

City of Fayetteville Staff Review Form

2015-0087

Legistar File ID

3/3/2015

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

Tim Nyander

2/13/2015

Utilities Director /
Utilities Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

The Fayetteville City Administration recommends approval of Amendment 1 to Garver LLC's Engineering Services Contract to add Construction Phase Services. The original contract amount for design was \$105,600.00. The additional amount of Amendment 1 is \$71,200.00. The revised total amount is \$176,800.00.

Budget Impact:

5400.5600.5314.00

Water/Sewer

Account Number

Fund

14015.1000

Regional Park Waterlines Project

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 1,372,568.07

Funds Obligated \$ 26,663.04

Current Balance \$ 1,345,905.03

Does item have a cost? Yes

Item Cost \$ 71,200.00

Budget Adjustment Attached? No

Budget Adjustment \$ -

Remaining Budget \$ 1,274,705.03

V20140710

Previous Ordinance or Resolution # 99-14

Original Contract Number: 2324

Approval Date:

Comments:

CITY COUNCIL AGENDA MEMO

MEETING OF MARCH 3, 2015

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: February 6, 2015

SUBJECT: Kessler Mountain/ Regional Park Waterline
Resolution approving Amendment 1 to Garver LLC's Engineering Service
Contract to add Construction Phase Services. The additional amount is
\$71,200.00.

RECOMMENDATION:

The Fayetteville City Administration recommends approval of Amendment 1 to Garver LLC's Engineering Services Contract for Kessler Mountain/ Regional Park Waterline to add Construction Phase Services. The original contract amount for design was \$105,600.00. The additional amount of Amendment 1 is \$71,200.00. The revised total amount is \$176,800.00.

BACKGROUND:

The new Kessler Mountain/Regional Park water line will connect the existing water storage tanks on Kessler Mountain to the new 18 inch waterline south at the new Regional Park. The construction bids were opened February 6, 2013 and are a separate Agenda item.

DISCUSSION:

City staff does not have the manpower to provide the construction phase services (Construction observation, submittal, payment, and quantity verifications) and thus the proposed contract with the design engineer.

BUDGET/STAFF IMPACT:

Funds are available within the Regional Park Waterline Project.

Attachments:

Staff Review Form
Contract Amendment 1
Original Contract dated May 20, 2014 (copy)

**AMENDMENT TO AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES
CITY OF FAYETTEVILLE
FAYETTEVILLE, ARKANSAS
Project No. 14048020**

CONTRACT AMENDMENT NO. 1

This Contract Amendment No. 1, dated _____, 2015 shall amend the original contract between the CITY OF FAYETTEVILLE and GARVER, LLC (GARVER), dated May 20, 2014 referred to in the following paragraphs as the original agreement.

This Contract Amendment No. 1 adds construction phase services for the water main improvements from the Kessler Mountain elevated water storage tanks to Cato Springs Road, excluding the eastern portion to be installed by the CITY OF FAYETTEVILLE, within Fayetteville, Arkansas.

The original agreement is hereby modified as follows:

APPENDIX A – SCOPE OF SERVICES

Section 2.10, Construction Phase Services of Appendix A of the original agreement is hereby amended to omit and replace all of Section 2.10 Construction Phase Services with the following:

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

1. Issue a Notice to Proceed letter to the Contractor and attend the preconstruction meeting.
2. Attend monthly progress/coordination meetings with the CITY OF FAYETTEVILLE and 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 CITY OF FAYETTEVILLE and issue necessary clarifications (respond to RFIs) regarding the construction contract documents.
5. Review the Contractor's monthly progress payment requests based on the actual quantities of contract items completed and accepted, and will make a recommendation to the CITY OF FAYETTEVILLE 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. Based upon information provided by the CITY OF FAYETTEVILLE, The record drawings will also include the portion to be installed by the CITY OF FAYETTEVILLE.
7. Provide full-time resident construction observation services for the 75-calendar-day construction contract performance time. The proposed fee is based on approximately 8 hours per day, 5 days per week, during the 75-calendar-day construction contract performance time. If the construction time extends beyond the time established in this agreement or if the CITY OF FAYETTEVILLE wishes to increase the time or frequency of the observation, the CITY OF FAYETTEVILLE will pay GARVER an additional fee agreed to by the CITY OF FAYETTEVILLE and GARVER.
8. Coordinate the Short Term Activity Authorization (STAA) permits with ADEQ. The CITY OF FAYETTEVILLE will pay the permit fees outside this agreement in accordance with the original agreement.
9. Provide up to 8 hours of survey crew time for field checking quantities, contractor's layout, etc.
10. When authorized by the CITY OF FAYETTEVILLE, 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 CITY OF FAYETTEVILLE will pay GARVER an additional fee to be agreed upon by the CITY OF FAYETTEVILLE and GARVER.
11. 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 CITY OF FAYETTEVILLE during the construction period.
- Coordinate with the firm providing construction materials quality assurance testing.
- 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 CITY OF FAYETTEVILLE 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 CITY OF FAYETTEVILLE immediately, so that appropriate action under the CITY OF FAYETTEVILLE's contract with the Contractor can be taken.

Section 2.11, Project Deliverables of Appendix A of the original agreement is hereby amended to add the following additional item at the end of the section.

10. One full-size hard copy of the record drawings and electronic files as requested

Section 2.12, Extra Work of Appendix A of the original agreement is hereby amended to completely delete item 10 and revise item 15 as follows.

10. ~~All construction services (notice to proceed, preconstruction conference, submittals, RFI's, RFP's, change orders, pay estimates, progress meetings, testing, inspection, closeout, record drawings, etc.)~~

15. ADEQ STAA permit fees (\$200 per stream crossing)

Section 3.1, Payment of Appendix A of the original agreement is hereby amended to add Construction Phase Services to the table and revise the TOTAL FEE in the table as shown below. In the paragraph following the table of the original agreement, delete "The total amount paid to GARVER under this agreement is estimated to be \$105,600.", and replace with "The total amount paid to GARVER under this agreement is estimated to be \$176,800."

WORK DESCRIPTION	FEE AMOUNT	FEE TYPE
Construction Phase Services	\$71,200	Hourly Rate + Expenses
TOTAL FEE	\$176,800	

This Agreement may be executed in two (2) or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

CITY OF FAYETTEVILLE, ARKANSAS

By: _____

Mayor, Lioneld Jordan

ATTEST:

By: _____

City Clerk

GARVER, LLC

By:  _____

Vice President, Scott Zotti

By:  _____

Project Manager

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

THIS AGREEMENT is made as of May 20, 2014, 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.

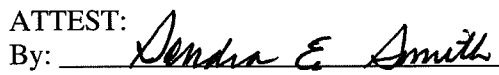
7.6 Arkansas Freedom of Information Act

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.

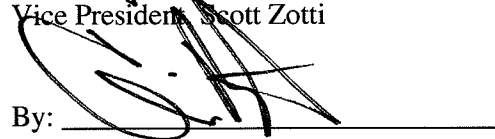
CITY OF FAYETTEVILLE, ARKANSAS

By: 
Mayor, Lioneld Jordan

ATTEST:
By: 
City Clerk

ENGINEER

By: 
Vice President, Scott Zotti

By: 
Project Manager



END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES



APPENDIX A – SCOPE OF SERVICES

2.1 General

Generally, the scope of services includes surveying, environmental, design, preparation of property acquisition documents, and bidding services for approximately 6,500 linear feet of new 24 inch ductile iron water main from the Kessler Mountain elevated water storage tanks to Cato Springs Road in Fayetteville, Arkansas.

2.2 Conceptual Design

GARVER will prepare plan and profile sheets at a 20 scale based upon GIS data and record drawings provided by the CITY OF FAYETTEVILLE and field investigation by GARVER. The conceptual design phase submittal drawings will include a cover sheet, sheet index, and plan and profiles with aerial photography. The drawings will show master plan regional park facilities, master plan roads and master plan trails already planned by the CITY OF FAYETTEVILLE. The drawings will represent approximately 30 percent of the final construction plans and exclude details and erosion control. GARVER will prepare an opinion of probable construction cost. GARVER will not begin surveys and environmental until the conceptual design is approved by the CITY OF FAYETTEVILLE in writing.

2.3 Surveys

2.3.1 Design Surveys

GARVER will provide field survey data for designing the project, and this survey will be tied to the CITY OF FAYETTEVILLE'S control network. Survey data from the Fayetteville Regional Park will be used and supplemented with new surveys, approximately 0.5 mile, from the regional park to the elevated water storage tanks.

GARVER will conduct field surveys, utilizing radial topography and GPS methods, at intervals and for distances at and/or along the project site as appropriate for modeling the existing ground, including locations of pertinent features or improvements. GARVER will locate buildings and other structures, streets, drainage features, tree lines, visible utilities as well as those underground utilities marked by the CITY OF FAYETTEVILLE and ARKUPS, and any other pertinent topographic features that may be present at and/or along the project site. GARVER will establish control points for use during construction.

2.3.2 Property Surveys

GARVER will locate existing monumentation representing right of way and/or easements based on record data which will be provided by an abstractor under a subconsultant agreement with GARVER. Property surveys from the Fayetteville Regional Park will be used and supplemented with new property surveys from the regional park to the elevated water storage tanks.

2.4 Geotechnical Services – Not Used

2.5 Environmental Services

GARVER will perform wetland delineation for the entire project outside the Fayetteville Regional Park. 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, the CITY OF FAYETTEVILLE 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 (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 Office (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.

2.6 Preliminary Design

The preliminary design phase submittal will include all drawings including plan and profiles at a 20 scale, details, erosion control, and an opinion of probable construction cost. The preliminary design phase will represent approximately 75 percent of final construction contract plans. This submittal will include technical specifications and "front end" contract documents. GARVER will not begin final design until the preliminary design is approved by the CITY OF FAYETTEVILLE in writing. GARVER will coordinate and furnish preliminary drawings to affected utilities upon approval by the CITY OF FAYETTEVILLE.

2.7 Final Design

During the final 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. 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. GARVER will coordinate and submit plans to the Arkansas Department of Health and pay the review fee.

2.8 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 easement and temporary construction easements for no more than 3 properties. Property acquisition document preparation will begin after receiving the CITY OF FAYETTEVILLE's comments from the Preliminary Design review.

2.9 Bidding Services

During the bidding phase of the project, GARVER will:

1. Prepare and submit Advertisement for Bids to the CITY OF FAYETTEVILLE. The CITY OF FAYETTEVILLE will advertise in the newspaper, and GARVER will advertise on GARVER's on-line plan room.
2. Dispense construction contract documents to prospective bidders using GARVER's on-line plan room.
3. Support the contract documents by preparing addenda as appropriate.
4. Conduct a pre-bid meeting.
5. Attend the bid opening.
6. Prepare bid tabulation.
7. Evaluate bids and recommend award.



8. Prepare construction contracts for execution by the CITY OF FAYETTEVILLE and contractor.

2.10 Construction Phase Services

Construction Phase Services are excluded and may be added by amendment as approved by the CITY OF FAYETTEVILLE and GARVER. Any work beyond preparing the construction contract documents for execution is considered Extra Work. 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.

2.11 Project Deliverables

The following will be submitted to the CITY OF FAYETTEVILLE, or others as indicated, by GARVER:

1. Three copies of the Conceptual Design and opinion of probable construction cost
2. Electronic copies of all correspondence
3. Three copies of the Preliminary Design, specifications, and opinion of probable construction cost.
4. Three copies and electronic copy of the easement acquisition documents
5. Three copies of the Final Design, specifications, and opinion of probable construction cost.
6. Electronic copies of preliminary and final plans to each potentially affected utility company.
7. One copy of the issued for bid documents
8. Three copies of the contract documents for execution by CITY OF FAYETTEVILLE and contractor
9. Electronic files as requested

2.12 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. Submittals or deliverables in addition to those listed herein.
3. Geotechnical services.
4. Design of any utilities relocation other than water.
5. Retaining walls or other significant structural design beyond that required for water main.
6. Construction materials testing.
7. Water tank coating inspection, tank mixing improvements, and any other water tank improvements beyond connection of new water main.
8. Hydraulic modeling.
9. Coordination with FEMA.
10. All construction services (notice to proceed, preconstruction conference, submittals, RFI's, RFP's, change orders, pay estimates, progress meetings, testing, inspection, closeout, record drawings, etc.)
11. Services after construction, such as warranty follow-up, operations support, etc.
12. AHTD Utility Permit.



13. Preparation of an individual 404 permit, wetlands mitigation, cultural resource survey, and work of any kind beyond request for clearance from USFWS and SHPO.
14. SWPPP permit fee and submittal to ADEQ.
15. ADEQ STAA.

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.

2.15 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:

<u>Phase Description</u>	<u>Calendar Days</u>
Conceptual Design	30 days from start date
Design and Property Surveys	21 days from approval of Conceptual Design
Preliminary Design	45 days from approval of Conceptual Design and completion of survey herein and survey for Fayetteville Regional Park
Property Acquisition Documents	14 days from approval of Preliminary Design
Final Design	30 days from approval of Preliminary Design contingent upon Fayetteville Regional Park design

3.1 Payment

For the work described herein (except for property record research and as may be modified for additional services required), 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
Conceptual Design	\$18,800	Hourly Rate + Expenses
Surveys (Including ARKUPS and Record Research)	\$14,700	
Environmental	\$3,800	
Preliminary Design	\$31,100	
Final Design (Including ADH Fee)	\$22,500	
Property Acquisition	\$4,200	
Bidding Services	\$10,500	
TOTAL FEE	\$105,600	



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 \$105,600. 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 - Garver Hourly Rate Schedule
Water Main Improvements
Kessler Mountain to Cato Springs Road

Classification	Rates
Engineers / Architects	
E-1.....	\$ 92.00
E-2.....	\$ 106.00
E-3.....	\$ 129.00
E-4.....	\$ 155.00
E-5.....	\$ 183.00
E-6.....	\$ 228.00
M-1.....	\$ 300.00
Planners / Environmental Specialist	
P-1.....	\$ 108.00
P-2.....	\$ 137.00
Designers	
D-1.....	\$ 84.00
D-2.....	\$ 99.00
D-3.....	\$ 116.00
D-4.....	\$ 138.00
Technicians	
T-1.....	\$ 66.00
T-2.....	\$ 84.00
T-3.....	\$ 102.00
Surveyors	
S-1.....	\$ 41.00
S-2.....	\$ 54.00
S-3.....	\$ 71.00
S-4.....	\$ 100.00
S-5.....	\$ 150.00
S-6.....	\$ 163.00
2-Man Crew (Survey).....	\$ 169.00
3-Man Crew (Survey).....	\$ 210.00
2-Man Crew (GPS Survey).....	\$ 189.00
3-Man Crew (GPS Survey).....	\$ 230.00
Construction Observation	
C-1.....	\$ 80.00
C-2.....	\$ 103.00
C-3.....	\$ 126.00
C-4.....	\$ 163.00
Management/Administration	
M-1.....	\$ 300.00
X-1.....	\$ 52.00
X-2.....	\$ 71.00
X-3.....	\$ 99.00
X-4.....	\$ 135.00

Agreement for Professional Services

Water Main Improvements - Kessler Mountain to Cato Springs Road

Garver Project No. 14048020