

City of Fayetteville Staff Review Form

2015-0054

Legistar File ID

2/17/2015

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

Jim Beavers

1/29/2015

Utilities Director /
Utilities Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approve Professional Engineering Service Contract with Garver Engineers LLC for \$102,742.50 for engineering services to perform the final design of the water/sewer relocations associated with AHTD project BB0414 - 1-49/Hwy112 and approval of budget adjustment.

Budget Impact:

5400.5700.5314.00	Water/Sewer			
Account Number	Fund			
11011.1501	Water/Sewer Relocations -Bond Projects			
Project Number	Project Title			
Budgeted Item?	No	Current Budget	\$	1,300,000.00
		Funds Obligated	\$	19,500.00
		Current Balance	\$	1,280,500.00
Does item have a cost?	Yes	Item Cost	\$	102,742.50
Budget Adjustment Attached?	Yes	Budget Adjustment	\$	102,743.00
		Remaining Budget	\$	1,280,500.50

V20140710

Previous Ordinance or Resolution # _____

Original Contract Number: _____

Approval Date: _____

Comments:



TO: Mayor Jordan and City Council

THRU: Don Marr, Chief of Staff
Tim Nyander, Utilities Director
Legistar Review

FROM: Jim Beavers, P.E. Utilities Engineer

DATE: January 27, 2015

SUBJECT: Approval of an Engineering contract with Garver LLC to perform the final design and construction phase engineering services for the water/sewer relocations associated with AHTD project BB0414 – 1-49/Hwy 112 and approval of a budget adjustment.

RECOMMENDATION:

Approval of the attached Engineering Services Contract with Garver LLC in the amount of \$102,742.50 for engineering services to perform the final design of the water/sewer relocations associated with AHTD project BB0414 – I-49/Hwy 112.

BACKGROUND:

AHTD has requested final plans, specifications and cost estimates for utility relocations no later than April 1, 2015 for the new intersection of I-49/Hwy112. Construction is planned for fall 2015.

DISCUSSION:

Based upon a formal Engineering Selection Committee meeting, Garver LLC was selected to perform the design of the engineering services associated with AHTD project BB0414 (I-49/Hwy 112). A portion of these costs will be reimbursable from AHTD to the City. This amount will be determined by AHTD after we submit the final plans to AHTD for their review. A current, non-binding, estimate of reimbursable percentage is 80 percent.

BUDGET/STAFF IMPACT:

Budgeted funds will be moved from the Sanitary Sewer Rehabilitation Project to fund the cost of this request. In the Water/Sewer Relocation Project \$1,300,000.00 is budgeted for 2015. This \$1,300,000.00 is already obligated and will be spent in 2015 on 2 CIP projects – Zion Rd/Vantage Dr. to Hwy 265 and Stadium Dr. to Razorback Rd.

Attachments:

1. Staff Review Form
2. Staff Review Memo
3. Purchase Order Request
4. Budget Adjustment
5. Proposed Contract
6. Copy of AHTD Preliminary Improvements

City of Fayetteville - Purchase Order Request (PO)
 (Not a Purchase Order)
All PO Requests shall be scanned to the Purchasing e-mail: Purchasing@fayetteville-ar.gov.
Purchase shall not be made until an actual PO has been issued.

Requisition No.: _____ Date: **1/26/2015**
 P.O Number: _____

Vendor #: **52650** Vendor Name: **Garver Engineers**

Mail Yes No **Legistar#:**
2015-0054

Address: **2049 E Joyce Blvd Ste 400** FOB Point: _____

Taxable Yes No
 Expected Delivery Date: _____

City: **Fayetteville** State: **AR** Zip Code: **72703** Ship to code: **Fay**

Quotes Attached Yes No

Requester: **Cheryl Partain** Requester's Employee #: **2548**

Extension: **8224**

Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Number	Project.Sub#	Inventory #	Fixed Asset #
1	Professional Engineering Services-Final design of the water/sewer relocations for 1-49 Interchange/Hwy 112	1	EA	102,742.50	\$102,742.50	5400.5700.5314.00	11011.1501		
2					\$0.00				
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: _____

Subtotal: **\$102,742.50**
 Tax: **\$0.00**
 Total: **\$102,742.50**

Approvals:
 Mayor: _____ Department Director: _____ Purchasing Manager: _____
 Chief Financial Officer: _____ Budget Director: _____ IT Director: _____
 Dispatch Manager: _____ Utilities Manager: _____ Other: _____

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

THIS AGREEMENT is made as of _____, 2015, 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 - REVISED

2.1 General

Generally, the scope of services includes surveying, design, and preparation of property acquisition documents for improvements to relocate City of Fayetteville owned water and wastewater facilities to accommodate roadway improvements by others, Porter Road – Highway 112/71B Widening and Interchange Improvements (AHTD Job BB0414) in Fayetteville, Arkansas. The water and sanitary sewer relocations will be along Highway 112 from Drake Street to Truckers Drive and along the southern portion of the AHTD Improvements from McConnell Avenue to the Fulbright Expressway. Specifically, the gravity sewer relocations, up to 15 inch, include approximately 5,000 linear feet, and the water line relocations, up to 12 inch, include approximately 3,000 linear feet.

2.2 Surveys

2.2.1 Design Surveys

Garver will provide supplemental survey data for designing the project, and this survey will be tied to AHTD control. Garver will utilize previous survey data by others for AHTD Job BB0414, and assume the previous data is correct. Previous survey control points will be used for the supplemental survey and construction by others. Garver will not set any new survey control. In addition to topographic survey outside the limits previously surveyed, the supplemental survey will include sanitary sewer manhole rim and inverts, water facilities, and other utilities marked by utility owners. Work beyond 10 days for Design Surveys for a two man survey crew, at 10 hours per day, is Extra Work. The City of Fayetteville will reimburse Garver for ARKUPS (utility marking). Utility marking beyond \$2,500 is Extra Work.

2.2.2 Property Surveys

Garver will provide supplemental survey data for property surveys for preparing property acquisition documents. Work beyond 20 hours for Property Surveys for a two man survey crew is Extra Work. Garver will utilize previous record research, property deeds obtained by others for AHTD Job BB0414. Garver will subcontract with an abstractor to obtain existing easements, and Garver will show existing easements on construction drawings and property acquisition documents. The City of Fayetteville will reimburse Garver for record research. Record research beyond \$3,500 is Extra Work.

2.3 Coordination

Garver will furnish electronic plans and coordinate with all known utility owners potentially affected by the project. Garver will include the surveyed locations of the observable and marked utilities in the construction plans. Any special requirements by utility owners will be noted on the construction drawings. In addition to utilities, Garver will furnish final plans and coordinate approval with AHTD.

Garver will also attend up to a maximum of three coordination meetings with the City of Fayetteville and other agencies as required. Garver will prepare exhibits for these meetings when appropriate.



2.4 Environmental Services

GARVER will perform wetland delineation for the entire project outside the proposed AHTD right-of-way. GARVER will prepare a wetland report and submit to the US Army Corps of Engineers (USACE) requesting a jurisdictional determination if required. If USACE requires mitigation, a mitigation plan and approval is considered Extra Work outside this agreement. GARVER will also request authorization to proceed under a Nationwide 404 permit. If an individual 404 permit is required, it shall be considered Extra Work outside this agreement. For stream crossings, Garver will notify the Arkansas Department of Environmental Quality (ADEQ) during construction, and the CITY OF FAYETTEVILLE will pay all permitting fees for the Short Term Activity Authorization(s) (STAA) outside this agreement. GARVER will note stream crossings on construction drawings. GARVER will prepare and submit initial clearance letters from the US Fish and Wildlife Service (USFWS) and the State Historic Preservation Officer (SHPO). If USFWS or SHPO requires a cultural resource survey, an endangered species survey, or any other items, this shall be considered Extra Work outside this agreement. GARVER will prepare a Stormwater Pollution Prevention Plan (SWPPP). Surface disturbance will be limited to less than 5 acres. As such, submittal of the SWPPP and fee to ADEQ is considered Extra Work.

2.5 Detailed Design

During the detailed design phase of the project, Garver will conduct final designs to prepare construction plans and specifications, for one construction contract, including final construction details and quantities, special provisions, and opinion of probable construction cost with AHTD cost sharing. Garver will conduct a workshop with the City of Fayetteville to review the Detailed Design and make any needed changes based upon written comments provided by the City of Fayetteville. Garver will also make final field inspection with City of Fayetteville, make any needed plan changes as a result of the final field inspection and/or special easement acquisition considerations, and prepare the construction documents as required to advertise for bids.

2.6 Property Acquisition Documents

Garver will provide mapping as required for preparing easement acquisition documents for the City of Fayetteville's use in acquiring the property. Documentation will include an individual tract map with description of temporary and permanent acquisition for each property. The fee for providing property acquisition documentation is based on permanent right of way and temporary construction easements for no more than 20 properties.

2.7 Bidding Services

Bidding Services are excluded and may be added by amendment as approved by the City of Fayetteville and Garver.

2.8 Construction Phase Services

Construction Phase Services are excluded and may be added by amendment as approved by the City of Fayetteville and Garver. In the event GARVER's Scope of Services under this agreement is not amended to include construction phase services, the City of Fayetteville assumes all responsibility for interpretation of the Construction Contract Documents and for construction observation and supervision and waives any claims against GARVER that may be in any way connected thereto.

In addition, the City of Fayetteville agrees, to the fullest extent permitted by law, to indemnify and hold GARVER harmless from any loss, claim or cost, including reasonable attorneys' fees and costs of



defense, arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Construction Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of GARVER.

2.14 Project Deliverables

The following will be submitted to the City of Fayetteville, or others as indicated, by Garver:

1. Three full size copies of the Detailed Design plans, specifications, and opinion of probable construction cost with cost sharing to the City of Fayetteville.
2. Electronic copies of all correspondence to the City of Fayetteville.
3. Electronic files as requested by the City of Fayetteville and AHTD.

2.15 Extra Work

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

1. Redesign for the City of Fayetteville's convenience or due to changed conditions after previous alternate direction and/or approval.
2. Improvements to water and sewer facilities at locations beyond what is required to accommodate AHTD improvements.
3. Submittals or deliverables in addition to those listed herein.
4. Geotechnical services.
5. Design of any utilities relocation other than water and sewer.
6. Retaining walls or other significant structural design beyond that required for water and sanitary sewer relocations.
7. Construction materials testing.
8. Environmental Handling, including NEPA documentation and other environmental clearances beyond initial coordination letters from SHPO, USACE, and USFWS.
9. Wetland mitigation plans, cultural resource surveys, threatened, endangered, and candidate species surveys, and any other work related to environmentally or historically (culturally) significant items.
10. Preparation of AHTD Utility Permits.
11. Coordination with FEMA and preparation/submittal of a CLOMR and/or LOMR.
12. Arkansas Department of Health coordination, approval, and review fee.
13. Bidding and Construction Services.
14. Services after construction, such as warranty follow-up, operations support, etc.

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

2.16 Schedule

Garver shall begin work under this Agreement upon receipt of a Notice to Proceed and shall complete the work in accordance with the schedule below:

<u>Phase Description</u>	<u>Calendar Days</u>
Detailed Design	45 days from Notice to Proceed

3.0 Payment



For the work described herein the CITY OF FAYETTEVILLE, except for property record research and ARKUPS, 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
ARKUPS (Utility Marking)	\$2,500	Direct Cost + 10%
Record Research (Abstractor)	\$3,500	Direct Cost + 10%
Design and Property Surveys	\$29,860.50	Hourly Rate + Expenses
Environmental Services	\$9,093.75	
Detailed Design	\$44,588.25	
Property Acquisition Documents	\$13,200	
Bidding Services	\$0 (may be added by amendment)	
Construction Services	\$0 (may be added by amendment)	
TOTAL FEE	\$102,742.50	

Except for ARKUPS and Record Research, 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. For ARKUPS and Record Research, the City of Fayetteville will reimburse Garver the actual amount invoiced to Garver plus a ten (10) percent administrative fee. The total amount paid to GARVER under this agreement is estimated to be \$102,742.50. 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. For any delays beyond Garver's control, any unused portion of the fee will be increased 4% annually with the first increase on June 1, 2016. Underruns in any phase may be used to offset overruns in another phase as long as the overall contract amount is not exceeded. For informational purposes, a breakdown of GARVER's estimated costs are included in Appendix B.

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 AHTD (\$0.42 per mile) for mileage.
5. \$20 per hour for GPS survey equipment use for Environmental Services only, excludes design and property surveys.

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.

4.0 Appendices

The following Appendices are attached to and made a part of this Agreement:

Appendix B – Hourly Rate Schedule and Estimated Costs

APPENDIX B

CITY OF FAYETTEVILLE Porter Rd-HWY 112/71B Widening and Interchange - AHTD Job BB0414

ESTIMATED FEE SUMMARY

Title I Services	Estimated Fees
<i>ARKUPS (Utility Marking)</i>	\$2,500.00
<i>Record Research</i>	\$3,500.00
Design and Property Surveys	\$29,860.50
Environmental Services	\$9,093.75
Detailed Design	\$44,588.25
Property Acquisition Documents	\$13,200.00
Total for Title I Services	\$102,742.50

APPENDIX B

CITY OF FAYETTEVILLE

Porter Rd-HWY 112/71B Widening and Interchange - AHTD Job BB0414

DESIGN AND PROPERTY SURVEYS

WORK TASK DESCRIPTION	E-3	S-5	S-4	2-Man Crew (GPS Survey)	X-2	T-2
	\$132.00	\$141.00	\$107.00	\$192.00	\$73.00	\$87.00
	hr	hr	hr	hr	hr	hr
1. Surveys - Topographic						
Coordination for Surveys	4	8				
Topographic Surveys				100		
Data Processing and Drawing and Surface Updates			16			
Subtotal - Surveying	4	8	16	100	0	0
2. Surveys - Property						
Coordination for Surveys	1	4				
Property Surveys				20		
Data Processing			8			
Adding Existing Easements and Drawing Updates			16			
Subtotal - Surveying	1	4	24	20	0	0
Hours	5	12	40	120	0	0
Salary Costs	\$660.00	\$1,692.00	\$4,280.00	\$23,040.00	\$0.00	\$0.00

SUBTOTAL - SALARIES: \$29,672.00

DIRECT NON-LABOR EXPENSES

Document Printing/Reproduction/Assembly	\$20.00
Postage/Freight/Courier	\$0.00
Office Supplies/Equipment	\$0.00
Communications	\$0.00
Survey Supplies	\$50.00
Aerial Photography	\$0.00
GPS Equipment	\$0.00
Computer Modeling/Software Use	\$0.00
Traffic Counting Equipment	\$0.00
Locator/Tracer/Thermal Imager Equipment	\$0.00
Travel Costs (@ \$0.42/mile)	\$118.50

SUBTOTAL - DIRECT NON-LABOR EXPENSES: \$188.50

SUBTOTAL: \$29,860.50

SUBCONSULTANTS FEE: \$0.00

TOTAL FEE: \$29,860.50

APPENDIX B

CITY OF FAYETTEVILLE

Porter Rd-HWY 112/71B Widening and Interchange - AHTD Job BB0414

ENVIRONMENTAL SERVICES

WORK TASK DESCRIPTION	E-5	E-4	E-3	P-1	T-2	X-2	X-1
	\$187.00	\$153.00	\$132.00	\$113.00	\$87.00	\$73.00	\$54.00
	hr	hr	hr	hr	hr	hr	hr
1. Civil Engineering							
Wetlands Delineation				6			
SHPO and USFW Clearance Letters				4			
USACE Nationwide and Wetland Report				12			
SWPPP				8			
Erosion Control Plans and Details				16	24		
Coordination with City			4				
QA/QC			8				
Subtotal - Civil Engineering	0	0	12	46	24	0	0
2. Structural Engineering							
Subtotal - Structural Engineering	0	0	0	0	0	0	0
3. Mechanical Engineering							
Subtotal - Mechanical Engineering	0	0	0	0	0	0	0
4. Electrical Engineering							
Subtotal - Electrical Engineering	0	0	0	0	0	0	0
Hours	0	0	12	46	24	0	0
Salary Costs	\$0.00	\$0.00	\$1,584.00	\$5,198.00	\$2,088.00	\$0.00	\$0.00

SUBTOTAL - SALARIES: \$8,870.00

DIRECT NON-LABOR EXPENSES

Document Printing/Reproduction/Assembly	\$60.00
Postage/Freight/Courier	\$25.00
Office Supplies/Equipment	\$0.00
Communications	\$0.00
Survey Supplies	\$0.00
Aerial Photography	\$0.00
GPS Equipment	\$120.00
Computer Modeling/Software Use	\$0.00
Traffic Counting Equipment	\$0.00
Locator/Tracer/Thermal Imager Equipment	\$0.00
Travel Costs (@ \$0.42/mile)	\$18.75

SUBTOTAL - DIRECT NON-LABOR EXPENSES: \$223.75

SUBTOTAL: \$9,093.75

SUBCONSULTANTS FEE: \$0.00

TOTAL FEE: \$9,093.75

APPENDIX B

CITY OF FAYETTEVILLE

Porter Rd-HWY 112/71B Widening and Interchange - AHTD Job BB0414

DETAILED DESIGN

WORK TASK DESCRIPTION	E-3	E-2	E-1	T-2	C-3	T-1	S-4
	\$132.00	\$108.00	\$94.00	\$87.00	\$130.00	\$68.00	\$107.00
	hr	hr	hr	hr	hr	hr	hr
1. Civil Engineering							
Quality Control	4				8		
Owner/AHTD/Utility Coordination	24	16		8			
Drawings							
Cover	1						
General Notes and Survey Control	2		4				
Design and Water and Sewer Plan and Profiles (16 sheets)	32		80	100			
Construction Details	4		8	8			
Construction Quantities and Cost Sharing	2		8				
Specifications	12					8	
Project Management	40						
Owner Workshop	4						
Field Inspection	8						
Easement Considerations	2			8			
Owner and AHTD Comments	4		4	16			
Arkansas Department of Health	2			4			
Subtotal - Civil Engineering	141	16	104	144	8	8	0
2. Structural Engineering							
Subtotal - Structural Engineering	0	0	0	0	0	0	0
3. Mechanical Engineering							
Subtotal - Mechanical Engineering	0	0	0	0	0	0	0
4. Electrical Engineering							
Subtotal - Electrical Engineering	0	0	0	0	0	0	0
Hours	141	16	104	144	8	8	0
Salary Costs	\$18,612.00	\$1,728.00	\$9,776.00	\$12,528.00	\$1,040.00	\$544.00	\$0.00

SUBTOTAL - SALARIES: \$44,228.00

DIRECT NON-LABOR EXPENSES

Document Printing/Reproduction/Assembly	\$300.00
Postage/Freight/Courier	\$25.00
Office Supplies/Equipment	\$0.00
Communications	\$0.00
Survey Supplies	\$0.00
Aerial Photography	\$0.00
GPS Equipment	\$0.00
Traffic Counting Equipment	\$0.00
Locator/Tracer/Thermal Imager Equipment	\$0.00
Travel Costs (@ \$0.42/mile)	\$35.25

SUBTOTAL - DIRECT NON-LABOR EXPENSES: \$360.25

SUBTOTAL: \$44,588.25

SUBCONSULTANTS FEE: \$0.00

TOTAL FEE: \$44,588.25

APPENDIX B

CITY OF FAYETTEVILLE

Porter Rd-HWY 112/71B Widening and Interchange - AHTD Job BB0414

PROPERTY ACQUISITION DOCUMENTS

WORK TASK DESCRIPTION	E-3	S-5	S-4	T-2	X-2
	\$132.00	\$141.00	\$107.00	\$87.00	\$73.00
	hr	hr	hr	hr	hr
1. Acquisition Documents					
Easement Acquisition Documents		30	80		
Coordination with Owner	2				
Subtotal - Civil Engineering	2	30	80	0	0

Hours	2	30	80	0	0
Salary Costs	\$264.00	\$4,230.00	\$8,560.00	\$0.00	\$0.00

SUBTOTAL - SALARIES: \$13,054.00

DIRECT NON-LABOR EXPENSES

Document Printing/Reproduction/Assembly	\$146.00
Postage/Freight/Courier	\$0.00
Office Supplies/Equipment	\$0.00
Communications	\$0.00
Survey Supplies	\$0.00
Aerial Photography	\$0.00
GPS Equipment	\$0.00
Computer Modeling/Software Use	\$0.00
Traffic Counting Equipment	\$0.00
Locator/Tracer/Thermal Imager Equipment	\$0.00
Travel Costs (@ \$0.42/mile)	\$0.00

SUBTOTAL - DIRECT NON-LABOR EXPENSES: \$146.00

SUBTOTAL: \$13,200.00

SUBCONSULTANTS FEE: \$0.00

TOTAL FEE: \$13,200.00

