

City of Fayetteville Staff Review Form

2017-0500

Legistar File ID

10/3/2017

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

Tim Nyander

9/11/2017

Utilities Director /
Utilities Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A RESOLUTION APPROVING AN AGREEMENT WITH MCCLELLAND CONSULTING ENGINEERS, INC. FOR ENGINEERING SERVICES RELATED TO THE ARKANSAS DEPARTMENT OF TRANSPORTATION (ARDOT) JOB 040579, HWY 16 UTILITY RELOCATIONS FROM COLLEGE AVENUE TO HUNTSVILLE ROAD, IN THE NOT-TO-EXCEED AMOUNT OF \$107,144.55, AND APPROVING A CONTINGENCY IN THE AMOUNT OF \$10,714.45 FOR A TOTAL COST OF \$117,859.00

Budget Impact:

5400.720.5600-5314.00

Water and Sewer

Account Number

Fund

11011.1

Water/Sewer Relocations - Bond Projects

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 3,499,149.00

Funds Obligated \$ 2,938,262.75

Current Balance **\$ 560,886.25**

Does item have a cost? Yes

Item Cost \$ 117,859.00

Budget Adjustment Attached? No

Budget Adjustment \$ -

Remaining Budget **\$ 443,027.25**

V20140710

Previous Ordinance or Resolution # _____

Original Contract Number: _____

Approval Date: _____

Comments:



MEETING OF OCTOBER 3, 2017

TO: Mayor and City Council

THRU: Don Marr, Chief of Staff
Water & Sewer Committee, September 12, 2017 meeting

FROM: Tim Nyander, Utilities Director

DATE: August 31, 2017

SUBJECT: Approval of the engineering contract and contract contingency with McClelland Consulting Engineers (MCE) Inc. for professional engineering services associated with the water and sanitary sewer relocations for ARDOT (formerly AHTD) Highway 16 (15th Street) from College to Huntsville, Project 040579

RECOMMENDATION:

Fayetteville City Staff recommends approval of (1) the engineering contract with McClelland Consulting Engineers (MCE) Inc. in the not to exceed amount of \$107,144.55 and (2) an engineering contract contingency of \$10,714.45. The total request for this Agenda item is \$117,859.00.

BACKGROUND

The Arkansas Department of Transportation has requested utility relocations to prepare for the widening of Highway 16 (15th Street) from College to Huntsville (Please refer to attached plan cover page).

The water and sanitary sewer relocations for Highway 16 (15th Street) from College to Huntsville, ARDOT Project 040579, are estimated to cost approximately \$1,200,000.00 to \$1,500,000.00. The relocations are estimated to be 58% reimbursable to the City of Fayetteville by ARDOT.

The estimate and the predesign reimbursement percentage are estimates only. Final reimbursement percentages will be will be approved the State (ARDOT) prior to construction.

The proposed engineering contract with MCE includes surveying, design, SWPPP and bidding. Construction administration services may be negotiated in a future contract amendment.

DISCUSSION:

The City's present workload would be prohibitive to perform the necessary preliminary engineering and meet the project schedule.

McClelland Consulting Engineers, Inc. (MCE) was selected for this task in a formal engineering selection committee meeting on July 26, 2017, City of Fayetteville RFQ 17-01, Engineer and

Architect - Selection #3. The contract scope and the not to exceed costs were negotiated by City Utilities staff.

BUDGET/STAFF IMPACT:

Funds are available within the Water/Sewer Relocations – Bond Project.

Attachments:

Agreement with MCE

Cover Page - ARDOT Plan

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

MCCLELLAND CONSULTING ENGINEERS, INC.

Hwy 16 Utility Relocation from College Avenue to Huntsville Road. AHTD Job 040579.

THIS AGREEMENT is made as of _____, 2017, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and McClelland Consulting Engineers, Inc. with offices located in the City of Fayetteville (hereinafter called ENGINEER).

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

ENGINEER shall serve as CITY OF FAYETTEVILLE's professional engineering consultant in those assignments to which this Agreement applies, and shall give consultation and advice to CITY OF FAYETTEVILLE during the performance of ENGINEER's services. All services shall be performed under the direction of a professional engineer registered in the State of Arkansas and qualified in the particular field. If Construction Phase Services are to be provided by ENGINEER under this Agreement, the construction shall be executed under the observation of a professional engineer registered in the State of Arkansas in accordance with Arkansas Code Amended §22-9-101.

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

SECTION 3 - RESPONSIBILITIES OF CITY OF FAYETTEVILLE

- 3.1 CITY OF FAYETTEVILLE shall, within a reasonable time, so as not to delay the services of ENGINEER.
 - 3.1.1 Provide full information as to CITY OF FAYETTEVILLE's requirements for the Project.
 - 3.1.2 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.

- 3.1.3 Assist ENGINEER in obtaining access to property reasonably necessary for ENGINEER to perform its services under this Agreement.
- 3.1.4 Examine all studies, reports, cost opinions, Bid Documents, Drawings, proposals, and other documents presented by ENGINEER and render in writing decisions pertaining thereto.
- 3.1.5 The Utilities Director is the CITY OF FAYETTEVILLE's project representative with respect to the services to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define CITY OF FAYETTEVILLE's policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.
- 3.1.6 CITY OF FAYETTEVILLE 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.
- 4.3 ENGINEER shall provide a schedule of its services and include such schedule with the scope in Appendix A.

SECTION 5 - PAYMENTS TO ENGINEER

- 5.1 The maximum not-to-exceed amount authorized for this Agreement is \$107,144.55.
- 5.2 The CITY OF FAYETTEVILLE shall compensate ENGINEER based upon a unit price or lump sum basis as described in Appendix A.
- 5.2.1 The maximum not-to-exceed amount authorized for this Agreement is based upon the estimated fee scope, hours, costs and expenses per phase. The estimated fee spreadsheets shall be included in Appendix A. The amount for any phase may be more or less than the estimate, however the maximum not-to-exceed amount shall not be exceed without a formal contract amendment.
- 5.3 Statements
- 5.3.1 Monthly statements for each calendar month shall be submitted to CITY OF FAYETTEVILLE consistent with ENGINEER's normal billing schedule. Once established, the billing schedule shall be maintained throughout the duration of the Project. Applications for payment shall be made in accordance with a format to be developed by ENGINEER and approved by CITY OF FAYETTEVILLE. Applications for payment shall be accompanied each month by the updated project schedule. Final payment for professional services shall be made upon CITY OF FAYETTEVILLE's approval and acceptance with the satisfactory completion of the professional engineering services.
- 5.4 Payments
- 5.4.1 All statements are payable upon receipt and generally 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.

5.5 Final Payment

5.5.1 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 ENGINEER's sureties under this Agreement or applicable performance and payment bonds, if any.

SECTION 6 - GENERAL CONSIDERATIONS

6.1 Insurance

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

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

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

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

6.2 Professional Responsibility

6.2.1 ENGINEER will exercise reasonable skill, care, and diligence in the performance of ENGINEER's services and will carry out its responsibilities in accordance with customarily accepted professional engineering practices, CITY OF FAYETTEVILLE Standards, Arkansas State Law and the Rules and regulations of the Arkansas Board of Licensure For Professional Engineers and Professional Surveyors. 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 consequent of such defect. ENGINEER agrees not to seek or accept any compensation or reimbursements from the CITY OF FAYETTEVILLE for engineering work it performs to correct any errors, omissions or other deficiencies caused by ENGINEER's failure to meet customarily accepted professional engineering practices. CITY OF FAYETTEVILLE retains all other remedies to recover for its damages caused by any negligence of ENGINEER.

6.2.2 In addition ENGINEER will be responsible to CITY OF FAYETTEVILLE for damages caused by its negligent conduct during its activities at the Project Site to the extent covered by ENGINEER'S's Commercial General Liability and Automobile Liability Insurance policies.

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 The CITY OF FAYETTEVILLE acknowledges the ENGINEER's plans and specifications, including documents on electronic media ("delivered documents"), as instruments of professional services. Nevertheless, the delivered documents prepared under this Agreement shall be delivered to and become the property of the CITY OF FAYETTEVILLE upon completion of the services and payment in full of all monies due to ENGINEER. Except for the ENGINEER's services provided for by this Agreement as related to the construction and completion of the Project, the ENGINEER accepts no liability arising from any reuse of the delivered documents by the CITY OF FAYETTEVILLE, unless ENGINEER is retained by CITY OF FAYETTEVILLE to make modifications or otherwise reuse the delivered documents. Except where the CITY OF FAYETTEVILLE reuses the delivered documents subsequent to the completion of the Project, nothing contained in this paragraph shall alter the ENGINEER's responsibilities and obligations under this Agreement.

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

conflict between the sealed original drawings/hard copies and the electronic files, the sealed drawings/hard copies will govern.

6.13 Notices

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

CITY OF FAYETTEVILLE's address:

113 West Mountain
Fayetteville, AR 72701

ENGINEER's address:

1810 North College Avenue
Fayetteville, Arkansas 72701

6.14 Successor and Assigns

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

6.15 Controlling Law

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

6.16 Entire Agreement

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

SECTION 7 - SPECIAL CONDITIONS

7.1 Additional Responsibilities of ENGINEER:

7.1.1 CITY OF FAYETTEVILLE's or any Federal or State Agency'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 nor any Federal or State Agency's review,, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

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

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

7.2 Remedies

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

7.3 Audit: Access to Records

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

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

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

7.3.3.1 Negotiated prime agreements:

- 7.3.3.2 Negotiated change orders or agreement amendments in excess of \$10,000 affecting the price of any formally advertised, competitively awarded, fixed price agreement:
- 7.3.3.3 Agreements or purchase orders under any agreement other than a formally advertised, competitively awarded, fixed price agreement. However, this right of access does not apply to a prime agreement, lower tier subagreement or purchase order awarded after effective price competition, except:
 - 7.3.3.3.1 With respect to record pertaining directly to subagreement performance, excluding any financial records of ENGINEER;
 - 7.3.3.3.2 If there is any indication that fraud, gross abuse or corrupt practices may be involved;
 - 7.3.3.3.3 If the subagreement is terminated for default or for convenience.

7.4 Covenant Against Contingent Fees

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

7.5 Gratuities

7.5.1 If CITY OF FAYETTEVILLE finds after a notice and hearing that ENGINEER or any of ENGINEER's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of CITY OF FAYETTEVILLE, in an attempt to secure an agreement or favorable treatment in

awarding, amending or making any determinations related to the performance of this Agreement, CITY OF FAYETTEVILLE may, by written notice to ENGINEER terminate this Agreement. CITY OF FAYETTEVILLE may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which CITY OF FAYETTEVILLE bases such finding shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

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

7.6 Arkansas Freedom of Information Act

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

7.6.2 Pursuant to Arkansas Code Ann. § 25-19-105(b)(20), the personal information of CITY OF FAYETTEVILLE water system customers must be treated as confidential information and shall not be made available for inspection except by ENGINEER's employees as required to fulfill the terms of this Agreement. Upon completion of ENGINEER's contractual duties and after approval of ENGINEER's documents, the ENGINEER agrees to destroy or return to CITY OF FAYETTEVILLE any copies of

records containing information about CITY OF FAYETTEVILLE water system customers.


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

McClelland Consulting Engineers, Inc.

By:  _____
Daniel Barnes, P.E.

Title: President, Fayetteville

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

APPENDIX A – SCOPE OF SERVICES

1.1 General

Generally, the scope of services includes design surveys along the Highway 16 corridor from the vicinity of the west side of College Avenue to the vicinity of the east side of Huntsville Road, as defined by ARDOT'S Job No. 040579 for widening this segment of Highway 16. ARDOT is also including improvements at the intersection of Highway 16 and Highway 71B (S School Ave) in Job No. 040579. Surveys will be limited to those areas where existing and new water and sewer facilities must be coordinated with ARDOT highway improvement plans. Preliminary and Final Design services related to water and sewer improvements within the limits outlined above shall be completed. The design work shall cover approximately 1,300 linear feet of 8-inch water main (may be replaced with a 12-inch line) on the south side of Hwy 16 from College Avenue to South Washington Avenue; approximately 4,000 linear feet of 12-inch waterline along the north side of Hwy 16 from Washington Avenue to the vicinity of South Armstrong Avenue; realignment of the 24-inch water line that crosses Hwy 16 in the vicinity of Morningside Drive; realignment of approximately 750 linear feet of 12-inch line on the east side of Hwy 16 from South Armstrong Street to the vicinity of East Fairlane Street; four sanitary sewer crossings between College Avenue and South Armstrong Avenue that will need encasement extensions; 750 linear feet of 12-inch sanitary sewer main in Hwy 16 from South Armstrong Street to the vicinity of East Fairlane Street which should not require relocation; and approximately 100 linear feet of 8-inch waterline on the east side of Highway 71B at Highway 16. Design services shall also include necessary water and sewer interconnections and replacements, water meter replacements, manhole rim adjustments and related work as necessary to accommodate the 8-inch, 12-inch and 24-inch water main design as well as the ARDOT College Ave. – Huntsville Road Job No. 040579 widening plans. Approximately 150 feet of 24-inch, 4,000 feet of 12-inch and 1,400 feet of 8-inch water main is anticipated.

1.2 Design Surveys, Preliminary Design, Final Design and Bidding Services

1.2.1 Design Surveys

MCE will complete design surveys as necessary to locate existing water and sewer facilities and to locate other existing utilities that are marked by One-Call services in areas required to accommodate the ARDOT widening plans along Hwy 16 from College Avenue to Huntsville Road. Areas where there are no water and sewer conflicts and no new water and sewer facilities are required will not be surveyed. MCE shall rely on the Fayetteville water and sewer GIS information for general utility locations and on Fayetteville's personnel marking water and sewer facilities during the one call process for design survey locations.

1.2.2 Preliminary Design

Preliminary plans shall be submitted to the City of Fayetteville for the purpose of confirming the final design scope of work, including the extent of new water and sewer mains, the location of interconnections, coordination issues with the highway plans, preliminary easement requirements, anticipated right of way conflicts, and a preliminary estimate of construction

costs. The preliminary plans shall include illustrating the proposed work on the Highway Department plans, with minimal profile information.

1.2.3 Final Design

Based on review comments from Preliminary Design the Final Design and Project Specifications shall be completed, including plans, profiles, details, ARDOT coordination issues, final estimated construction costs, easement requirements and related documents as necessary to obtain approvals by the City of Fayetteville, the Arkansas Department of Health and the Arkansas Highway and Transportation Department. Once it is evident that the Final Design deliverables shall include:

1. Two full sized sets of plans and project specifications, as well as cost estimates for the city of Fayetteville.
2. Six full sized sets of plans and cost estimates for ARDOT.
3. Two full sized sets of plans and specifications for the Health Department.
4. A summary of easement requirements for the City of Fayetteville.

1.2.4 Bidding Phase

MCE shall assist the City of Fayetteville with an Advertisement for Bids, issue plans and specifications to Plan Rooms, assist in addressing bidders' questions, issue Addenda as authorized by the City of Fayetteville, attend the bid opening and prepare Bid Tabulation with an award recommendation. In addition, MCE shall prepare a summary of the project costs and the estimated ARDOT reimbursement value based on the actual bid prices.

1.3 Property Surveys, Property Mapping, Easement Mapping and Easement Preparation Services.

1.3.1 Property Surveys

MCE shall rely on the ARDOT Highway 16 right of way plans, the ARDOT ownership map and Fayetteville easement information for the initial evaluation of easement requirements. Based on those sources of information, an initial map of easements needs will be submitted to the City of Fayetteville. Upon City of Fayetteville's concurrence, property surveys as necessary to confirm property lines needed for the easement preparation process will be completed. The property survey process shall include verification of current property ownership/current property legal descriptions based on courthouse records.

1.3.2 Property Mapping

The ARDOT property maps shall be updated/modified based on any changes determined during the property survey process and property ownership verification process.

1.3.3 Easement Mapping

The easement maps obtained from Fayetteville atlas sheets shall be updated as needed to reflect more current existing easement records, as provided by City of Fayetteville personnel, in

areas where the exact location of existing easements has an impact on the project plans as necessary to illustrate to the bidders and construction contractor the limits of their authorized work areas.

1.3.4 Easement Preparation Services

For those areas identified and subsequently approved by the City of Fayetteville, individual easement legal descriptions and tract maps will be prepared in accordance with the criteria established by the City of Fayetteville, generally in accordance with documents prepared on previous projects. It is anticipated that as many as 20 new easement documents may be required and as many as 4 of these documents may require revisions based changes by ARDOT or the City of Fayetteville.

1.4 Storm Water Pollution Prevention Plan Services

A Storm Water Pollution Prevention Plan shall be completed at the end of the design phase, to conform to the design documents and ARDOT criteria, and to further be acceptable to the City of Fayetteville.

1.5 Geotechnical Services

The scope of Geotechnical Services will be added with a future amendment to this agreement.

1.6 Construction Phase Services

The scope of Construction Phase Services will be added with a future amendment to this agreement.

1.7 Extra Work

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

1. Redesign for the City's convenience or due to changed conditions after prior approval or conflicting direction from the City or from ARDOT.
2. Submittals or deliverables in addition to those listed in paragraph 2.2.3.
3. Environmental Assessment.
4. Work related to environmentally or historically (culturally) significant items.

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 MCE.

1.8 Schedule

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

Phase Description	Calendar Days
Design Survey	30 days from start date
Draft Preliminary Design	60 days from completion of Design Surveys
Preliminary Design Review	10 days from Preliminary Design Submittal
Final Design	90 days from Preliminary Design Review
Final Design Approval	20 days from Final Design Submittal
Easement Preparation	60 days from Final Design Approval
Bidding Phase	75 days from Final Design Approval
Storm Water Pollution Prevention Plan	Concurrent with Easement Preparation

Appendix B-1 Fee Proposal

Appendix B-1
 Design Surveys, Preliminary Design,
 Final Design, SWPPP Servies and Bidding Assistance
 In Conjunction with the Highway 16 Water and Sewer Relocation
 AHTD Job No. 040579
 Fayetteville, Arkansas

Manhours

Labor Classification	Time/Hours	Labor Rate	Extended
Principal Engineer	60.00	\$65.00	\$3,900.00
Sr Project Manager V	186.00	\$60.00	\$11,160.00
Project Designer III	182.00	\$35.00	\$6,370.00
Chief Draftsman	164.00	\$24.00	\$3,936.00
Survey Tech. II	40.00	\$22.00	\$880.00
Reg. Land Surveyor IV	28.00	\$36.50	\$1,022.00
Field Survey 1-Man	78.00	\$27.00	\$2,106.00
Office Admin	18.00	\$21.50	\$387.00
Direct Labor Subtotal			\$29,761.00
Overhead 164.03%			\$48,816.97
Subtotal			\$78,577.97
Fixed Fee			\$9,429.36
FCCM 0.09%			\$26.78
Subtotal Labor Costs			\$88,034.11

EXPENSES

Estimated Reimbursable Expenses	Amount
Mileage	\$150.00
ArkUps	\$2,500.00
Printing	\$500.00
ADH Review Fee	\$500.00
Total Estimated Reimbursable Expenses	\$3,650.00

Total Costs - Design Surveys, Preliminary Design, Final Design, Bidding Phase, and SWPPP Services **\$91,684.11**

Appendix B-2 Fee Proposal

Appendix B-2
Property Surveys, Property Mapping, Easement Mapping and Easement Preparation Services
In Conjunction with the Highway 16 Water and Sewer Relocation
AHTD Job No. 040579
Fayetteville, Arkansas

Manhours

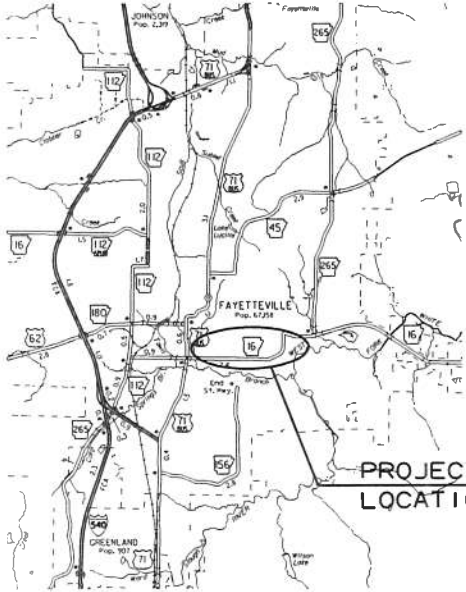
Labor Classification	Time/Hours	Labor Rate	Extended
Survey Tech. II	113.00	\$22.00	\$2,486.00
Reg. Land Surveyor IV	35.00	\$36.50	\$1,277.50
Field Survey 1-Man	16.00	\$27.00	\$432.00
	Direct Labor Subtotal		\$4,195.50
	Overhead	164.03%	\$6,881.88
	Subtotal		\$11,077.38
	Fixed Fee		\$1,329.29
	FCCM	0.09%	\$3.78
	Subtotal Labor Costs		\$12,410.44

EXPENSES

Estimated Reimbursable Expenses	Amount
Mileage	\$50.00
Printing	\$500.00
Easement Search - \$125 per parcel - 20 parcels	\$2,500.00
Total Estimated Reimbursable Expenses	\$3,050.00

Total Costs - Property Surveys, Property Mapping, Easement Mapping and Easement Preparation Services **\$15,460.44**

DATE REVISED	DATE FILED	DATE REVISED	DATE FILED	FED. RD. DIST. NO.	STATE	FED. AID PROJ. NO.	SHEET NO.	TOTAL SHEETS
				6	ARR.			
						JOB NO.	040579	
2 COLLEGE AVE.-HUNTSVILLE RD. (SEL. SECS.) (FAYETTEVILLE)								



ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT
CONSTRUCTION PLANS FOR STATE HIGHWAY

COLLEGE AVE.-HUNTSVILLE RD. (SEL. SECS.) (FAYETTEVILLE) (S)

WASHINGTON COUNTY

ROUTE 16 SECTION 3

JOB 040579

FED. AID PROJ. STP-00xx(xx)



ARK. HWY. DIST. NO. 4

PROJECT LOCATION



VICINITY MAP

• DESIGN TRAFFIC DATA •

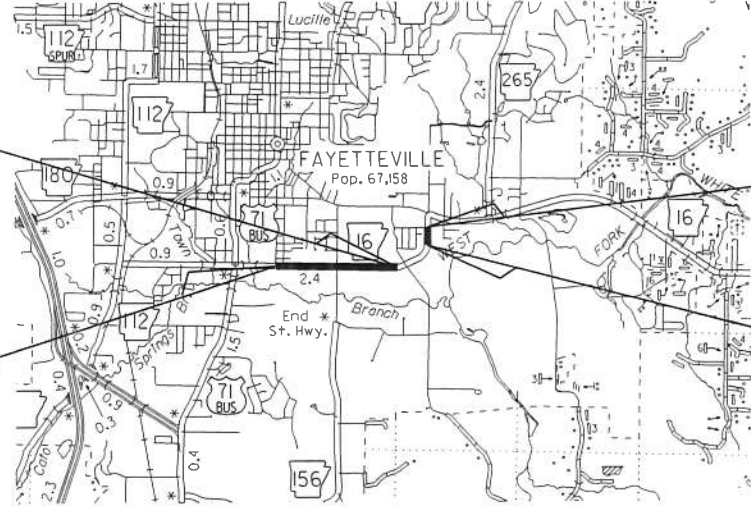
DESIGN YEAR	-----	2029
2009 ADT	-----	12,500
2029 ADT	-----	17,500
2029 DHV	-----	1925
DIRECTIONAL DISTRIBUTION	-----	60%
TRUCKS	-----	13%
DESIGN SPEED	-----	40 MPH

STA. 580+50
JOB EXCEPTION

STA. 605+52
END JOB 040579

STA. 527+94
BEGIN JOB 040579
LOG MILE 0.900

STA. 598+00
JOB EXCEPTION



R 30 W | R 29 W



APPROVED



DEPUTY DIRECTOR
AND CHIEF ENGINEER

	BEGIN PROJECT	MID-POINT OF PROJECT	END PROJECT
LATITUDE	N xx'xx' xx"	N xx'xx' xx"	N xx'xx' xx"
LONGITUDE	W xx'xx' xx"	W xx'xx' xx"	W xx'xx' xx"

GROSS LENGTH OF PROJECT	7758.00	FEET OR	1,469	MILES
NET " " ROADWAY	6008.00	" "	1,138	" "
NET " " BRIDGES	0.00	" "	0.000	" "
NET " " PROJECT	6008.00	" "	1,138	" "

P.E. 040486
NON-PART.

9-17-00 r040579.dwg/1114 sheet

