. The total amount paid to GARVER under this agreement is estimated to be \$149,900. The actual total fee may not exceed this estimate without authorization from the CITY OF FAYETTEVILLE. The rates shown in Appendix B will be increased 4% annually with the first increase effective on or about June 1, 2015. In conjunction with the annual rate increase, any unused portion of the total fee will be increased 4% annually on or about June 1, 2015. Underruns in any phase may be used to offset overruns in another phase as long as the overall contract amount is not exceeded.

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

1. Direct cost for travel, long distance and wireless communications, outside reproduction and



- presentation material preparation, and mail/courier expenses.
2. Direct cost for subcontract/subconsultant fees.
 3. Charges similar to commercial rates for reports, plan sheets, presentation materials, etc.
 4. The amount allowed by the federal government for mileage with an additional \$0.05 for survey trucks/vans.
 5. \$20 per hour for GPS survey equipment use for Environmental Services only, excludes design and property surveys.
 6. Direct cost for ARKUPS and ADH review fee.

The CITY OF FAYETTEVILLE will pay GARVER on a monthly basis, based upon statements submitted by GARVER to the CITY OF FAYETTEVILLE for the scope of services described in this agreement. Payments not received within 60 days of invoice date will be subject to a one percent monthly simple interest charge.

As directed by the CITY OF FAYETTEVILLE, some billable work may have been performed by GARVER prior to execution of this agreement. Payment for this work will be made in accordance with the fee arrangement established herein, as approved by the CITY OF FAYETTEVILLE.

Additional Services (Extra Work). For work not described or included herein but requested by the CITY OF FAYETTEVILLE in writing, the CITY OF FAYETTEVILLE will pay GARVER, for time spent on the project, at the rates shown in Appendix B for each classification of GARVER's personnel (may include contract staff classified at GARVER's discretion) plus reimbursable expenses including but not limited to printing, courier service, reproduction, and travel. The rates shown in Appendix B will be increased 4% annually with the first increase effective on or about June 1, 2015.



APPENDIX B

**Baxter and Mount Sequoyah Tank Rehabilitation Improvements
Garver Hourly Rate Schedule**

Classification	Rates
Engineers / Architects	
E-1.....	\$ 94.00
E-2.....	\$ 115.00
E-3.....	\$ 132.00
E-4.....	\$ 153.00
E-5.....	\$ 187.00
E-6.....	\$ 234.00
M-1.....	\$ 309.00
Planners / Environmental Specialist	
P-1.....	\$ 113.00
P-2.....	\$ 141.00
Designers	
D-1.....	\$ 87.00
D-2.....	\$ 102.00
D-3.....	\$ 122.00
D-4.....	\$ 141.00
Technicians	
T-1.....	\$ 68.00
T-2.....	\$ 87.00
T-3.....	\$ 105.00
Surveyors	
S-1.....	\$ 42.00
S-2.....	\$ 55.00
S-3.....	\$ 75.00
S-4.....	\$ 107.00
S-5.....	\$ 141.00
S-6.....	\$ 161.00
2-Man Crew (Survey).....	\$ 172.00
3-Man Crew (Survey).....	\$ 214.00
2-Man Crew (GPS Survey).....	\$ 192.00
3-Man Crew (GPS Survey).....	\$ 234.00
Construction Observation	
C-1.....	\$ 83.00
C-2.....	\$ 106.00
C-3.....	\$ 130.00
C-4.....	\$ 159.00
Management/Administration	
M-1.....	\$ 309.00
X-1.....	\$ 54.00
X-2.....	\$ 73.00
X-3.....	\$ 102.00
X-4.....	\$ 139.00

