

City of Fayetteville Staff Review Form

2019-0315

Legistar File ID

6/4/2019

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

Paul Libertini

5/16/2019

ENGINEERING (621)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A Resolution to approve an agreement with Burns & McDonnell Engineering Company, Inc. in the amount of \$618,186.00 for design services associated with the Hwy 112 (Janice Ave to Drake St) project, and to approve a Budget Adjustment.

Budget Impact:

4470.800.8835-5314.00

Sales Tax Captial Improvement

Account Number

Fund

06035.3800

Hwy 112 (Poplar St - Drake St)

Project Number

Project Title

Budgeted Item? No

Current Budget \$ -

Funds Obligated \$ -

Current Balance \$ -

Does item have a cost? Yes

Item Cost \$ 618,186.00

Budget Adjustment Attached? Yes

Budget Adjustment \$ 618,186.00

Remaining Budget \$ -

V20180321

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:


Comments:



MEETING OF MAY 21, 2019

TO: Mayor and City Council

THRU: Don Marr, Chief of Staff
Garner Stoll, Development Services Director
Chris Brown, City Engineer

FROM: Paul Libertini, Staff Engineer 

DATE: May 16, 2019

SUBJECT: **Hwy 112/Garland Ave (Janice Ave to Drake St) – Design Agreement with Burns & McDonnell Engineering Company**

RECOMMENDATION:

Staff recommends City Council approval of the Design Agreement with Burns & McDonnell Engineering Company in the amount of \$618,186 for engineering services.

BACKGROUND:

On January 3, 2017, the City Council approved the City's participation in a revised Partnering Agreement with the Arkansas Department of Transportation (ARDOT) to make needed improvements to Hwy 112 (Resolution 27-17). Upon completion of the improvements to Hwy 112, the City agreed to assume ownership and responsibility of Hwy 112 from Hwy 16 (15th St) to Interstate 49. This resolution also authorized Mayor Jordan to execute all appropriate agreements and contracts necessary to expedite the construction of this project.

On September 19, 2017, the Mayor signed the attached Agreement of Understanding. The City is obligated to manage the improvements to two portions of Hwy 112:

- Hwy 112 from Leroy Pond Drive to North Street is currently under construction and anticipated to be completed this summer.
- Hwy 112 from Poplar Street to Drake Street – the City will be managing project design, right-of-way acquisition, utility relocations, bidding and construction inspection.

The City published a Letter Of Interest on August 26, 2018 requesting design firms to submit their qualifications. Seven engineering firms submitted Letters Of Interest to the Selection Committee which short-listed 5 of the firms to submit detailed proposals. The Selection Committee convened on December 6, 2018 to discuss and rate the proposals. Burns & McDonnell Engineering Company received the highest score and therefore was selected to negotiate an agreement for engineering services.

DISCUSSION:

Since this project is Federally funded, the engineering scope of work, agreement and fees must be reviewed and approved by ARDOT. After several submittals to ARDOT and subsequent

revisions, the Engineering Services Agreement has received final approval. City Engineering staff is satisfied with the final agreement and fees.

On May 5th, the Transportation Committee voted to forward this item to the City Council with a recommendation for approval.

BUDGET/STAFF IMPACT:

This project will be fully (100%) funded by the Arkansas Department of Transportation. The City will make the initial payments to the Consultant from the Transportation Bond Program fund and then request 100% reimbursement from the Department.

Attachments:

Agreement for Engineering Services

Agreement of Understanding with the Arkansas Department of Transportation

Resolution 27-17

AGREEMENT
FOR
ENGINEERING SERVICES
(LOCAL VERSION – COST PLUS FEE)

JOB NO. 040720
Poplar St. – Drake St. (Fayetteville) (S)
Washington County

PREAMBLE

THIS AGREEMENT, entered into this _____ day of _____, 2019, by and between the City of Fayetteville (“Owner”), and Burns & McDonnell Engineering Company, Inc. (“Consultant”), a corporation existing under the laws of the State of Missouri, with principal offices at 9400 Ward Parkway, Kansas City, Missouri 64114.

WITNESSETH:

WHEREAS, the Owner is planning to widen Highway 112 between Poplar and Drake Street in Fayetteville, Washington County; and,

WHEREAS, the Owner's forces are fully employed on other urgent work that prevents their early assignment to the aforementioned work; and,

WHEREAS, the Consultant's staff is adequate and well qualified, and it has been determined that its current workload will permit completion of the project on schedule.

NOW THEREFORE, it is considered to be in the best public interest for the Owner to obtain the assistance of the Consultant's organization in connection with engineering services. In consideration of the faithful performance of each party of the mutual covenants and agreements set forth hereinafter, it is mutually agreed as follows:

1. PRELIMINARY MATTERS

- 1.1. “Consultant’s Representative” shall be Steven Beam, PE, until written notice is provided to the Owner designating a new representative.
- 1.2. “Contract Ceiling Price.” The Contract Ceiling Price for this Agreement is \$618,186.00. The Contract Ceiling Price is the maximum aggregate amount of all payments that the Owner may become obligated to make under this Agreement. In no event, unless modified in writing, shall total payments by the Owner under this Agreement exceed the Contract Ceiling Price. The Consultant shall not be entitled to receive adjustment, reimbursement, or payment, nor shall the Owner, its officers, agents, employees, or representatives, incur any liability for, any fee or cost, exceeding the Contract Ceiling Price.
- 1.3. “Contract Price” is aggregate amount of allowable costs and fees to be paid by the Owner under this Agreement.
- 1.4. “Default” means the failure of the Consultant to perform any of the provisions of this Agreement. *Default includes, but is not limited to, failure to complete phases of the work according to schedule or failure to make progress in the work so as to endanger timely performance of this Agreement, failure to pay subcontractors in a timely manner, failure to comply with federal and state laws, and failure to comply with certifications made in or pursuant to this Agreement.*

- 1.5. "Department" or "ARDOT" means the Arkansas Department of Transportation.
- 1.6. "DOT" means the United States Department of Transportation.
- 1.7. "FAR" means the Federal Acquisition Regulations, codified in 48 Code of Federal Regulations (CFR).
- 1.8. "Owner" means City of Fayetteville, Arkansas.
- 1.9. "Fee" whether fixed or otherwise is a dollar amount that includes the Consultant's profit on the job.
- 1.10. "FHWA" means the Federal Highway Administration.
- 1.11. "Indirect Cost Rate." The Indirect Cost Rate is defined in the provisions of FAR, and is also subject to any limitations contained herein. The Indirect Cost Rate for the Consultant under this Agreement shall be 221.95 percent (FY2017) unless modified in writing and is based upon an updated audited indirect cost rate approved by the Department. If applicable, the Indirect Cost Rate for each subconsultant shall be listed in **Appendix B**.
- 1.12. "Title I Services" are those services provided by the Consultant before the award of the contract for construction of the Project, consisting primarily of engineering services for the planning or design of the Project.
- 1.13. "Title I Services Ceiling Price." The Title I Services Ceiling Price for this Agreement is \$618,186.00. The Title I Services Ceiling price is the maximum aggregate amount of all payments that the Owner may become obligated to make under this Agreement for fees and costs related to Title I Services. In no event, unless modified in writing, shall total payments by the Owner related to Title I Services exceed the Title I Services Ceiling Price. The Consultant shall not be entitled to receive adjustment, reimbursement, or payment for, nor shall the Owner, its officers, agents, employees, or representatives, incur any liability for, any fee or cost related to, Title I Services exceeding the Title I Services Ceiling Price.
- 1.14. "Title II Multiplier" (if applicable) is the mark-up by which the fee and indirect costs associated with Title II services are calculated. The Title II Multiplier, which accounts for the fee and indirect costs, is multiplied by the salary rate, as shown on the Schedule of Salary Ranges, of the particular individual(s) performing the Title II services. The Title II Multiplier under this Agreement is 3.606 (FY2017) unless modified in writing and is based upon an updated audited indirect cost rate approved by the Department.
- 1.15. "Title II Services" are those services provided by the Consultant after the award of the contract for the construction of the Project, consisting primarily of engineering services during the construction of the Project.
- 1.16. "Title II Services Ceiling Price". The Title II Services Ceiling Price for this Agreement is not applicable (NA). The Title II Services Ceiling price is the maximum aggregate amount of all payments that the Owner may become obligated to make under this Agreement for fees and costs related to Title II Services. In no event, unless modified in writing, shall total payments by the Owner related to Title II Services exceed the Title II Services Ceiling Price. The Consultant shall not be entitled to receive adjustment, reimbursement, or payment for, nor shall the Owner, its officers, agents, employees, or representatives, incur any liability for, any fee or cost related to, Title II Services exceeding the Title II Services Ceiling Price.

2. TYPE OF AGREEMENT

- 2.1. This Agreement is a cost-plus-fixed-fee contract. The Consultant is being hired to perform professional engineering services in connection with the Project as set forth herein. In consideration for Title I services performed, the Owner will reimburse the Consultant for allowable direct and indirect costs, as defined herein, and pay the Consultant a fixed fee. If Title II services are to be performed, the Owner will reimburse the Consultant for allowable direct costs and also pay the Consultant an amount determined by multiplying the salary rate of the individual(s) performing the Title II services, as shown on the Schedule of Salary Ranges, by the Title II Multiplier.
- 2.2. The Project to be performed under this Agreement is a federally-assisted project and federal funds will be used, in part, to pay the Consultant. Therefore, notwithstanding any provision of this Agreement, all payments, costs, and expenditures are subject to the requirements and limitations of FAR, and the Consultant shall certify the accuracy of all invoices and requests for payment, along with supporting documentation and any information provided in determining the Indirect Cost Rates.

3. COSTS, FEES, AND PAYMENT

3.1. *Allowable costs.*

3.1.1. Allowable costs are subject to the limitations, regulations, and cost principles and procedures in FAR, which are expressly incorporated into this Agreement by reference. For the purpose of reimbursing allowable costs (except as provided in subparagraph 2 below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term *costs* includes only—

3.1.1.1. Those recorded costs that, at the time of the request for reimbursement, the Consultant has paid by cash, check, or other form of actual payment for items or services purchased directly for the Agreement;

3.1.1.2. When the Consultant is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

- Materials issued from the Consultant's inventory and placed in the production process for use in its performance under this Agreement;
- Direct labor;
- Direct travel;
- Other direct in-house costs; and
- Properly allocable and allowable indirect costs, as shown in the records maintained by the Consultant for purposes of obtaining reimbursement under government contracts; and
- The amount of progress payments that have been paid to the Consultant's subcontractors under similar cost standards.

3.1.2. Consultant's contributions to any pension or other post-retirement benefit, profit-sharing or employee stock ownership plan funds that are paid quarterly or more often

may be included in indirect costs for payment purposes; *provided*, that the Consultant pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until the Consultant actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Consultant actually makes the payment.

3.1.3. Allowable costs for travel are reimbursed for actual expenses incurred and are subject to the limitations, regulations, and cost principals and procedures in FAR and the State of Arkansas Travel Regulations as adopted by the Department Accounting Manual, which are expressly incorporated into this Agreement by reference.

3.1.4. Notwithstanding the audit and adjustment of invoices or vouchers, allowable indirect costs under this Agreement shall be obtained by applying Indirect Cost Rates established in accordance with Subsection 3.3 below.

3.1.5. Any statements in specifications or other documents incorporated in this Agreement by reference designating performance of services or furnishing of materials at the Consultant's expense or at no cost to the Owner shall be disregarded for purposes of cost-reimbursement.

3.2. *Salaries.* The following schedule covers the classification of personnel and the salary ranges for all personnel anticipated to be assigned to this project by the Consultant:

3.2.1. SCHEDULE OF SALARY RANGES

Classification	Hourly rate Min	Hourly rate Max
Principal	93.00	107.00
Project Director	42.00	120.00
Project Manager	40.00	84.00
Field Representative	28.00	63.00
Project Assistant	22.00	65.00
CAD	20.00	57.00
Designer	31.00	51.00
Public Involvement	20.00	52.00
Associate Civil Engineer	54.00	80.00
Senior Civil Engineer	37.00	72.00
Staff Civil Engineer	32.00	43.00
Assistant Civil Engineer	28.00	38.00
Associate Structural Engineer	55.00	71.00
Senior Structural Engineer	40.00	62.00
Staff Structural Engineer	33.00	41.00
Assistant Structural Engineer	29.00	35.00
Associate Environmental Scientist	51.00	94.00
Senior Environmental Scientist	31.00	65.00
Staff Environmental Scientist	24.00	40.00
Assistant Environmental Scientist	17.00	33.00

3.2.2. The Owner shall reimburse the Consultant for overtime costs only when the overtime has been authorized in writing by the Owner. When authorized, overtime shall be reimbursed at the rate of time and one-half for all nonexempt employees. Notwithstanding this provision, the Consultant must comply with all federal and state wage and hour laws and regulations, regardless whether the overtime is considered reimbursable under this Agreement.

3.3. *Indirect Cost Rates.*

3.3.1. Allowable indirect costs incurred by the Consultant shall also be reimbursed by the Owner at the Indirect Cost Rate. The Indirect Cost Rate of the Consultant for this Agreement shall be the rate as set forth in Subsection 1.11. If applicable, the Indirect Cost Rate for subcontractors shall be determined in the same manner and subject to the same limitations as the Consultant, and shall be listed for each subcontractor identified in **Appendix B**. The Indirect Cost Rate, or any adjustment thereto, shall not change any monetary ceiling, contract obligation, or specific cost allowance, or disallowance provided for in this Agreement except as provided for in Subsections 3.3.4. and 3.3.5. The Indirect Cost Rate must reflect the allowable indirect costs pursuant to FAR.

3.3.2. In establishing the Indirect Cost Rate or proposing any adjustment thereto, the Consultant shall, upon request, submit to the Owner, ARDOT, FHWA, or their representatives an audited indirect cost rate and supporting cost data in accordance with the requirements set forth in the current *Arkansas Department of Transportation Indirect Cost Rate Audit Requirements*.

3.3.3. During the term of this Agreement, if an audit of a subsequent accounting period of the Consultant demonstrates that the Consultant has incurred allowable indirect costs at a different rate than the Indirect Cost Rate, the Indirect Cost Rate shall be adjusted. Any adjustment is subject to the audit and documentation requirements of the FAR and the current *Arkansas Department of Transportation Indirect Cost Rate Audit Requirements*. Except in the case of a provisional Indirect Cost Rate, as provided in the following subparagraphs, or the disallowance of cost following a subsequent audit, any adjustment to the Indirect Cost Rate shall be effective only prospectively from the date that the adjustment is accepted. As detailed in Subsection 1.11, this rate may only be modified in writing and is based upon an approved indirect cost rate by the Department. The modification will indicate the earliest labor date for the rate change to be effective.

3.3.4. In order to expedite some projects, when an audited indirect cost rate has not yet been submitted and approved, the Owner may extend a temporary waiver and accept a provisional indirect cost rate. This provisional rate must be reviewed by, and receive a positive recommendation from the Arkansas Department of Transportation. The provisional cost proposal must be accompanied by written assurance from an independent CPA that he/she has been engaged to audit the costs in accordance with the above requirements. The anticipated audit must be based on costs incurred in the most recently completed fiscal year for which the cost data is available, with the audit scheduled to begin within a reasonable time frame. If the date of the initial cost proposal is within the last quarter of the current fiscal year, the audit may be delayed until the current fiscal year is closed and the final cost data is available. The written assurance from the CPA that he or she has been engaged to perform the audit at an appropriate time is still required.

- 3.3.5. Once an audited indirect cost rate is approved, the ceiling prices provided for in the initial agreement using the provisional indirect cost rate will be adjusted with a supplemental agreement to implement the resulting increase or decrease from revising the indirect cost rate, and all amounts paid the consultant prior to receipt and acceptance of an audited indirect cost rate will be retroactively adjusted for changes in the indirect cost rate. However, no changes in hours, fixed fees, or other costs will be allowed as a result of applying the audited indirect cost rate.
- 3.4. *Fees.* The justification for the fees and costs is contained in **Appendix A**. In addition to reimbursement of the allowable costs as set forth above, the Owner shall pay to the Consultant a fixed fee of \$49,020.00 for Title I Services. For Title II Services, if applicable, the Owner shall reimburse the Consultant for allowable direct costs and also pay to the Consultant an amount determined by multiplying the salary rate of the individual(s) performing the Title II Services, as shown on the Schedule of Salary Ranges, by the Title II Multiplier. The Title II Multiplier shall account for all fees and indirect costs associated with Title II services.
- 3.5. *Invoices, Reimbursement, and Partial Payments.* Submission of invoices and payment of the fees shall be made as follows, unless modified by the written agreement of both parties:
- 3.5.1. Not more often than once per month, the Consultant shall submit to the Owner, in such form and detail as the Owner may require, an invoice or voucher supported by a statement of the claimed allowable costs for performing this Agreement, and estimates of the amount and value of the work accomplished under this Agreement. The invoices for costs and estimates for fees shall be supported by any data requested by the Owner. The Owner will submit reimbursement requests to the Department. Additional supporting documentation may be requested during the Department's reimbursement request review.
- 3.5.2. In making estimates for fee purposes, such estimates shall include only the amount and value of the work accomplished and performed by the Consultant under this Agreement which meets the standards of quality established under this Agreement. The Consultant shall submit with the estimates any supporting data required by the Owner. At a minimum, the supporting data shall include a progress report in the form and number required by the Owner. Additional supporting documentation may be requested during the Department's reimbursement request review.
- 3.5.3. Upon approval of the estimate by the Owner, payment upon properly executed vouchers shall be made to the Consultant, as soon as practicable, of 100 percent of the allowed costs, and the approved amount of the estimated fee, less all previous payments. Notwithstanding any other provision of this Agreement, only costs and fees determined to be allowable by the Owner in accordance with subpart 31.2 of the Federal Acquisition Regulations (FAR) in effect on the date of this Agreement and under the terms of this Agreement shall be reimbursed or paid.
- 3.5.4. Before final payment under the Agreement, and as a condition precedent thereto, the Consultant shall execute and deliver to the Owner a release of all claims which are known or reasonably could have been known to exist against the Owner arising under or by virtue of this Agreement, other than any claims that are specifically excepted by the Consultant from the operation of the release in amounts stated in the release.

3.6. *Title I Services, Title II Services Ceiling Price and Contract Ceiling Price.* The parties agree that aggregate payments under this Agreement, including all costs and fees, shall not exceed the Contract Ceiling Price. The parties further agree that aggregate payments for Title I and Title II services under this Agreement, including all costs and fees, shall not exceed the Title I and Title II Services Ceiling Price, respectively. No adjustment of the Indirect Cost Rate, other adjustment, claim, or dispute shall affect the limits imposed by these ceiling prices. No payment of costs or fees shall be made above these ceiling prices unless the Agreement is modified in writing.

3.7. *Final payment.*

3.7.1. The Consultant shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but no later than forty-five (45) days (or longer, as the Owner may approve in writing) after the completion date. Upon approval of the completion invoice or voucher, and upon the Consultant's compliance with all terms of this Agreement, the Owner shall promptly pay any balance of allowable costs and any retainage owed to the Consultant. After the release of said retainage Consultant agrees that it will continue to provide consultation services to the Owner as needed through supplemental agreement(s) with respect to the contracted services under this Agreement until all work is completed under both Title I and Title II.

3.7.2. The Consultant shall pay to the Owner any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Consultant or any assignee under this Agreement, to the extent that those amounts are properly allocable to costs for which the Consultant has been reimbursed by the Owner. Reasonable expenses incurred by the Consultant for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Owner. Before final payment under this Agreement, the Consultant and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—

- An assignment to the Owner, in form and substance satisfactory to the Owner, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Consultant has been reimbursed by the Owner under this Agreement; and,
- A release discharging the Owner, its officers, agents, and employees from all liabilities, obligations, and claims which were known or could reasonably have been known to exist arising out of or under this Agreement.

3.8. *Owner's Right to Withhold Payment.* The Owner may withhold payment to such extent as it deems necessary as a result of: (1) third party claims arising out of the services of the Consultant and made against the Owner; (2) evidence of fraud, over-billing, or overpayment; (3) inclusion of non-allowable costs; (4) failure to make prompt payments to subcontractors in the time provided by this Agreement; (5) payment requests received including fees for unapproved subcontractors; and/or (6) the Consultant's default or unsatisfactory performance of services. The withholding of payment under this provision shall in no way relieve the Consultant of its obligation to continue to perform its services under this Agreement.

4. **DISALLOWANCE OF COSTS**

- 4.1. Notwithstanding any other clause of this Agreement, the Owner may at any time issue to the Consultant a written notice of intent to disallow specified costs incurred or planned for incurrence under this Agreement that have been determined not to be allowable under the contract terms.
- 4.2. Failure to issue a notice under this Section shall not affect the Owner's rights to take exception to incurred costs.
- 4.3. If a subsequent audit reveals that: (1) items not properly reimbursable have, in fact, been reimbursed as direct costs; or (2) that the Indirect Cost Rate contains items not properly reimbursable under the FAR; then, in the case of indirect costs, the Indirect Cost Rate shall be amended retroactively to reflect the actual allowable indirect costs incurred, and, in the case of both direct and indirect costs, the Owner may offset, or the Consultant shall repay to Owner, any overpayment.

5. **RECORDS & AUDITS**

- 5.1. *Records* includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- 5.2. *Examination.* The Consultant shall maintain, and the Owner, ARDOT, FHWA, and their authorized representatives shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs (direct and indirect) claimed to have been incurred or anticipated to be incurred in performance of this Agreement. This right of examination shall also include examination and audit of any records considered, relied upon, or relating to the determination of the Indirect Cost Rate or any certification thereof, including any CPA audit relied upon to establish the rate. This right of examination shall also include inspection at all reasonable times of the Consultant's offices and facilities, or parts of them, engaged in performing the Agreement.
- 5.3. *Supporting Data.* If the Consultant has been required to submit data in connection with any action relating to this Agreement, including the negotiation of or pre-negotiation audit of the Indirect Cost Rate, the negotiation of the Fee, request for cost reimbursement, request for payment, request for an adjustment, or assertion of a claim, the Owner, ARDOT, FHWA, or their authorized representatives, in order to evaluate the accuracy, completeness, and accuracy of the data, shall have the right to examine and audit all of the Consultant's records, including computations and projections, related to—
 - The determination or certification of the Indirect Cost Rate, including any independent CPA audit or certification thereof;
 - Any proposal for the Agreement, subcontract, or modification;
 - Discussions conducted on the proposal(s), including those related to negotiating;
 - Fees or allowable costs under the Agreement, subcontract, or modification;
 - Performance of the Agreement, subcontract or modification; or,

- The amount and basis of any claim or dispute.
- 5.4. *Audit.* The Owner, ARDOT, FHWA, or their authorized representatives, shall have access to and the right to examine any of the Consultant's records involving transactions related to this Agreement or a subcontract hereunder.
- 5.5. *Reports.* If the Consultant is required to furnish cost, funding, or performance reports, the Owner, ARDOT, FHWA, or their authorized representatives shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Consultant's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.
- 5.6. *Availability.* The Consultant shall retain and make available at its office at all reasonable times the records, materials, and other evidence described in this Section and Section 29, Disputes and Claims, for examination, audit, or reproduction, until five years after final payment under this Agreement, or for any longer period required by statute or by other clauses of this Agreement. In addition—
- 5.6.1. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be retained and made available for five years after the termination; and,
- 5.6.2. Records relating to any claim or dispute, or to litigation or the settlement of claims arising under or relating to this Agreement shall be retained and made available until after any such claims or litigation, including appeals, are finally resolved.
- 5.7. The Consultant shall insert a clause containing all the terms of this Section in all subcontracts under this Agreement.

6. DESCRIPTION OF THE PROJECT

See Appendix A-1.

7. INFORMATION AND TITLE I SERVICES TO BE PROVIDED BY CONSULTANT

See Appendix A-1.

8. INFORMATION TO BE PROVIDED BY THE OWNER

See Appendix A-1.

9. TITLE II SERVICES TO BE PROVIDED BY CONSULTANT

See Appendix A-1.

10. COORDINATION WITH OWNER

Throughout the Project, the Consultant shall hold conferences, as needed, in Independence County, Arkansas, or such other location as designated by the Owner, with representatives of the Owner, the ARDOT, and the FHWA so that as the Project progresses, the Consultant shall have full benefit of the Owner's knowledge of existing needs and facilities and be consistent with the Owner's current policies and practices. The extent and character of the work to be done by the Consultant shall be subject to the general oversight and approval of the Owner.

11. OFFICE LOCATION FOR REVIEW OF WORK

Review of the work as it progresses and all files and documents produced under this Agreement may be made by representatives of the Owner, the ARDOT, and the FHWA at the Consultant's Arkansas office located at 6815 Isaacs Orchard Road, Suite B3, Springdale, Arkansas.

12. ACCESS TO PROPERTY

The Consultant's services to the Owner may require entry upon private property. The Owner will present or mail to private landowners a letter of introduction and explanation, describing the work, which shall be drafted by the Consultant. The Consultant will make reasonable attempts to notify resident landowners who are obvious and present when the Consultant is in the field. The Consultant is not expected to provide detailed contact with individual landowners. The Consultant is not expected to obtain entry by means other than the consent of the landowner. If the Consultant is denied entry to private property by the landowner, the Consultant will not enter the property. If denied entry to the property, the Consultant shall notify the Owner and advise the Owner of an alternate evaluation method if one is feasible. The Owner shall decide on the course of action to obtain access to the property.

13. DELIVERABLES

See Appendix A-1.

14. SUBCONTRACTING

- 14.1. Unless expressly disclosed in **Appendix B**, the Consultant may not subcontract any of the services to be provided herein without the express written approval of the Owner. All subcontractors, including those listed in **Appendix B**, shall be bound by the terms of this Agreement. All subcontractors shall be subject to all contractual and legal restrictions concerning payment and determination of allowable costs, and subject to all disclosure and audit provisions contained herein and in any applicable federal or state law.
- 14.2. Unless the consent or approval specifically provides otherwise, neither consent by the Owner to any subcontract nor approval of the Consultant's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the Consultant of any responsibility, obligation, or duty under this Agreement.

- 14.3. No subcontract placed under this Agreement shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations of the FAR.
- 14.4. Furthermore, notwithstanding any other provision within this Agreement, no reimbursement or payment for any markup of the cost of any subcontract shall be considered by the Owner without the express written agreement of the Owner.
- 14.5. *Prompt Payment.* The Consultant shall pay subcontractors for satisfactory performance of their subcontracts within 30 days of receipt of each payment by the Owner to the Consultant. Any retainage payments held by the Consultant must be returned to the subcontractor within 30 days after the subcontractor's work is completed. Failure to comply with this provision shall be considered a Default by the Consultant. If the Consultant fails to comply with this provision, in addition to any other rights or remedies provided under this Agreement, the Owner, at its sole option and discretion, may:
- make payments directly to the subcontractor and offset such payments, along with any administrative costs incurred by the Owner, against reimbursements or payments otherwise due the Consultant;
 - notify any sureties; and/or,
 - withhold any or all reimbursements or payments otherwise due to the Consultant until the Consultant ensures that the subcontractors have been and will be promptly paid for work performed.
- 14.6. The Consultant shall insert a clause containing all the terms of this Section in all subcontracts under this Agreement.

15. RESPONSIBILITY OF THE CONSULTANT

- 15.1. Neither the employees of the Consultant, or of its subcontractors, shall be deemed employees of the Owner for the purposes of this Agreement.
- 15.2. The Consultant and its subcontractors agree that it will have no interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement. Furthermore, the Consultant and its subcontractors shall not enter into any other contract during the term of this Agreement that would create or involve a conflict of interest with the services provided herein or other contracts that may be adverse to the Owner, State, City or County as it relates to this Agreement.
- 15.3. Notwithstanding any review, approval, acceptance, or payment by the Owner, the Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Consultant under this Agreement. The Consultant shall, without additional compensation above the Contract Price, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.
- 15.4. The Consultant shall demonstrate to the Owner's Representative the presence and implementation of quality assurance in the performance of the Consultant's work. The Consultant shall identify individual(s) responsible, as well as methods used to determine the completeness and accuracy of drawings, specifications, and cost estimates.

- 15.5. The Consultant further agrees that in its performance of work under this Agreement, it shall adhere to the requirements in the Design Standards of the ARDOT and FHWA, which shall be incorporated herein by reference.
- 15.6. The Owner shall have the right at any time and in its sole discretion to submit for review all or any portion of the Consultant's work to consulting engineers engaged by the Owner for that purpose. The Consultant shall fully cooperate with any such review.
- 15.7. The Consultant and any subcontractor shall employ qualified and competent personnel to perform the work under this Agreement.
- 15.8. Neither the Owner's review, approval, or acceptance of, nor payment for, the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, or of any cause of action arising out of the performance of this Agreement. The Consultant shall be and remain liable to the Owner for all damages to the Owner caused by the Consultant's negligent performance of any of the services furnished under this Agreement.
- 15.9. The rights and remedies of the Owner provided under this Agreement are in addition to any other rights and remedies provided by law.
- 15.10. If the Consultant is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

16. WARRANTY OF SERVICES

- 16.1. *Definitions.* *Acceptance*, as used in this Agreement, means the act of an authorized representative of the Owner by which the Owner approves specific services, as partial or complete performance of the Agreement. *Correction*, as used in this Agreement, means the elimination of a defect.
- 16.2. Notwithstanding inspection and acceptance by the Owner or any provision concerning the conclusiveness thereof, the Consultant warrants that all services performed and work product under this Agreement will, at the time of acceptance, conform to the requirements of this Agreement, meet the satisfaction of the Owner, and are performed in accordance to the prevailing industry standards, including standards of conduct and care, format and content.
- 16.3. If the Consultant is required to correct or re-perform, it shall be at no additional cost to the Owner above the Contract Price, and any services corrected or re-performed by the Consultant shall be subject to this Section to the same extent as work initially performed. If the Consultant fails or refuses to correct or re-perform, the Owner may, by contract or otherwise, correct or replace with similar services and charge to the Consultant the cost occasioned to the Owner thereby, or make an equitable adjustment in the Contract Price.
- 16.4. If the Owner does not require correction or re-performance, the Owner shall make an equitable adjustment in the Contract Price.
- 16.5. Nothing within this Section shall constitute a waiver or exclusion of any other right or remedy that the Owner may possess at law or under this Agreement.

17. TERM, COMMENCEMENT, AND COMPLETION

- 17.1. This Agreement shall commence on the effective date set forth above and remain in effect until the completion of the Consultant's Scope of Services, as defined herein, to be completed within a period of 24 months, unless extended or terminated by the Owner in accordance with this Agreement.
- 17.2. The Consultant shall begin work under the terms of this Agreement within ten (10) days of receiving written notice to proceed. [If services are to be performed in subsequent phases, then each phase shall be commenced upon the Owner's approval of the previous phase. The Consultant shall not be entitled to any compensation or reimbursement for services performed in a phase unless and until it has received approval from the Owner to proceed with such services.]
- 17.3. It is further agreed that time is of the essence in performance of this Agreement. The Consultant shall complete the work, or each phase, as scheduled, and the Owner shall provide any required approval of the work or phase meeting the requirements contained herein in a reasonable and timely manner. The Project shall be completed as follows:

See Appendix D.

18. TERMINATION

- 18.1. The Owner may terminate this Agreement in whole or, from time to time, in part, for the Owner's convenience or because of the Default of the Consultant.
- 18.2. The Owner shall terminate this Agreement by delivering to the Consultant written notice of the termination.
- 18.3. Upon receipt of the notice, the Consultant shall:
- Immediately discontinue all services affected (unless the notice directs otherwise).
 - Deliver to the Owner all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement, whether completed or in process.
 - Terminate all subcontracts to the extent they relate to the work terminated.
 - In the sole discretion and option of the Owner, and if and only if requested to do so, assign to the Owner all right, title, and interest of the Consultant under the subcontracts terminated, in which case the Owner shall have the right to settle any claim or dispute arising out of those subcontracts without waiver of any right or claim the Owner may possess against the Consultant.
 - With approval or ratification by the Owner, settle all outstanding liabilities arising from the termination of subcontracts, the cost of which would be allowable in whole or in part, under this Agreement.
 - Complete performance of any work not terminated.

- Take any action that may be necessary, or that the Owner may direct, for the protection and preservation of the property related to this Agreement which is in the possession of the Consultant and in which the Owner has or may acquire an interest.
- 18.4. If the termination is for the convenience of the Owner, the Owner shall make an equitable adjustment in the Contract Price, subject to the Ceiling Prices and Funding Limitations provisions, *but shall allow no anticipated fee or profit on unperformed services*. The Owner, upon its own determination, shall pay the Consultant in addition to payment for services rendered and reimbursable costs incurred, for all expenses the Owner determines to have been reasonably incurred by the Consultant in connection with the orderly termination of this Agreement including but not limited to demobilization, reassignment of personnel, associated indirect costs and all other expenses directly resulting from termination.
- 18.5. If the termination is for the Consultant's Default, the Owner may complete the work by contract or otherwise and the Consultant shall be liable for any reasonable and necessary additional cost incurred by the Owner to the extent caused by Consultant's default.
- 18.6. Disputes and claims arising from termination of this Agreement shall be governed by Section 29, Disputes and Claims.
- 18.7. The rights and remedies of the Owner provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement, and shall not constitute a waiver of any other such right or remedy.

19. STOP WORK ORDERS

- 19.1. The Owner may, at any time, by written order to the Consultant, require the Consultant to stop all, or any part, of the work called for by this Agreement for a period of up to 90 days after the order is delivered to the Consultant, and for any further period to which the parties may agree. Upon receipt of the order, the Consultant shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the Consultant, or within any extension of that period to which the parties shall have agreed, the Owner shall either—
- 19.1.1. Cancel the stop work order; or
- 19.1.2. Terminate the work pursuant to Section 18, Termination.
- 19.2. If a stop work order issued under this Section is canceled or the period of the order or any extension thereof expires, the Consultant shall resume work. The Owner shall make an equitable adjustment in the delivery schedule or Contract Price, or both, and the Agreement shall be modified in writing accordingly, if—
- The stop work order was not issued because of Consultant's Default in its performance of its obligations under any part of this Agreement; and,
 - The stop work order results in an increase in the time required for, or in the Consultant's cost properly allocable to, the performance of any part of this Agreement; and,

- The Consultant provides Notice of Potential Claim pursuant to Section 29, Disputes and Claims.

20. CHANGES

- 20.1. The Owner may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Agreement, including but not limited to: (1) drawings, designs, or specifications; (2) time of performance (i.e., hours of the day, days of the week, etc.); and (3) places of inspection, delivery, or acceptance.
- 20.2. If any such change causes an increase *or decrease* in the cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, the Owner shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fee; and (3) other affected terms.
- 20.3. All claims and disputes shall be governed by the Section 29, Disputes and Claims. As provided in Section 28, the Consultant must provide written notice of its intention to make a claim for additional compensation before beginning the work on which the claim is based. If such notice is not given, the Consultant hereby agrees to waive any claim for such additional compensation.
- 20.4. Failure to agree to any adjustment shall be a dispute under Section 29, Disputes and Claims. *However, nothing in this Section or any other provision of this Agreement shall excuse the Consultant from proceeding with the Agreement as changed.*

21. OWNERSHIP OF DOCUMENTS & DATA

Except for any pre-existing intellectual property, all project documents and data, regardless of form and including but not limited to original drawings, disks of CADD drawings, cross-sections, estimates, files, field notes, and data, shall be the property of the Owner. The Consultant shall further provide all documents and data to the Owner upon the Owner's request. The Consultant may retain reproduced copies of drawings and other documents. In the event that any patent rights or copyrights are created in any of the documents, data compilations, or any other work product, the Owner shall have an irrevocable license to use such documents, or data compilations, or work product.

22. PATENT AND COPYRIGHT INFRINGEMENT

- 22.1. The Consultant shall report to the Owner, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the Consultant has knowledge.
- 22.2. In the event of any claim or suit against the Owner on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed under this Agreement, the Consultant shall furnish to the Owner, when requested by the Owner, all evidence and information in possession of the Consultant pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Consultant.

- 22.3. The Consultant agrees to include, and require inclusion of, the provisions of this Section in all subcontracts at any tier for supplies or services.
- 22.4. The Consultant shall indemnify the Owner and its officers, agents, and employees against liability, including costs and attorneys' fees, for infringement of any United States patent or copyright arising from the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property under this Agreement, or out of the use or disposal by or for the account of the Owner of such supplies or construction work.
- 22.5. This indemnity shall not apply unless the Consultant shall have been informed within ten (10) business days following the Owner's receipt of legal notice of any suit alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Owner directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the Agreement not normally used by the Consultant, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Consultant, unless required by final decree of a court of competent jurisdiction.

23. BANKRUPTCY

In the event the Consultant enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Consultant agrees to furnish, by certified mail, written notice of the bankruptcy to the Owner. This notice shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notice shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of ARDOT job numbers and FAP numbers for all contracts with Owner against which final payment has not been made. This obligation remains in effect until final payment under this Agreement.

24. FUNDING LIMITATIONS

The Owner's obligations under this Agreement are contingent upon the availability of appropriated funds from which payments under the terms of this Agreement can be made in this and each subsequent fiscal year for the duration of the Agreement. No legal liability on the part of the Owner of any kind whatsoever under this Agreement shall arise until funds are made available to the Owner for performance of this Agreement, including those to be appropriated and provided by the State of Arkansas and those to be provided by the United States.

25. RESTRICTIONS ON EMPLOYMENT OF PRESENT AND FORMER EMPLOYEES

The Consultant agrees to a 6 month restriction on employment of present and former employees of the Owner regarding matters for which a former employee was officially responsible.

26. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the parties and their successors and assigns, and except as expressly set forth herein, neither the Owner nor the Consultant may assign, delegate, or transfer any benefit or obligation under this Agreement without the express written consent of the other party. Nothing herein shall be construed as a waiver of any immunity or as creating any personal liability on the part of any officer or agent of the Owner or any other governmental entity either made a party to, or having any interest in, this Agreement.

27. INDEMNITY AND RESPONSIBILITY FOR CLAIMS AND LIABILITY

- 27.1. *Indemnity.* The Consultant shall hold harmless and indemnify the Owner and the ARDOT, their officers, employees and agents and all other governmental agencies with an interest in the Project, from and for all claims and liabilities stemming from any negligent acts, errors or omissions in the services performed in this Agreement on the part of the Consultant and its subcontractors, and their agents and employees.
- 27.2. *No Personal Liability.* No director, officer, manager, employee, agent, assign, or representative of the Owner or the ARDOT shall be liable to the Consultant in a personal or individual capacity under any term of this Agreement, because of any breach thereof, or for any act or omission in its execution or performance.
- 27.3. *Independent Consultant Relationship.* The parties intend that the Consultant shall be an independent consultant of the Owner and that the Consultant shall be liable for any act or omission of the Consultant or its agents, employees, or subcontractors arising under or occurring during the performance of this Agreement. No act or direction of the Owner shall be deemed to be an exercise of supervision or control of the Consultant's performance.

28. INSURANCE

- 28.1. *Professional Liability Insurance Coverage.* The Consultant shall maintain at all times during the performance of services under this Agreement professional liability insurance coverage for errors, omissions, and negligent acts to the extent caused by the performance of professional services under this Agreement in an amount per claim of not less than five (5) times the original Contract Ceiling Price or \$1,000,000, whichever is less. Such insurance shall extend to the Consultant and to its legal representatives in the event of death, dissolution, or bankruptcy, and shall cover the errors, omissions, or negligent acts of the Consultant's subcontractors, agents, and employees. Such insurance shall extend to any errors, omissions, and negligent acts in the performance of services under this Agreement committed by the Consultant or alleged to have been committed by the Consultant or any person for whom the Consultant is legally responsible subject to the terms of the policy.
- 28.2. *Deductible.* The Consultant may maintain a professional liability insurance policy with a deductible clause in an amount approved by the Owner if, in the judgment and opinion of the Owner, the Consultant's financial resources are sufficient to adequately cover possible liability in the amount of the deductible. The Consultant shall submit promptly to the Owner, upon request as often as quarterly, detailed financial statements and any other information requested by the Owner to reasonably determine whether or not the Consultant's financial resources are sufficient to adequately cover possible liability in the amount of the deductible.

- 28.3. *Worker's Compensation Insurance.* The Consultant shall at all times during the Term of this Agreement maintain Worker's Compensation and Employers Liability Insurance as required under Arkansas law.
- 28.4. *Automobile and General Liability Insurance.* The Consultant shall at all times during the term of this Agreement maintain commercial general liability insurance coverage for bodily injury and property damage in the combined single limit of \$1,000,000 per occurrence and aggregate, and comprehensive automobile liability insurance coverage for bodily injury and property damage in the combined single limit of \$1,000,000, which shall cover all owned, hired, and non-owned vehicles.
- 28.5. *Valuable Papers Insurance.* The Consultant shall at all times during the term of this Agreement maintain Valuable Papers Insurance, whether as part of the General Liability Insurance referenced above or as a separate insurance, in an amount sufficient to cover all cost associated with repairing, restoring, or replacing any plans, drawings, field notes, and other documents kept or created by the Consultant as part of the services under this Agreement, in the event of casualty to or loss or theft of such papers.
- 28.6. *Insurance Policies and Certificates.* The Consultant shall provide the Owner upon request copies of its insurance policies and evidence satisfactory to the Owner concerning the effectiveness and the specific terms of the insurance. Prior to the execution of this Agreement, the Consultant shall furnish to the Owner certificates of insurance reflecting policies in force, and it shall also provide certificates evidencing all renewals of any expiring insurance policy required hereunder within thirty (30) days of the expiration thereof. The Consultant's failure to provide and continue in force and effect any insurance required under this Article shall be deemed a Default for which Owner, in its sole discretion, may terminate this Agreement immediately or on such other terms as it sees fit.
- 28.7. *Additional Insurance Requirements.* All insurance maintained by the Consultant pursuant to this Section shall be written by insurance companies licensed to do business in Arkansas, in form and substance satisfactory to the Owner, and shall provide that the insurance will not be subject to cancellation, termination, or change during its term except upon thirty (30) days prior written notice to the Owner. In the event that the insurance is cancelled, terminated, or changed during its term and thirty (30) days written notice cannot be provided to the Owner, the Consultant shall provide any insurance required under this Article for continual coverage upon expiration of the existing policy or become financially responsible for any claims associated with the expired period.
- 28.8. *Duration of Insurance Obligations.* The Consultant shall maintain its professional insurance coverage required under this Agreement in force and effect for a period not less than five years after the final acceptance of the project or the completion of the Consultant's services under this Agreement, whichever comes later. Comprehensive General Liability Insurance Coverage and Valuable Papers Insurance Coverage required under this Agreement shall be in full force and effect until the final acceptance or the completion of the Consultant's services, whichever comes later. All other insurance shall be maintained in full force and effect until final acceptance of the project or completion of the Consultant's services, whichever comes first.
- 28.9. *Consultant's Insurance Primary.* All insurance policies maintained by the Consultant pursuant to this Agreement shall provide that the consultant's insurance shall be primary and the Owner's own insurance shall be non-contributing.

- 28.10. *Additional Insured.* All liability insurance policies, except the professional liability policy, maintained by the Consultant pursuant to this Agreement shall be endorsed to include the Owner, its officers, directors, managers, employees, agents, assigns and representatives, individually and collectively, as additional insured, and all property damage insurance shall be endorsed with a waiver of subrogation by the insurer as to the Owner.

29. DISPUTES AND CLAIMS

- 29.1. *Notice of Potential Claim.* Whenever a Consultant deems that any additional compensation is due, the Consultant shall notify the Owner in writing of its intention to make a claim for additional compensation ("Notice of Potential Claim") **before beginning the work that gives rise to the claim.**
- 29.2. *Time & Manner for Submitting Claim.* All disputes and claims shall first be submitted in writing to the Owner within 45 calendar days after the completion or termination date. **The Consultant hereby agrees that the failure to submit the dispute or claim to the Owner prior to 45 calendar days after the completion or termination date shall constitute a waiver of the dispute or claim.**
- 29.3. *Form.* All disputes and claims must be submitted in writing and in sufficient detail to permit the Owner to determine the basis for entitlement and the actual allowable costs incurred. Each claim must contain:
- A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected by the claim;
 - The date the actions resulting in the claim occurred or conditions resulting in the claim became evident;
 - A copy of the "Notice of Potential Claim";
 - The name, title, and activity of each Owner's employee knowledgeable about facts that gave rise to such claim;
 - The name, title, and activity of each Consultant, Subcontractor, or employee knowledgeable about the facts that gave rise to the claim;
 - The specific provisions of the Agreement that support the claim and a statement why such provisions support the claim;
 - The identification and substance of any relevant documents, things, or oral communications related to the claim;
 - A statement whether the claim is based on provisions of the Agreement or an alleged breach of the Agreement;
 - If an extension of time is sought, the specific number of days sought and the basis for the extension;
 - The amount of additional compensation sought and a specific cost breakdown of the amount claimed; and,
 - Any other information or documents that are relevant to the claim.

- 29.4. *Decision and Appeal.* The decision of the Owner shall be final and conclusive.
- 29.5. *Continued Performance.* Pending final resolution of a dispute or claim, unless the Owner has terminated this Agreement pursuant to Section 18 or issued a stop work order pursuant to Section 19, the Consultant shall proceed diligently with the performance of this Agreement in accordance with the Owner's decisions.
- 29.6. *Nonexclusive Remedies.* The rights and remedies of the Owner provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement, and shall not constitute a waiver of any other such right or remedy. If the Owner decides the facts justify the action, the Owner may, at its sole option and discretion, receive and act upon a proposal, dispute, or claim submitted at any time before final payment under this Agreement.

30. COVENANT AGAINST CONTINGENCY FEES

- 30.1. The Consultant warrants that no person or agency has been employed or retained to solicit or obtain this Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Owner shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Contract Price or consideration, or otherwise recover, the full amount of the contingent fee.
- 30.2. *Bona fide agency*, as used in this Section, means an established commercial or selling agency, maintained by the Consultant for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds itself out as being able to obtain any government contract or contracts through improper influence.
- 30.3. *Bona fide employee*, as used in this Section, means a person, employed by the Consultant and subject to the Consultant's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds out as being able to obtain any government contract or contracts through improper influence.
- 30.4. *Contingent fee*, as used in this Section, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a government contract.
- 30.5. *Improper influence*, as used in this Section, means any influence that induces or tends to induce a government employee or officer to give consideration or to act regarding a government contract on any basis other than the merits of the matter.

31. TITLE VI ASSURANCES (NONDISCRIMINATION)

During the performance of this Agreement, the Consultant, for itself, its successors, and its assigns, certifies and agrees as follows:

- 31.1. *Compliance with Regulations.* The Consultant shall comply with the Regulations relative to Title VI (Nondiscrimination in Federally-assisted programs of the Department of Transportation and its operating elements, especially Title 49 CFR Part 21, as amended, and hereinafter referred to as the Regulations). These regulations are herein incorporated by reference and made a part of this Agreement.

Title VI provides that the recipients of Federal financial assistance will maintain and implement a policy of nondiscrimination in which no person shall, on the basis of race, color, or national origin, be excluded from participation in, denied the benefits of, or subject to discrimination under any program or activity by recipients of Federal financial assistance or their assignees and successors in interest.

- 31.2. *Nondiscrimination.* The Consultant, with regard to the work performed by it during the term of this Agreement, shall not discriminate on the basis of race, color, or national origin in the selection and retention of subcontractors, including procurement of material and leases of equipment. The Consultant shall not participate either directly or indirectly in any discrimination prohibited by Section 21.5 of the Regulations, including employment practices.
- 31.3. *Solicitations for Subcontracts, Including Procurements of Material & Equipment.* In all solicitations, either by competitive bidding or negotiation, made by the Consultant for work to be performed under a subcontract, including procurement of materials and leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- 31.4. *Information and Reports.* The Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, and accounts, other sources of information, and its facilities by the Owner, the Department, or the USDOT and its Affiliated Modes to be pertinent to ascertain compliance with such regulations and directives. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Owner, the Department or the USDOT and its Affiliated Modes, as appropriate, and shall set forth the efforts made by the Consultant to obtain the records or information.
- 31.5. *Sanctions for Noncompliance.* In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the Owner shall impose such contract sanctions as it, the Department, or the USDOT and its Affiliated Modes may determine to be appropriate, including but not limited to, withholding of payments to the Consultant under the Agreement until the Consultant complies with the provisions and/or cancellation, termination, or suspension of the Agreement, in whole or in part.
- 31.6. *Incorporation of Provisions.* The Consultant shall include the terms and conditions of this Section in every subcontract including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as the Owner, the Department, or the USDOT and its Affiliated Modes may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; *provided*, however that, in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Consultant may request the Owner or the Department to enter into the litigation to protect the interests of the State and litigation to protect the interest of the United States.

32. DBE CLAUSE

- 32.1. The Consultant or subcontractor shall not discriminate on the basis of race, color, sex, or national origin. The Consultant shall comply with the applicable requirements of 49 CFR Part 26 and perform any actions necessary to maintain compliance in the award and administration of DOT-assisted contracts. Failure by the Consultant to comply with or perform these requirements is a material breach of this Agreement, which may result in the cancellation, termination, or suspension of this Agreement in whole or in part, or such other remedy that the Owner may determine appropriate.
- 32.2. The Consultant shall insert a clause containing all the terms of this Section in all subcontracts under this Agreement.

33. COMPLIANCE WITH ALL OTHER LAWS REGARDING NONDISCRIMINATION

- 33.1. The Consultant will comply with the provisions of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act of 1964, FHWA Federal Aid Project Guidance, and any other Federal, State, and/or local laws, rules and/or regulations.
- 33.2. The Consultant, during the term of this Agreement, shall not discriminate on the basis of race, color, sex, national origin, age, religion, disability, or any other protected classes in admission or access to and treatment in programs and activities associated with this Agreement, or in the selection and retention of subcontractors, including procurement of material and leases of equipment. The Consultant shall not participate either directly or indirectly in any discrimination prohibited by the Regulations, including employment practices.
- 33.3. In accordance with Section 504 regulations 49 CFR Part 27.15, the Owner's Notice of Nondiscrimination is required in any bulletins, announcements, handbooks, pamphlets, brochures, and any other publications associated with this Agreement that are made available to the public, program participants, applicants or employees.

34. CERTIFICATION REGARDING LOBBYING

- 34.1. The Consultant certifies, to the best of their knowledge and belief, that:
- 34.1.1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

34.1.2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying".

34.1.3. The Consultant shall require that the language of this certification be included in the agreement for all subcontracts and that all subcontractors shall certify and disclose accordingly.

35. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

35.1. The Consultant certifies, to the best of its knowledge and belief, that—

35.1.1. The Consultant and any of its Principals—

35.1.1.1. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal or state agency;

35.1.1.2. Have not, within a 3-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

35.1.1.3. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in Subsection 35.1.1.2; and,

35.1.1.4. The Consultant has not within a 3-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency.

35.2. *Principals*, for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions). This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Section 1001, Title 18, United States Code, as well as any other applicable federal and state laws.

35.3. The Consultant shall provide immediate written notice to the Owner if, at any time prior to contract award, the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

- 35.4. The certification in Subsection 35.1 is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Consultant knowingly rendered an erroneous certification, the Owner may terminate the contract resulting from this solicitation for default in addition to any other remedies available to the Owner.

36. CERTIFICATION REGARDING CONFLICT OF INTEREST

- 36.1. The Consultant certifies that it has no financial interest in the proposed project or construction of the proposed project.
- 36.1.1. The Consultant nor any of its Principals have:
- 36.1.1.1. No financial interest in work associated with this contract;
 - 36.1.1.2. No ownership interest in work associated with this contract;
 - 36.1.1.3. No Financial interest in the results of any agency decisions regarding approvals for work associated with this project;
 - 36.1.1.4. Policies and procedures (provided statutory framework permits) for a contracting agency to pursue a range of civil actions and penalties including fines, suspension, or debarment associated with fraud, waste, abuse, and identified conflict of interest which were not disclosed.
- 36.2. For the duration of the contract, except for work expressly defined in this contract, the Consultant shall not be party to agreements for design or construction on projects associated with contract.
- 36.3. For the duration of the contract, except for work expressly defined in this contract, the Consultant shall not be party to enforceable promises or guarantees of future work associated with this contract.

37. MISCELLANEOUS

- 37.1. *General Compliance with Laws.* The Consultant shall comply with all Federal, State, and local laws, regulations, and ordinances applicable to the work, including but not limited to, the Americans with Disabilities Act and Occupational Safety and Health Act as amended.
- 37.2. *Registered Professional Engineer's Endorsement.* All plans, specifications, estimates, and engineering data provided by the Consultant shall be endorsed and recommended by an authorized representative of the Consultant, who shall be a registered Professional Engineer licensed in the State of Arkansas.
- 37.3. *Choice of Law.* This Agreement shall be governed by the laws of the State of Arkansas without consideration of its choice of law provisions.
- 37.4. *Choice of Forum.* The Consultant agrees that any cause of action stemming from or related to this Agreement, including but not limited to disputes or claims arising under this Agreement, for acts or omissions in the performance, suspension, or termination of this Agreement, whether sounding in contract or tort, equity or law, may only be brought in the appropriate forum within State of Arkansas.

- 37.5. *No Waiver of Immunity.* The Owner expressly does not waive any defense of immunity that it may possess under either federal or state law, and no provision in this Agreement shall be construed to constitute such a waiver in whole or in part.
- 37.6. *Conflicts Between Laws, Regulations, and Provisions.* In the event of conflicting provisions of law, the interpretation shall be governed by the following in this order, from most controlling to least: Federal law and regulations, State law and regulations, Department and FHWA Design Standards, and this Agreement.
- 37.7. *Severability.* If any term or condition of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, all remaining terms of this Agreement shall remain valid and enforceable unless one or both of the parties would be materially prejudiced.
- 37.8. *No-Waiver.* The failure of the Owner to strictly enforce any term of this Agreement shall not be construed as a waiver of the Owner's right to require the Consultant's subsequent performance of the same or similar obligation or duty.
- 37.9. *Modification and Merger.* This written Agreement and any provisions incorporated by reference reflect the entire agreement of the parties and may be modified only by the express written agreement of both parties.
- 37.10. *Force Majeure Clause.* Neither party to this Agreement shall be liable for any delay direct or indirect in performance caused by an unforeseen event such as acts of God, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party beyond such party's reasonable control. Each party will take reasonable steps to mitigate the impact of any force majeure.
- 37.11. *Authorization to Proceed.* Execution of this Agreement by the Owner will be made by written authorization to the Consultant. The Consultant and Subcontractors shall not seek reimbursement for work initiated prior to receiving notice to proceed or work order authorization.

38. CERTIFICATION OF AUTHORIZED REPRESENTATIVES

This Agreement and the certifications contained herein or attached hereto constitute the whole Agreement of the parties, and each party certifies that this Agreement and any attached certification have been executed by their duly authorized representatives.

39. NOTICE

- 39.1. All notices, approvals, requests, consents, or other communications required or permitted under this Agreement shall be addressed to either the Owner's Representative or the Consultant's Representative, and mailed or hand-delivered to:

39.1.1. To the Owner's Representative:

Chris Brown, PE
City of Fayetteville
113 W. Mountain Street
Fayetteville, AR 72701


39.1.2. To the Consultant:

Steven Beam, PE
Burns & McDonnell Engineering Company, Inc.
6815 Isaacs Orchard Road, Suite B3
Springdale, AR 72764

IN WITNESS WHEREOF, the parties execute this Agreement, to be effective upon the date set out above.

Burns & McDonnell Engineering
Company, Inc.

City of Fayetteville

BY: 
Michael S. Debacker, PE
Transportation Director

BY: _____
Mayor Lioneld Jordan

APPENDICES

APPENDIX A-1	SCOPE OF WORK
APPENDIX A-2	JUSTIFICATION OF FEES AND COSTS
APPENDIX B	SUBCONTRACTS B-1 McClelland Consulting Engineers, Inc. B-1A Safety Provisions (Consultant requirements of Subconsultant)
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APPENDIX A-1

SCOPE OF WORK

ARDOT JOB 040720 Poplar St. – Drake St. (Fayetteville) (S) Washington County

I. DESCRIPTION OF THE PROJECT

The intent of the City of Fayetteville ("the City") is to engage a design firm or a team of design firms to provide professional engineering services for the widening of Highway 112 for approximately 1.0 mile from Poplar Street to Drake Street in Fayetteville, Arkansas. The scope of the project shall be a notch-and-widen project. Intersection improvements will be designed at Drake Street and at Cassatt Street. Drake Street will be a traditional, signalized intersection. Cassatt Street will be a roundabout intersection.

The proposed project will provide environmental documentation, surveys, geotechnical studies, hydraulic studies, roadway design plans, right of way plans, and bidding services. Title II services, including construction engineering, and inspection services, are not a part of this Scope of Work at this time. Storm drainage systems, relocated utility facilities, maintenance of traffic and other incidental systems and facilities will be designed and constructed as necessary. A roundabout design shall be provided at the intersection of W. Altheimer Drive & Cassatt St. The Work Zone Policy impact is considered non-significant.

This project includes federal funds along with review and approval of the work by the Arkansas Department of Transportation (ARDOT). All work and contract requirements shall conform to requirements of the Federal Highway Administration (FHWA), ARDOT and the City.

The plans will not be required to be prepared in standard ARDOT format.

II. SERVICES PROVIDED BY THE CITY:

1. Coordinate review of environmental documentation, construction plans and specifications, and cost estimates with ARDOT.
2. Conduct the necessary public involvement meeting and public hearings.
3. Publish and pay for public notices and legal notice.
4. Provide Spanish translation services at public meetings as necessary.
5. Provide right-of-way appraisals and acquisition.
6. Handle utility adjustments, as needed.
7. Handle relocatees, as needed.
8. Advertise and receive construction bids.

III. SERVICES PROVIDED BY THE ARDOT:

1. Existing right of way information.
2. Previous traffic and planning studies.
3. Aerial and mapping data, if available.
4. Provide sample environmental clearance documents.
5. Coordinate with FHWA for tribal correspondence and document approvals.
6. Coordinate with State Historic Preservation Office (SHPO) and other federal, state, and local agencies as necessary.

7. Review final environmental documentation prepared by the City's consultant.
8. Perform FWD Testing and provide a recommended overlay thickness.
9. Review right-of-way plans, legal descriptions and property acquisition exhibits.
10. Review real estate appraisals and valuations of proposed land acquisitions.
11. Review plans and specifications at 50%, 90% and final review level.

IV. TITLE I SERVICES TO BE FURNISHED BY THE CONSULTANT

ENVIRONMENTAL CLEARANCE DOCUMENTATION

Prepare environmental clearance documentation, a Categorical Exclusion (CE) is assumed (modification to Agreement will be made if environmental is elevated to an Environmental Assessment (EA) or Environmental Impact Statement (EIS)).

A. ENVIRONMENTAL DATA COLLECTION

Preliminary environmental data associated with the proposed project area will be collected and assessed for the social, economic, and environmental impacts area. Data related to the following impact areas should be including, but not restricted to:

1. Air Quality
2. Noise Quality
3. Hazardous Materials
4. Wetlands and Stream Impacts
5. Water Quality, including Public Drinking Supplies
6. Farmland
7. Land Use and Land Cover
8. Migratory Birds
9. Terrestrial and Aquatic Communities
10. Endangered and Threatened Species
11. Economic
12. Community
13. Relocations, including Homes, Businesses, Non-profit Organizations, and Tenants of all types. If there will be more than five relocatees, a Conceptual Stage Relocation Study that complies with the Uniform Relocation Assistance Act (49 CFR 24.205) will be required in the environmental document.
14. Environmental Justice and Title VI
15. Recreational Areas
16. Archeological and Historic Sites
17. Visual
18. Section 4(f) and 6(f) properties
19. Secondary and Cumulative Impacts

Preliminary environmental data collection is part of the initial scope of work's justification of costs and fees. If any additional analyses or data collection are needed beyond a Phase I Cultural Resources survey, or beyond noise impact analysis, these services will be added through a supplemental agreement.

B. ENVIRONMENTAL CONSTRAINTS MAP

All environmental data collected will be transferred to appropriately scaled aerial photographs to produce a map that indicates all known environmentally sensitive areas and provided to the Design Consultants for avoidance and minimization of impacts. Environmentally sensitive areas should be provided to the Roadway and Bridge Design Consultants for notation on the

plans as a restraining condition on the Contractor, in accordance with Section 107.10 of the Standard Specifications for Highway Construction. Contract Special Provisions should be developed as necessary to provide protection for environmental sensitive areas or features and to provide guidance to the Contractor.

C. LOCATION AND/OR DESIGN ALTERNATIVES

Develop conceptual layout for all location and/or design alternatives, which will include but not be limited to major drainage structures, accelerated construction techniques and any intersection locations. Development of alternatives shall include early and continuous coordination with the City, ARDOT, FHWA and appropriate resource agencies. Electronic copies of the design shall be furnished in Bentley MicroStation "DGN" format and PDF format.

The Consultant shall work to avoid and/or minimize environmental impacts, as appropriate. If impacts cannot be avoided, then the impacts shall be minimized. Mitigation for impacts should occur as a last resort.

Prepare cost estimates for each alternative.

After all reasonable and feasible alternatives have been reviewed by the ARDOT and FHWA; a determination will be made on which type of environmental document (Environmental Impact Statement, Environmental Assessment, or Categorical Exclusion) is warranted.

D. CULTURAL RESOURCES AND HISTORIC PROPERTIES

Perform a cultural resources impact evaluation based on state records research and an on-site inspection. Develop a cultural resources report documenting existing impacts or other conditions which may preclude the presence of intact archeological deposits and historic structures within the project area for a proposed project. The purpose of an impact evaluation is to determine whether conditions in the project area are suitable for preservation of archeological deposits with sufficient integrity to be eligible for inclusion in the National Register of Historic Places (NRHP) or for designation as state landmarks.

Coordinate with FHWA through ARDOT for tribal consultation and correspondence. The Consultant will prepare tribal letters per the ARDOT letter template for submittal to FHWA through ARDOT.

The surveys will provide sufficient information (i.e., a Phase I survey and report) to allow the SHPO to make a determination of effect regarding the project. It is anticipated for budgeting purposes that a cultural resources report will be required.

All work under this task shall be completed in accordance with customary ARDOT guidelines and format.

E. BIOLOGICAL INVESTIGATIONS

The Engineer will conduct wetland surveys and delineations to determine the limits of all jurisdictional waters of the United States and potential jurisdictional wetlands within the project limits. The area of project impact to jurisdictional waters, including wetlands and streams, will be determined to permit the project under Section 404 of the Clean Water Act. Wetlands will be delineated using the U.S. Army Corps of Engineers (USACE) Wetland Delineation Manual of 1987 and applicable supplemental guidance published by the USACE.

The Engineer will contact the U.S. Fish and Wildlife (USFWS) to ensure all state and

federally listed threatened and endangered species of concern are identified, as well as their habitat areas, to avoid/minimize impacts. This coordination will assist in providing guidelines from these agencies on existence, habitat and mitigation. If suitable habitat for any listed threatened or endangered species is encountered within potential location alternatives, it may be necessary to survey for the species. Presence and absence surveys for any listed threatened or endangered species are not included as a part of this scope.

F. HAZARDOUS/REGULATED MATERIALS

The Engineer shall conduct a literature and database review and a visual survey to identify potential hazardous/regulated material sites in the vicinity of the proposed project. The results of this effort shall be documented in the Environmental Documentation. The work shall include:

1. Overview and Summary of Hazardous Material Sites within the Study Area- This initial screening will include a review and evaluation of applicable state and federal regulatory agency databases.
2. Identification of Sites of Concern - A review and evaluation of the following list will be performed for the reasonable and feasible alternatives. CERCLA, NPL, RCRA, RST, LRST, State Superfund, city/county Solid Waste Landfills.
3. Visual survey of the study area.

G. OTHER ENVIRONMENTAL STUDIES, ANALYSES AND INVESTIGATIONS

The Engineer shall conduct all other environmental studies, analyses and investigations in accordance with FHWA/ ARDOT requirements for a CE for a transportation improvement project. The other environmental studies, analyses, and investigations will include the following: Air quality, noise quality, hazardous materials, wetlands and stream impacts, water quality, including public drinking supplies, farmland impacts, land use and land cover, terrestrial and aquatic communities, endangered and threatened species, economic, community, environmental justice and Title VI, recreational areas, archeological and historic sites, visual, and Section 4(f) and 6(f) properties.

H. PUBLIC INVOLVEMENT MEETING

The Engineer will plan, coordinate, participate in, and assist the City in conducting one Public Involvement Meeting near the project area. The Engineer will identify the logistics involved in selecting the meeting site with the City. The City will subsequently secure/reserve and pay any rental costs for such site and any necessary equipment.

The Engineer will prepare and submit notice of public involvement meeting to the City and ARDOT for review and approval, and will place the approved notice in a local newspaper in accordance with ARDOT policies and requirements. The City will be responsible for payment of the publication of legal notices and ads.

The Engineer will prepare public involvement displays, sign-in sheets, comment sheets, and other materials for the Public Involvement Meeting as necessary. The Engineer will provide adequate numbers of handouts and displays for the public involvement meeting and will provide four (4) personnel to support the Public Involvement Meeting by being prepared to answer questions and explain all concepts of the proposed project.

As directed by the City, the Engineer will obtain Project Mailing List database from the City and update as necessary. The Engineer will develop and maintain the Project Mailing List database of names/addresses to be utilized in distributing the Public Meeting notice. Persons attending the Public Meeting will be added to the database when requested by

the same.

The Engineer will compile comments received at the Public Meeting and document the same in the form of a synopsis that will include comments cards, letters, attendance sheets, summary of input, response to public comments, etc. This will include photographs or copies of informational displays, handouts, etc. The Engineer also will prepare and submit the Title VI report.

I. ENVIRONMENTAL DOCUMENT

The Engineer will perform social, economic, and environmental studies for inclusion in the environmental documentation. Improvements of the road along the existing alignment and one alternative alignment will be analyzed. The goal is to provide the documentation necessary to obtain FHWA approval of a CE document. The work to be performed shall consist of preparing an environmental document based on National Environmental Policy Act (NEPA) processes for the proposed project in accordance with ARDOT and FHWA policies and procedures.

The objectives of this task are: (1) to describe the existing social, economic and physical conditions within the corridor; (2) to identify and evaluate the short-term and long-term impacts of the proposed improvements; and (3) to identify and recommend mitigation measures to be incorporated in the design and/or operation plan for the project. The services described herein are based on National Environmental Policy Act (NEPA) processes.

Submit draft environmental document in MS Word format for text and pdf format for figures and attachments for review by the City and ARDOT.

Perform revisions necessary to respond to comments from the City, and ARDOT review.

Submit final draft to the City and ARDOT for FHWA approval.

Prepare designated number of copies of environmental document after FHWA approval and distribute as directed. An electronic copy of the approved environmental document in pdf format will be provided to the City and the ARDOT.

Coordinate and obtain appropriate Federal and State permits and clearances (Section 106, Section 404, STAA, etc.) necessary for the environmental clearance and to construct the proposed project in compliance with ARDOT procedures. Provide environmental information needed for completion of the NPDES SWPPP to design team, including wetland locations and acres of impacts, endangered and threatened species, 303(d) waters, Total Maximum Daily Load (TMDL) waters, operator of local municipal separate storm sewer system (MS\$), and special waters for 50-ft buffer zone.

J. CONSTRUCTION PLAN AND SPECIFICATIONS DEVELOPMENT

Prepare special provisions related to environmental commitments and protection. The Environmental Staff shall work with the Roadway Engineers to ensure all environmental commitments and regulatory requirements are incorporated into project plans and contracts by use of plan sheet notes, general notes and special provisions.

(NOTE: Close coordination should be maintained with the City and ARDOT to insure that all aspects of the environmental process meet ARDOT approval. This includes approval of deliverables and dates of delivery for each task).

FIELD SURVEYS AND MAPPING

The Consultant shall be responsible for obtaining all required aerial photography and topographic mapping (other than that provided by the City/ ARDOT). The consultant shall also be responsible for all field surveys including topographic surveys, hydraulic surveys, property surveys, and utility surveys, as needed, to identify all existing features along the project including soil borings and establishing project control. Surveying procedures and requirements as established by ARDOT Survey Procedures Manual do not apply to this project.

All services performed shall be consistent with Arkansas minimum standards and in compliance with Arkansas laws and regulations governing the practice of Land Surveyors and with all Federal, State and Local laws, regulations and ordinances applicable to the work.

ROADWAY DESIGN AND PLANS

Submit an updated cost estimate with each design review, including costs for utilities, etc. as applicable.

A. CONCEPTUAL ALIGNMENTS/ ALTERNATIVES (10% Submittal)

1. The Consultant shall prepare an alignment study generally following the existing road centerline, but analyzing which side of the road to widen considering the availability of existing right-of-way, structures, etc. This study should also show at least one roundabout concept at the intersection of W. Altheimer Drive/ Cassatt Street.

B. CONCEPTUAL ROADWAY DESIGN (30% Submittal)

1. Submit design criteria to be used in the design of the project for approval by the City and ARDOT prior to beginning preliminary design work.
2. Submit 30% plans for review by the City to include at a minimum: the proposed alignment with horizontal curve data, grades with vertical curve data, limits of construction, existing property lines and r/w, floodway and floodplain limits, and existing aerial photography and/or topographic survey. 30% plans will include plan and profile, typical section, and intersection layouts for Drake Street and Cassatt Street.
3. 30% Cost Estimate will differentiate the cost of the proposed project from that of a typical ARDOT urban highway.
4. Provide four (4) paper copies (half size 11x17), one electronic pdf, and AutoCAD/Civil 3D files for plan review.

C. PRELIMINARY ROADWAY DESIGN (50% Submittal)

1. Provide pavement design alternatives according to the requirements of the *Roadway Design Plan Development Guidelines* using AASHTO design procedures, and submit recommendation to City and ARDOT for approval.
2. Provide the roadway plan sheets. A field inspection for each project may be performed at the 50% and 90% review level. Preliminary plans shall be submitted at the 50% level for ARDOT approval of the geometric design, title sheet, and typical sections.
3. Public Meeting
The Consultant shall prepare all design related displays to be used at the public meeting when needed. This would include, but not be limited to plans of the proposed route illustrating the proposed horizontal and vertical alignments complete with all bridge structure. All proposed and existing right of way requirements, including easements, shall be included on this display. The Consultant shall assist the City at the meeting by being prepared to answer and explain all concepts of the proposed design. The Consultant shall

also be responsible for developing a written transcript of the public comments and provide written responses to each comment. This written transcript shall be furnished to the City for the completion of the project certification.

4. The preliminary roadway plans (50% submittal) shall show, as a minimum:
 - a) The title sheet shall generally conform to the ARDOT standard title sheet.
 - b) The typical sections will include notes pertaining to slopes, tolerances, leveling, and other items. The typical sections will contain information depicting the width of the subgrade, all lanes, shoulders, and clear zones. The side slopes (run/rise) and finished grade cross slopes (ft. /ft.) will also be shown. The point of profile will be defined and the location of pipe underdrains if needed will be illustrated. The location and shape for all ditches will be also be depicted.
 - c) Based on traffic data and geotechnical investigations, pavement design recommendations will be delivered to the City and ARDOT for their review and approval. Pertinent data and design calculations will be provided as well as the actual pavement section recommendations. The approved pavement designs will be incorporated into the typical sections.
 - d) Project specific details required to properly construct elements of the job that are not covered in the standard drawings or other plan drawings will be developed as needed.
 - e) Survey control detail sheets of the survey baseline and design centerline with control point data in accordance with the standard used by the Roadway Design Division of ARDOT (required only if survey is necessary).
 - f) Roadway Plan & Profile Sheets
The plan and profile sheets will contain information including the following in the plan view: proposed centerline and travel lanes, existing topography, existing utilities, horizontal geometry (curve data, PI's, bearings), north arrow, lane and shoulder dimensions, taper dimensions, proposed driveways and side streets, proposed cross drains and related construction notes, bridge end stationing, sketch of bridge layouts, guardrail locations, turning radii, limits of existing and proposed right-of-way and control of access (including fence), permanent and temporary construction easements, construction limits, location of right-of-way points and benchmarks, floodplain limits, and other data as required.

The plan and profile sheets will contain information including the following in the profile view: proposed vertical geometry (including VPI's, grades, and ditch grades), superelevation station limits, benchmarks, existing ground profile, and drainage information.

- g) Maintenance of Traffic Plans (50%)
The maintenance of traffic signing details will suggest a sequence of construction to complete major phases of the project. It will clearly identify barricades to be placed, striping to be removed, striping to be placed prior to diversion of traffic, and possible detour routes and the stages required to maintain traffic during construction. These details will supplement ARDOT standard drawings TC-1, TC-2, TC-3, TC-4, and TC-5.
 - h) Signing & Pavement Marking Plans (50%)
 - i) Erosion control plans
 - j) Culvert Diagrams (if applicable)
 - k) Traffic Signal (if applicable)
 - l) Water & Sewer Facilities

As directed by the City and based on findings from the 30% design phase, the Engineer will produce plans related to the relocation of existing water and sewer facilities which are directly affected by the project. – **THESE ARE NOT KNOWN AT THE TIME OF ENTERING INTO THE AGREEMENT AND ARE NOT A PART OF THE SCOPE OF WORK. A SUPPLEMENTAL AGREEMENT WILL BE ENTERED**

**INTO UPON DETERMINATION OF THE SCOPE OF WATER/SEWER
RELOCATION NEEDS.**

5. Provide four (4) paper copies (half size 11x17), one electronic pdf, Bentley MicroStation, and AutoCAD/Civil 3D files of plans for right of way review, and 50% plan review.
6. Attend preliminary field inspection, if required. Provide sufficient number of plan copies for preliminary field inspection. (Field inspection for the project may be performed at the 50% and 90% review level.)
7. Make revisions necessary to respond to comments made at the 30% and 50% review as well as comments made at the preliminary field inspection.
8. Provide design information necessary for environmental documentation and environmental permits to be obtained by the Consultant.
9. Provide an interim construction cost estimate. Cost Estimate will differentiate the cost of the proposed project from that of a typical ARDOT urban highway.

D. FINAL ROADWAY DESIGN (90/100% Submittal)

The objective of this phase is to complete roadway, and right-of-way plans for the project. In the final design phase, comments from the 50% submittal will be addressed, all quantities will be calculated, right-of-way plans developed, and a construction cost estimate calculated. The final plans review will be performed and comments will be incorporated into the final plans. Comments from the 90% submittal will be incorporated and final design of the roadway will proceed with the written approval by the City or the ARDOT.

1. Comments from the review of 50% plans will be incorporated in 90% plans and all sheets will be updated with appropriate quantity callouts once quantities are tabulated.
2. The permanent pavement marking details illustrate pavement markings and traffic sign placement. All signing, striping and delineation will be in accordance with the latest edition of the Manual of Uniform Traffic Control Devices and shall conform to ARDOT and federal regulations, laws and policies. These details will supplement ARDOT standard drawings PM-1 and PM-2.
3. Survey control sheets will show the horizontal and vertical control points and horizontal alignment data in plan view at the appropriate scale. The following information will be provided: Traverse Point Table-Point number, northing, easting, and elevation (if applicable). Horizontal alignment data-Curve number, point type (PC/PI/PT), station, northing, and easting. The appropriate notes will also be included.
4. Erosion control plans will be developed and will include temporary measures that will be put in place at the start of construction. The information for temporary measures include the location of silt fences (station/offset at PI's), rock berms, sediment basins, as well as other strategies to prevent pollution of streams by stormwater runoff from the project site. Permanent erosion control measures that will be left in place after construction is complete will also be noted.
5. Cross sections for all roadways will be shown at a 1:1 scale and include the items required in the "Roadway Design Plan Development Guidelines". In addition, any matchlines will be labeled and sections will be provided at bridge ends, begin/end tapers, nose points, begin/end auxiliary lanes, and any pipes/culverts perpendicular to centerline construction. Inlet and outlet sections will be shown for pipes/culverts on skews.
6. The Engineer will produce plan and profile sheets related to the relocation of existing water and sewer facilities which are directly affected by the project.
7. Quantities will be calculated and tabulated using the Standard Specifications for Highway Construction and the appropriate supplemental and job specific special provisions and ARDOT's Roadway Design Plan Development Guidelines and Roadway Design Training Guide.
8. Provide an index of sheets, a list of specifications, and general notes.

9. Provide quantities in plans.
10. Provide summary of quantities in Microsoft Excel file with "BAMS" number
11. Provide special provisions.
12. Prepare and submit a SWPPP containing all the necessary data needed to obtain a SWPPP permit for the project including ARDOT, ADEQ and Owner data and details to ADEQ for permit approval.
13. Prepare and submit a Short Term Activity Authorization (STAA) to ADEQ for permit approval, if necessary.
14. Provide transportation management plan.
15. Provide construction cost estimate.
16. Provide four (4) paper copies (half size 11x17), one electronic pdf, Bentley MicroStation, and AutoCAD/Civil 3D files of plans for right of way review, and 90% plan review.
17. Attend final field inspections, if required.
18. Make plan changes resulting from the 90% review, subsequent reviews, and final field inspection.
19. Perform all other work required to advertise and receive bids.
20. Provide hydraulic certification (if necessary).
21. Provide six (6) paper copies & one electronic pdf of half size signed and sealed plans along with the final Bentley MicroStation and AutoCAD/Civil 3D files.

E. POST AWARD OF CONTRACT (TITLE II SERVICES)

Title II Services will be added by supplemental agreement at a later date. At a minimum, the following services shall be provided:

1. Provide review and approval of shop drawings and any other supplementary plans or similar data submitted by the Contractor and requiring approval.
2. When requested, provide design related solutions to construction problems and issues that may arise.

GEOTECHNICAL INVESTIGATIONS AND REPORTING

This scope of work includes subsurface borings at 500-foot intervals alternating between a widened portion and the existing roadway, field and laboratory testing, and material properties for pavement design. Borings shall extend 10 feet below existing ground elevation. CBR tests shall be performed at a 1000-ft spacing. Coring of the existing roadway shall be performed at a 1000-ft interval to confirm the existing pavement section. No investigations or recommendations for retaining walls or bridges are included in the scope of work at this time. The Subconsultant will be responsible for staking and locating field borings and then including coordinates and elevations for those borings in the report. Deliverables shall include a Preliminary and Final Geotechnical Report.

RIGHT-OF-WAY PLANS

A. PRELIMINARY AND FINAL DESIGN

1. Provide Right-of-Way Plans.

Right of Way Plans shall be prepared and submitted to the City and ARDOT according to the following:

Stage 1: Submit 60% strip map with construction centerline, limits of construction, existing topography and proposed right of way plotted on complete parcel surveys with property lines identified.

- Stage 2:** Prepare right of way plans to City specifications including a metes and bounds legal description of each parcel. Plan scale shall be adequate to clearly show all details, dimensions, bearings, distances and notes at 11"x17" sheet size (not smaller than 1"=100' unless approved in advance by City).
- Stage 3:** Perform a thorough "in-house" review of the right of way plans.
- Stage 4:** Submit 90% level right of way plans for review (11'x17"), legal descriptions, and "current owner" certificates of title with deeds attached, including an electronic file of the following:
- Right of way plans (All design and plans shall be compiled with AutoCAD/Civil 3D & MicroStation for submittal to ARDOT).
 - Legal descriptions (MSWORD format).
 - Point numbers of all points with the coordinates, feature code and point descriptions. The format is: Point Number, Easting Coordinate (X), Northing Coordinate (Y), Elevation, Feature Code (Two-letter designation), Point Description.
 - Alignment report with point numbers used for the baseline, design alignment, and existing right of way alignment control.
- Stage 5:** Submit final right of way plans and electronic files with corrections requested by the City.

BIDDING PHASE SERVICES

1. Prepare Plan Specifications & Engineering Plans
2. Prepare Advertisement for Bids and submit to the City for issuance to newspaper(s). The City to pay advertising costs outside of this agreement.
3. Dispense construction contract documents to prospective bidders at the approximate cost of reproduction and handling. City to receive bids.
4. Answer questions from contractors during bid phase
5. Issue addenda
6. Conduct the pre-bid meeting, if necessary
7. Attend Bid Opening
8. Review and certify bids for construction
9. Prepare Bid Tabulations
10. Prepare Construction Contract
11. Issue letter of recommendation to city for acceptable of bid
12. Assist the City with project close-out for design.

TITLE II SERVICES TO BE PROVIDED BY THE CONSULTANT

Title II Services will be added by supplemental agreement at a later date. At a minimum, the following services will be provided:

1. Provide review and approval of shop drawings and any other supplementary plans or similar data submitted by the Contractor and requiring approval.
2. When requested, provide design related solutions to construction problems and issues that may arise.

V. PROJECT CONDITIONS OF THE WORK

The Consultant shall submit a work schedule which will permit all work to be completed within eighteen (18) months after receiving notice to proceed. It is understood that extenuating circumstances e.g. unusually long review periods or other administrative delays by any public agency would be justification to extend the design completion time frame.

Coordinate design and construction with franchise utility companies' relocations and/or new locations to assure adequate space for all facilities and timely relocations.

Coordinate with relevant regulatory agencies as required (FEMA, USACOE, SHPO, ADEQ, USFWS and others) to resolve environmental issues and obtain permits.

Provide right of way acquisition documents and engineering services required for acquisition of rights of way and easements, as needed.

Responsible for preparing bid proposals, advertising the Project, dispensing construction contract documents to prospective bidders, supporting the contract documents by preparing addenda as appropriate, participating in a pre-bid meeting if necessary, attending the bid opening, preparing bid tabulation, evaluating bids, recommending award, and assembling the contract documents.

The facility shall be designed in accordance with the latest edition of AASHTO, "A Policy on Geometric Design of Highways and Streets", the latest edition of "AASHTO LRFD Bridge Design Specifications" with current interims; the latest edition of the "Manual on Uniform Traffic Control Devices"; the current interim to AASHTO's "Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals", 4th Edition; the latest edition of the "Americans with Disabilities Act Accessibility Guidelines"; ARDOT's "Standard Specifications for Highway Construction" with supplemental specifications; ARDOT Bridge Division memorandums, ARDOT policies, and current AREMA publications as appropriate. Other appropriate AASHTO publications and guide specifications shall also be utilized. The project is to be designed in ARDOT format utilizing the "Roadway Design Plan Development Guidelines". Upon completion of the contract, the Consultant shall furnish to the City all electronic files of the project design specifications (project manual) & plans on a compact disc in a mutually agreed upon format.

Design and land surveys shall be performed to Arkansas minimum standards requirements, and shall be supervised and certified (stamped) by a Professional Surveyor registered in Arkansas.

All plans shall be in U.S. Foot Units and based on Arkansas State Plane Grid that have been converted to ground units based on the Combination Adjustment Factor (CAF) approved by, or provided by, the ARDOT.

Construction specifications shall be the current edition of the ARDOT's Standard Specifications for Highway Construction.

All work performed by the Consultant shall be in compliance with all applicable Federal, State, and local laws, regulations, and ordinances.

VI. COORDINATION WITH CITY

Coordination meetings will be conducted on an as needed basis. These meetings shall include the Consultant, the City, ARDOT and others, as appropriate. The Consultant shall schedule these meetings with the City and ARDOT concurrence, and compile and distribute meeting minutes, as required.

VII. DELIVERABLES

A. Environmental

1. SHPO approved Cultural Resources Report prior to CE (4 copies).
2. Newspaper advertisements and/or Legal Notices (English and Spanish).
3. Public Meeting announcement.

4. Project Mailing List database, updated as necessary, Microsoft Excel.
 5. Technical handouts for the Public Meeting (up to 100 hard copies).
 6. Comment forms for the Public Meeting (up to 100 hard copies).
 7. Sign-in Sheets for the Public Meeting (up to 10 hard copies).
 8. Exhibits/displays for the Public Meeting (up to 10 exclusive displays).
 9. Synopsis of Public Meeting (2 copies).
 10. Draft CE submittal to City (up to 10 copies) in MS Word format (for text) and pdf (for figures and attachments).
 11. Draft CE submittal to ARDOT (By City).
 12. Draft CE submittal to the FHWA (by ARDOT).
 13. Final CE submittal to City, the ARDOT and the FHWA.
- B. Feasibility/Alignment Design Phase (10%)
1. Feasibility/Alignment Report
- C. Conceptual Design Phase (30%)
1. Roadway and Bridge Design Criteria
 2. Geotechnical Report for Bridges (Preliminary Version)
 3. Hydraulic Analysis Report
 4. 30% Complete Roadway Plans
 5. Interim Construction Cost Estimate
- D. Preliminary Design Phase (50%)
1. Geotechnical Report for Pavement Design
 2. 50% Complete Roadway Plans
 3. 60% Right of Way Strip Map
 4. 90% Right of Way Plans and/or Exhibits
 5. Warranty deed descriptions
 6. Final Right of Way Plans
 7. Meeting Minutes from Coordination Meetings
 8. Interim Construction Cost Estimate
- E. Final Design Phase (90/100%)
1. 90% Complete Roadway Design Plans.
 2. Final half-size Roadway Design Plans signed and sealed by an Arkansas Registered Professional Engineer.
 3. Provide Special Provisions and complete Project Manual for bidding.
 4. Provide transportation management plan, if required.
 5. Provide construction cost estimate
 6. Meeting Minutes from Coordination Meetings
 7. Electronic files of the project design and plans on a compact disc in AutoCAD/Civil 3D format that is fully indexed (all reference files attached and set to load automatically.) This includes the electronic copies of Roadway and Bridge submittals. Electronic files of the Project Manual, Special Provisions, design calculations, drainage report, geotechnical report, cost estimates, etc. on a compact disc in Adobe Acrobat PDF format and in Word and Excel format, as applicable.

Attachment A-2 - Justification of Costs and Fees
 May 8, 2019
 JOB NO. 040720, Poplar St. - Drake St. (Fayetteville) (S)
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TOTAL PROJECT SUMMARY

TITLE I SERVICES	HOURS	SALARY	FEE	EXPENSES	TOTAL
PROJECT MANAGEMENT	160	\$24,597	\$2,952	\$0	\$27,549
ENVIRONMENTAL CLEARANCE DOCUMENTATION	342	\$46,702	\$5,604	\$3,536	\$55,842
TRAFFIC DESIGN & PLANS	138	\$18,673	\$2,241	\$249	\$21,163
ROADWAY DESIGN & PLANS	2,447	\$318,521	\$38,223	\$175	\$356,919
BRIDGE DESIGN & PLANS	0	\$0	\$0	\$0	\$0
FLOODPLAIN MODELING	0	\$0	\$0	\$0	\$0
ROW DESIGN & PLANS	Subconsultant performed services				
FIELD SURVEYS AND MAPPING	Subconsultant performed services				
GEOTECHNICAL	Subconsultant performed services				
SUBTOTAL TITLE I	3,087	\$408,493	\$49,020	\$3,960	\$461,473
SUBCONSULTANTS TITLE I					
McClelland Consulting Engineers, Inc.	1,798	\$124,843	\$14,981	\$16,889	\$156,713
SUBTOTAL SUBCONSULTANTS TITLE I	1,798	\$124,843	\$14,981	\$16,889	\$156,713
TOTAL TITLE I	4,885	\$533,336	\$64,001	\$20,849	\$618,186
TITLE II SERVICES	0	#N/A		\$0	#N/A
SUBCONSULTANTS TITLE II					
None	0	\$0		\$0	\$0
TOTAL TITLE II	0	#N/A		\$0	#N/A
TOTAL PROJECT	4,885	#N/A	\$64,001	\$20,849	#N/A

Attachment A-2 - Justification of Costs and Fees
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PROJECT MANAGEMENT

MANHOURS									
TASK	PD	PM	SE	STRE	STFE	CAD/DES	ASST	TOTAL	
General									
Project Kick-off Meeting		8	8					16	
Progress Reports and Invoicing		24					48	72	
Project Meetings & Client Coordination		24	48					72	
TOTAL MH - PROJECT MANAGEMENT	0	56	56	0	0	0	48	160	
LABOR COSTS									
Category - Description						Rate	MH	Amount	
PD - Project Director						\$75.00	0	\$0	
PM - Project Manager						\$65.00	56	\$3,640	
SE - Senior Engineer						\$50.00	56	\$2,800	
STRE - Structural Engineer						\$50.00	0	\$0	
STFE - Staff Engineer						\$40.00	0	\$0	
CAD/DES - CAD/Designer						\$30.00	0	\$0	
ASST - Project Assistant						\$25.00	48	\$1,200	
Subtotal								\$7,640	
Overhead								221.95%	\$16,957
Subtotal								\$24,597	
Fee								\$2,952	
FCCM								0.00%	\$0
Subtotal Labor Costs								\$27,549	
EXPENSES									
ITEM					Quantity	Unit	Rate	Amount	
Printing (8 1/2 x 11)						each	\$0.08	\$0	
Printing (11 x 17)						each	\$0.35	\$0	
Plotting (22 x 34)						each	\$1.35	\$0	
Mileage (2 trips at 850 miles, 2 trips at 400 miles)						mile	\$0.535	\$0	
Lodging						each	\$91.00	\$0	
Meals (per day)						each	\$51.00	\$0	
Subtotal Expenses								\$0	
TOTAL COSTS - PROJECT MANAGEMENT								\$27,549	
BASIS OF ESTIMATE									
Description							Number	Months	
Contract Duration								24	
Coordination Meetings							Monthly		
Field Inspections							2		
Description									
1 hours per month during design phase required for PM to address progress reporting, invoicing, estimating and scheduling.									
2 hour per month during design phase required for Admin support to address progress reporting and invoicing.									
4 hours per month during design phase for general team coordination by PM.									
Monthly progress meetings anticipated during the design phase of the project.									

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ENVIRONMENTAL CLEARANCE DOCUMENTATION

MANHOURS									
TASK	PD	PM	SE	AES	SES	STES	CAD/DES	ASST	TOTAL
Data Collection					4	12			16
Constraints Map					4	16			20
Cultural Resources and Historic Properties									
Desktop Research					8	8			16
Field Investigation				2	4	34	30		70
CR Report & SHPO Coordination				6	24	40			70
Biological Investigations									
Wetland Surveys & Delineation					6	16			22
Wetlands Report					2	12			14
USACE Coordination/Jurisdictional Determination					4				4
Threatened & Endangered Species Investigation						6			6
USFWS Coordination					4				4
Hazardous/Regulated Materials									
Desktop Research & Findings						6			6
Other Studies and Investigations									
Section 4(f) and 6(f) Investigation				8					8
Noise Analysis & Report				8		20			28
Other Studies				8	8				16
Public Involvement Meeting									
Prepare meeting materials		2						4	6
Meetings attendance and debriefings		4			4				8
Public comment review and summary					4				4
Categorical Exclusion Document									
Prepare CE Document				8		16			24
TOTAL MH - ENV. CLEAR. DOC.	0	6	0	40	76	186	30	4	342
LABOR COSTS									
Category - Description	Rate		MH		Amount				
PD - Project Director	\$75.00		0		\$0				
PM - Project Manager	\$65.00		6		\$390				
AES - Assoc. Environmental Scientist	\$60.00		40		\$2,400				
SE - Senior Engineer	\$50.00		0		\$0				
SES - Senior Environmental Scientist	\$48.00		76		\$3,648				
STES - Staff Environmental Scientist	\$38.00		186		\$7,068				
CAD/DES - CAD/Designer	\$30.00		30		\$900				
ASST - Project Assistant	\$25.00		4		\$100				
			Subtotal		\$14,506				
			Overhead		221.95%		\$32,196		
			Subtotal		\$46,702				
			Fee		\$5,604				
			FCCM		0.00%		\$0		
			Subtotal Labor Costs		\$52,306				

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ENVIRONMENTAL CLEARANCE DOCUMENTATION

EXPENSES				
ITEM	Quantity	Unit	Rate	Amount
Printing (8 1/2 x 11 B&W)	200	each	\$0.08	\$16
Printing (11 x 17)	30	each	\$0.35	\$11
GPS Equipment	1	wk	\$450.00	\$450
EDR database search	1	each	\$175.00	\$175
Travel (Mileage, Rental Car, Airfare)	2	Allowance	\$550.000	\$1,100
Lodging	2	each	\$91.00	\$182
Meals (per day)	2	each	\$51.00	\$102
Public Meeting Materials (Large Format)	1	Allowance	\$1,500.00	\$1,500
Subtotal Expenses				\$3,536
TOTAL COSTS - ENVIRONMENTAL CLEARANCE DOCUMENTATION				\$55,842

BASIS OF ESTIMATE	
Description	Number
Public Meetings	1
Alternatives Evaluations	1
Description	
This estimate is based on preparing a Categorical Exclusion Document for environmental clearance. An EA or EIS will require a supplemental agreement.	
Cultural Resources investigation is limited to proposed ROW limits and no deep testing is included. It is assumed that no archaeological sites will be located so no mitigation plans or additional consulting with SHPO is included in the scope.	
It is assumed that no wetlands are on-site and no delineations will be required.	
Presence or absence surveys of listed threatened or endangered species are not included in the scope.	

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TRAFFIC DESIGN & PLANS

MANHOURS								
TASK	PD	PM	SE	STRE	STFE	CAD/DES	ASST	TOTAL
Non-Interchange Alternatives								
Operational Analysis			16		32	32		80
Report & Recommendations		2	4		16			22
Warrants Analyses		8			16			24
Signal Design & Plans								0
Meetings & Coordination		6			6			12
TOTAL MH - TRAFFIC DESIGN & PLANS	0	16	20	0	70	32	0	138
LABOR COSTS								
Category - Description						Rate	MH	Amount
PD - Project Director						\$75.00	0	\$0
PM - Project Manager						\$65.00	16	\$1,040
SE - Senior Engineer						\$50.00	20	\$1,000
STRE - Structural Engineer						\$50.00	0	\$0
STFE - Staff Engineer						\$40.00	70	\$2,800
CAD/DES - CAD/Designer						\$30.00	32	\$960
ASST - Project Assistant						\$25.00	0	\$0
							Subtotal	\$5,800
						Overhead	221.95%	\$12,873
							Subtotal	\$18,673
							Fee	\$2,241
						FCCM	0.00%	\$0
							Subtotal Labor Costs	\$20,914
EXPENSES								
ITEM	Quantity	Unit	Rate	Amount				
Printing (8 1/2 x 11)	0	each	\$0.08	\$0				
Printing (11 x 17)	100	each	\$0.35	\$35				
Plotting (22 x 34)	0	each	\$1.35	\$0				
Mileage (1 trips at 200 miles one-way)	400	mile	\$0.535	\$214				
Lodging and Meals (\$91 Lodging, \$51 Meals)	0	each	\$142.00	\$0				
24-Hour Turning Movement Counts	0	hour	\$80.00	\$0				
48-Hour Continuous Traffic Counts	0	Lane	\$700.00	\$0				
				Subtotal Expenses	\$249			
				TOTAL COSTS - TRAFFIC DESIGN & PLANS	\$21,163			
BASIS OF ESTIMATE								
Description								Number
Intersection Analyses								1
Signal Designs								0
Description								
Analysis will be completed using Synchro v8 and HCS2010.								
A saturation flow rate of 1,750 vehicles per hour per lane will be utilized.								
Forecasted traffic volumes will be updating using historical traffic volumes and growth rates.								
Analysis will include existing year (2017) analysis, opening year (TBD) analysis, and design year (2040) analysis.								
Recommendations will be developed for Drake Street and Cassatt Street intersections.								

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ROADWAY DESIGN & PLANS

MANHOURS								
TASK	PD	PM	SE	STRE	STFE	CAD/DES	ASST	TOTAL
Design Criteria		1	4					5
Location and/or Design Alternatives (10%)								
Design & Exhibits			40		40	80		160
Cost Estimate		2			8			10
Quality Reviews		4						4
Public Meeting Support		4	4		4			12
Conceptual Design (30%)								
Roadway Design & Plans		20	60		100	140		320
Intersection Design & Plans		8	20			20		48
Cost Estimate					16			16
Quality Reviews		8	8					16
Preliminary Design (50%)								
Pavement Design			16					16
Roadway Design & Plans		80	240		400	400		1,120
Intersection Design & Plans		8	40		40	40		128
Drainage Report			8		20			28
Cost Estimate					16	16		32
Coord. & Estimating of ArDOT Standard		8	8		16	8		40
Quality Reviews		8	16					24
Field Inspection/ Plan Review Meeting		6	6					12
Final Design (90%/100%)								
Roadway Design & Plans		20	40		160	200		420
Quality Reviews		8	16					24
Field Inspection/ Plan Review Meeting		6	6					12
TOTAL MH - ROADWAY DESIGN & PLANS	0	191	532	0	820	904	0	2,447
LABOR COSTS								
Category - Description						Rate	MH	Amount
PD - Project Director						\$75.00	0	\$0
PM - Project Manager						\$65.00	191	\$12,415
SE - Senior Engineer						\$50.00	532	\$26,600
STRE - Structural Engineer						\$50.00	0	\$0
STFE - Staff Engineer						\$40.00	820	\$32,800
CAD/DES - CAD/Designer						\$30.00	904	\$27,120
ASST - Project Assistant						\$25.00	0	\$0
Subtotal								\$98,935
Overhead 221.95%								\$219,586
Subtotal								\$318,521
Fee								\$38,223
FCCM 0.00%								\$0
Subtotal Labor Costs								\$356,744

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ROADWAY DESIGN & PLANS

EXPENSES				
ITEM	Quantity	Unit	Rate	Amount
Printing (11 x 17)	500	each	\$0.35	\$175
Plotting (22 x 34)	0	each	\$1.35	\$0
Subtotal Expenses				\$175
TOTAL COSTS - ROADWAY DESIGN & PLANS				\$356,919
BASIS OF ESTIMATE				
Description				
Project is scoped as a notch and widen project with all widening occurring on the west side of the existing roadway.				
Project length = 1 mile				
Intersection designs will include EB left-turn lane at Drake Street; roundabout at Cassatt Street				

Attachment A-2 - Justification of Costs and Fees
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SUBCONSULTANT SUMMARY

TITLE I SERVICES	HOURS	SALARY	FEE	EXPENSES	TOTAL
ROADWAY	84	\$10,512	\$1,261	\$0	\$11,773
FIELD SURVEYS AND MAPPING	998	\$66,208	\$7,945	\$1,445	\$75,598
ROW DESIGN & PLANS	547	\$36,855	\$4,423	\$0	\$41,278
GEOTECHNICAL	169	\$11,268	\$1,352	\$15,444	\$28,064
SUBCONSULTANT TOTAL TITLE I	1,798	\$124,843	\$14,981	\$16,889	\$156,713
SUBCONSULTANT TOTAL TITLE II	0	\$0		\$0	\$0
SUBCONSULTANT TOTAL PROJECT	1,798	124,843	14,981	16,889	\$156,713

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ROADWAY

McClelland Consulting Engineers, Inc.

MANHOURS									
TASK	PRE	TM	PE	TECH	CD	DRAFT	ADMIN	TOTAL	
Roundabout Design									
Design Criteria Development	4		8					12	
30% Design Review	8		16					24	
60% Design Review	8		16					24	
90% Design Review	8		16					24	
TOTAL MH - FIELD SURVEYS & MAPPING	28	0	56	0	0	0	0	84	
LABOR COSTS									
Category - Description						Rate	MH	Amount	
PRE - Principal Engineer						\$65.00	28	\$1,820	
TM - Task Manager						\$45.00	0	\$0	
PE - Project Engineer						\$40.00	56	\$2,240	
TECH - Technician						\$28.00	0	\$0	
CD - Chief Draftsman						\$26.71	0	\$0	
DRAFT - Draftsman						\$24.00	0	\$0	
ADMIN - Administrative Assistant						\$10.50	0	\$0	
							Subtotal	\$4,060	
							Overhead	158.92%	\$6,452
							Subtotal	\$10,512	
							Fee	\$1,261	
							FCCM	0.00%	\$0
							Subtotal Labor Costs	\$11,773	
EXPENSES									
ITEM					Quantity	Unit	Rate	Amount	
Printing (11 x 17)						each		\$0	
Plotting (22 x 34)						each		\$0	
Mileage (27 trips @ 4 miles)						mile		\$0	
Lodging						each		\$0	
Meals (per day)						each			
							Subtotal Expenses	\$0	
TOTAL COSTS - FIELD SURVEYS & MAPPING								\$11,773	
BASIS OF ESTIMATE									
Description									

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FIELD SURVEYS & MAPPING

McClelland Consulting Engineers, Inc.

MANHOURS									
TASK	PRE	TM	PLS	PC	CREW	TECH	ADMIN	TOTAL	
Control Survey (CSUR)									
Field Work				32	32			64	
Office Computation & Mapping		8	16			24		48	
Design Survey (DSUR)									
Field Work				178	178			356	
Office Computation & Mapping		12	20			120		152	
Parcel Survey (PSUR)									
Field Work				56	56			112	
Easement Review, Plotting & Adding To Survey						50		50	
Office Comps. ROW and Boundary Resolution		16	120			80		216	
TOTAL MH - FIELD SURVEYS & MAPPING	0	36	156	266	266	274	0	998	
LABOR COSTS									
Category - Description						Rate	MH	Amount	
PRE - Principal Engineer						\$55.25	0	\$0	
TM - Task Manager						\$38.00	36	\$1,368	
PLS - Registered Land Surveyor						\$32.00	156	\$4,992	
PC - Survey Party Chief						\$28.00	266	\$7,448	
CREW - Survey Field Crewman						\$19.50	266	\$5,187	
TECH - Technician						\$24.00	274	\$6,576	
ADMIN - Administrative Assistant						\$10.50	0	\$0	
							Subtotal	\$25,571	
						Overhead	158.92%	\$40,637	
							Subtotal	\$66,208	
							Fee	\$7,945	
						FCCM	0.00%	\$0	
							Subtotal Labor Costs	\$74,153	
EXPENSES									
ITEM					Quantity	Unit	Rate	Amount	
Easement research from WACO Title					11	each	\$125.00	\$1,375	
Printing (11 x 17)						each		\$0	
Plotting (22 x 34)						each		\$0	
Mileage (27 trips @ 4 miles)					120	mile	\$0.580	\$70	
Lodging						each		\$0	
Meals (per day)						each			
								Subtotal Expenses	\$1,445
TOTAL COSTS - FIELD SURVEYS & MAPPING									\$75,598
BASIS OF ESTIMATE									
Description									
- Job area is 6,000' x 120', approx. 16.9 acres, commence Melma Dr, terminate 200' north of Drake St. Includes 13 public side streets @ 100' to 150' typical from Hwy 112 CL. W. Alzheimer Dr. and Cassatt St. at 250' from Hwy 112 CL. Includes 2 crossings storm drains.									
- All but 1,400 feet on the east side of Hwy 112 is adjacent to University of Arkansas Agri Farm Campus									
- Route passes 7 tracts on the east side of Hwy 112.									
- Job site is 4 miles r/t from our offices.									

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ROW DESIGN & PLANS

McClelland Consulting Engineers, Inc.

MANHOURS									
TASK	PRE	TM	PLS	PC	CREW	TECH	ADMIN	TOTAL	
Staged Submittal of ROW Plans	13	30	160			160	28	391	
Preliminary Staking of ROW for Appraisal		4	16	60	60	16		156	
TOTAL MH - ROW DESIGN & PLANS	13	34	176	60	60	176	28	547	
LABOR COSTS									
Category - Description						Rate	MH	Amount	
PRE - Principal Engineer						\$55.25	13	\$718	
TM - Task Manager						\$36.77	34	\$1,250	
PLS - Registered Land Surveyor						\$29.46	176	\$5,185	
PC - Survey Party Chief						\$27.12	60	\$1,627	
CREW - Survey Field Crewman						\$15.60	60	\$936	
TECH - Technician						\$24.00	176	\$4,224	
ADMIN - Administrative Assistant						\$10.50	28	\$294	
							Subtotal	\$14,234	
							Overhead	158.92%	\$22,621
							Subtotal	\$36,855	
							Fee	\$4,423	
							FCCM	0.00%	\$0
							Subtotal Labor Costs	\$41,278	
EXPENSES									
ITEM	Quantity	Unit	Rate	Amount					
Printing (8 1/2 x 11)		each		\$0					
Printing (11 x 17)		each		\$0					
Plotting (22 x 34)		each		\$0					
Mileage		mile		\$0					
Roll Plot		lf		\$0					
							Subtotal Expenses	\$0	
							TOTAL COSTS - ROW DESIGN & PLANS	\$41,278	
BASIS OF ESTIMATE									
Description	# Parcels		# Miles						
Main Lanes	11		1.1						
Side Roads			0.3						
Total	11		1.40						

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GEOTECHNICAL

McClelland Consulting Engineers, Inc.

MANHOURS													
TASK	PRE	TM	ST	ET	LT I	LT II	LT III	GE	DM	CLR	TOTAL		
Geotechnical Investigation & Reports	5	6	12	30	30	30	30	20	3	3	169		
TOTAL MH - GEOTECHNICAL	5	6	12	30	30	30	30	20	3	3	169		
LABOR COSTS													
Category - Description									Rate	MH	Amount		
PRE - Principal Engineer									\$66.63	5	\$333		
TM - Task Manager									\$56.38	6	\$338		
ST - Survey Technician									\$31.00	12	\$372		
ET - Engineering Technician									\$20.75	30	\$623		
LT I - Lab Technician I									\$15.50	30	\$465		
LT II - Lab Technician II									\$18.50	30	\$555		
LT III - Lab Technician III									\$22.75	30	\$683		
GE - Geotechnical Engineer									\$42.75	20	\$855		
DM - Draftsman									\$23.00	3	\$69		
CLR - Clerical									\$19.50	3	\$59		
											Subtotal	\$4,352	
									Overhead	158.92%		\$6,916	
											Subtotal	\$11,268	
											Fee	\$1,352	
											FCCM	0.00%	\$0
											Subtotal Labor Costs		\$12,620
EXPENSES													
ITEM								Quantity	Unit	Rate	Amount		
Courier (FedEx)								5	each	\$15.00	\$75		
Mobilization/Demobilization								1	LS	\$500.00	\$500		
Boring Setup								14	each	\$40.00	\$560		
Soil Drilling in Roadway Areas (25 borings - 10' max)								140	LF	\$12.00	\$1,680		
ASTM D-2216 Moisture Content Determination								90	each	\$10.00	\$900		
ASTM D-4318 Liquid and Plastic Limit of Soils								28	each	\$50.00	\$1,400		
ASTM D-422 Gradation Analysis of Soils (6 sieves)								28	each	\$50.00	\$1,400		
ASTM D-2166 Unconfined Compressive Strength (Soil)								7	each	\$35.00	\$245		
ASTM D-2166 Dry Unit Weight of Specimens								7	each	\$12.00	\$84		
ASTM D-1888 California Bearing Ratio								6	each	\$500.00	\$3,000		
ASTM D-698 Standard Proctor (w/ Classification)								6	each	\$300.00	\$1,800		
Traffic Control								1	hours	\$3,000.00	\$3,000		
Backhoe Rental								1	LS	\$800.00	\$800		
											Subtotal Expenses	\$15,444	
											TOTAL COSTS - GEOTECHNICAL		\$28,064
BASIS OF ESTIMATE													
Description								Miles		# Borings			
Roadway								1		14			
Geotechnical Investigation will be conducted for the purpose of obtaining subgrade soil and existing pavement data to prepare a Geotechnical Report which will include recommendations for new pavement sections, overlay sections (if planned), road subgrade materials, and planned grading for the portion of the project from approximately Melmar Drive to approximately 215 feet beyond W. Drake Street (1.14 miles). The project scope is expected to consist of widening the existing dimensions of Hwy 112 (Garland Ave) along this length. Test pits are anticipated being required to obtain bulk samples for CBR testing and subsequent pavement recommendations. A backhoe rental fee is included to perform the test pits. Traffic control services are anticipated as being required for the drilling operations, which are anticipated to require a minimum of three (3) working days. The above fees anticipate that survey data at the boring locations will be obtained through a different fee scope, other than Geotechnical.													

APPENDIX B1

SUBCONSULTANT AGREEMENT
JOB NO. 040720
Poplar St. – Drake St. (Fayetteville) (S)
Washington County

1. SUBCONSULTANT AGREEMENT

- 1.1. The services to be performed under this Subconsultant Agreement will be performed in connection with the Agreement for Engineering Services ("Prime Agreement") between the Burns & McDonnell Engineering Company, Inc. ("Consultant") and the City of Fayetteville ("Owner") for Job 040720, dated _____, 2019. Consultant and McClelland Consulting Engineers, Inc. ("Subconsultant") hereby agree that the Subconsultant shall perform the professional and related services as described herein. In consideration for the performance of the professional services the Consultant agrees to compensate (and reimburse, if applicable) the Subconsultant in the manner and at the rate(s) provided herein.
- 1.2. The definitions of the Prime Agreement, and its provisions relating to the obligations, duties, and rights of subcontractors, *or which are otherwise required to be inserted into any subcontracting agreements*, are deemed to be part of, and are hereby incorporated by reference into, this Subconsultant Agreement and made binding upon the Subconsultant.
- 1.3. The Subconsultant shall perform its services in character, sequence, and timing so that it will be coordinated with that of the Consultant and in accordance with any schedules provided by the Consultant. Subconsultant shall be responsible for damages to Consultant or Owner to the extent caused by Subconsultant's delay.

2. DESCRIPTION OF PROJECT AND SERVICES TO BE PROVIDED

2.1. ROADWAY

The Subconsultant will provide design input and perform quality control reviews for the design and plans related to the roundabout intersection at Highway 112 and Cassatt Street.

2.2. FIELD SURVEYS AND MAPPING

The Subconsultant shall be responsible for obtaining all required aerial photography and topographic mapping (other than that provided by the City/ ARDOT). The Subconsultant shall also be responsible for all field surveys including topographic surveys, hydraulic surveys, property surveys, and utility surveys, as needed, to identify all existing features along the project including soil borings and establishing project control. Surveying procedures and requirements as established by ARDOT Survey Procedures Manual do not apply to this project.

All services performed shall be consistent with Arkansas minimum standards and in compliance with Arkansas laws and regulations governing the practice of Land Surveyors and with all Federal, State and Local laws, regulations and ordinances applicable to the work. All design and land surveys shall be supervised and certified (stamped) by a Professional Surveyor registered in Arkansas.

All plans and surveys shall be in U.S. Foot Units and based on Arkansas State Plane Grid that have been converted to ground units based on the Combination Adjustment Factor (CAF) approved by, or provided by, the ARDOT.

2.3. RIGHT-OF-WAY PLANS

A. PRELIMINARY AND FINAL DESIGN

1. Provide Right-of-Way Plans.

Right of Way Plans shall be prepared and submitted to the Consultant according to the following:

Stage 1: Submit 60% strip map with construction centerline, limits of construction, existing topography and proposed right of way plotted on complete parcel surveys with property lines identified.

Stage 2: Prepare right of way plans to City specifications including a metes and bounds legal description of each parcel. Plan scale shall be adequate to clearly show all details, dimensions, bearings, distances and notes at 11"x17" sheet size (not smaller than 1"=100' unless approved in advance by City).

Stage 3: Perform a thorough "in-house" review of the right of way plans.

Stage 4: Submit 90% level right of way plans for review (11"x17"), legal descriptions, and "current owner" certificates of title with deeds attached, including an electronic file of the following:

- Right of way plans (All design and plans shall be compiled with AutoCAD/Civil 3D & MicroStation for submittal to ARDOT).
- Legal descriptions (MSWORD format).
- Point numbers of all points with the coordinates, feature code and point descriptions. The format is: Point Number, Easting Coordinate (X), Northing Coordinate (Y), Elevation, Feature Code (Two-letter designation), Point Description.
- Alignment report with point numbers used for the baseline, design alignment, and existing right of way alignment control.

Stage 5: Submit final right of way plans and electronic files with corrections requested by the City.

2.4. GEOTECHNICAL INVESTIGATIONS AND REPORTING

This scope of work includes subsurface borings at 500-feet intervals alternating between a widened portion and the existing roadway, field and laboratory testing, and material properties for pavement design. Borings shall extend 10 feet below existing ground elevation. CBR tests shall be performed at a 1000-ft spacing. Coring of the existing roadway shall be performed at a 1000-ft interval to confirm the existing pavement section. No investigations or recommendations for retaining walls or bridges are included in the scope of work at this time. The Subconsultant will be responsible for staking and locating field borings and then including coordinates and elevations for those borings in the report. Deliverables shall include a Preliminary and Final Geotechnical Report.

All work performed by the Subconsultant shall be in compliance with all applicable Federal, State, and local laws, regulations, and ordinances. Subconsultant shall also adhere to the **Safety Provisions** included in **Appendix B-1A**.

2.5. DELIVERABLES

- Electronic files of the project surveys on a compact disc in AutoCAD/Civil 3D and Microstation DGN format.
- Preliminary Geotechnical Report
- Final Geotechnical Report
- 60% Right of Way Strip Map
- 90% Right of Way Plans and/or Exhibits
- Warranty deed descriptions
- Final Right of Way Plans

3. COSTS, FEES, PAYMENTS AND RATE SCHEDULES

- 3.1. This Agreement is a cost-plus-fixed-fee contract. The Subconsultant is being hired to perform professional engineering services in connection with the Project as set forth herein. In consideration for Title I services performed, the Consultant will reimburse the Subconsultant for allowable direct and indirect costs, as defined herein, and pay the Subconsultant a fixed fee. If Title II services are to be performed, the Consultant will reimburse the Subconsultant for allowable direct costs and also pay the Subconsultant an amount determined by multiplying the salary rate of the individual(s) performing the Title II services, as shown on the Schedule of Salary Ranges, by the Title II Multiplier.
- 3.2. "Indirect Cost Rate." The Indirect Cost Rate is defined in the provisions of 48 CFR Part 31 (FAR), and is also subject to any limitations contained herein. The Indirect Cost Rate for the Subconsultant under this Agreement shall be 158.92 percent (FY2017) until modified in writing and is based upon acceptance of an updated audited indirect cost rate by the Department.
- 3.3. *Salaries.* The following schedule covers the classification of personnel and the salary ranges for all personnel anticipated to be assigned to this project by the Subconsultant:

3.3.1.SCHEDULE OF SALARY RANGES

Staff Classification	Low Rate per Hour	High Rate per Hour
Principal Engineer	\$48.08	\$78.00
Task Manager	\$34.66	\$74.00
Registered Land Surveyor	\$27.88	\$48.75
Survey Party Chief	\$20.14	\$38.50
Survey Field Crewman	\$15.56	\$30.00
Project Engineer	\$33.00	\$70.25
Geotechnical Engineer	\$33.17	\$55.50
Chief Draftsman	\$26.71	\$36.00
Draftsman	\$16.83	\$27.80
Technician	\$24.50	\$40.00
Survey Technician	\$15.00	\$36.75
Lab/Engineering Technician	\$11.00	\$40.75
Field Technician	\$18.80	\$39.00
Clerical	\$11.60	\$28.50
Administrative Assistant	\$10.50	\$28.50

- 3.3.2. The Consultant shall reimburse the Subconsultant for overtime costs only when the overtime has been authorized in writing by the Owner. When authorized, overtime shall be reimbursed at the rate of time and one-half for all nonexempt employees. Notwithstanding this provision, the Subconsultant must comply with all federal and state wage and hour laws and regulations, regardless whether the overtime is considered reimbursable under this Agreement.
- 3.4. "Title I Services Ceiling Price." The Title I Services Ceiling Price for this Agreement is ~~\$156,713.00~~, inclusive of a fixed fee of ~~\$14,981.00~~. The Title I Services Ceiling price is the maximum aggregate amount of all payments that the Consultant may become obligated to make to Subconsultant under this Agreement for fees and costs related to Title I Services. In no event, unless modified in writing, shall total payments by the Consultant related to Title I Services exceed the Title I Services Ceiling Price. The Subconsultant shall not be entitled to receive adjustment, reimbursement, or payment for, nor shall the Subconsultant, its officers, agents, employees, or representatives, incur any liability for, any fee or cost related to, Title I Services exceeding the Title I Services Ceiling Price.
- 3.5. Payment to Subconsultant will be made within fifteen (15) days after Consultant is paid by Owner for Subconsultant's services. Subconsultant recognizes that payment by Owner to Consultant shall be a condition precedent to Consultant's obligation to make payment hereunder, and that payment to Subconsultant is directly contingent upon Owner's payment to Consultant.
- 3.6. If required by the Owner or Consultant, lien waivers, properly executed by Subconsultant, shall be furnished with each invoice from Subconsultant in the form of the lien waiver required by Consultant.
- 3.7. Consultant may withhold payment to Subconsultant, in whole or in part, to the extent reasonably necessary to protect Consultant from loss on account of: (a) defective services not remedied; (b) claims by Owner or other third party or evidence reasonably indicating the probable filing of claims; (c) failure of Subconsultant to make payments to any subconsultant; (d) any cost for which Subconsultant is responsible under this Agreement; or (e) a breach by Subconsultant of any provision of this Agreement. When the grounds for withholding payments are removed, payment of such withheld amounts shall be made. No interest shall be due or payable by Consultant on amounts withheld in good faith pursuant to this paragraph.
- 3.8. Payment to Subconsultant does not constitute or imply acceptance by Consultant or Owner of any portion of the Subconsultant's services and shall not constitute a waiver of any claims against Subconsultant.

4. COMPENSATION SUBJECT TO LIMITATIONS OF FEDERAL AND STATE LAW

The Project (as defined in the Prime Agreement), part of which is to be performed under this Subconsultant Agreement, is a federally-assisted project and federal funds will be used, in part, to pay the Consultant and Subconsultant. Therefore, notwithstanding any provision of this Subconsultant Agreement or the Prime Agreement, all payments, costs, and expenditures are subject to the requirements and limitations of FAR, including those relating to determination of indirect cost rates, if applicable. The Subconsultant shall certify the accuracy of all invoices, requests for payment, and cost rates (if applicable),

along with supporting documentation and any supporting information or records provided prior to, during, or after the term of this Subconsultant Agreement.

5. COMMISSION, ARDOT, AND FHWA AS THIRD PARTY BENEFICIARIES

- 5.1. This Subconsultant Agreement is between and binding upon only the Consultant and Subconsultant. The Commission, ARDOT, and FHWA are not parties to this Subconsultant Agreement, but are expressly made third-party beneficiaries of this Subconsultant Agreement and shall be entitled to enforce any obligation of the Subconsultant owed to the Consultant. No provision of this Subconsultant Agreement or the Prime Agreement, nor the exercise of any right thereunder, shall be construed as creating any obligation or any liability on the part of, or operating as a waiver of any immunity of, the Commission, the ARDOT, the FHWA, or any of their employees, officers, or agents.
- 5.2. The Subconsultant's sole recourse, if any, for any injury arising under or related to this Subconsultant Agreement, the performance of services hereunder, or compensation or claims hereunder, shall be against the Consultant.
- 5.3. The Disputes and Claims provisions of the Prime Agreement shall not apply to this Subconsultant Agreement. However, the Subconsultant shall provide the Consultant all necessary information and assistance to enable Consultant to comply with the Disputes and Claims provisions.

6. RECORDS & AUDITS

- 6.1. *Records* includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- 6.2. *Examination.* The Subconsultant shall maintain, and the Owner, ARDOT, FHWA, and their authorized representatives shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs (direct and indirect) claimed to have been incurred or anticipated to be incurred in performance of this Agreement. This right of examination shall also include examination and audit of any records considered, relied upon, or relating to the determination of the Indirect Cost Rate or any certification thereof, including any CPA audit relied upon to establish the rate. This right of examination shall also include inspection at all reasonable times of the Subconsultant's offices and facilities, or parts of them, engaged in performing the Agreement.
- 6.3. *Supporting Data.* If the Subconsultant has been required to submit data in connection with any action relating to this Agreement, including the negotiation of or pre-negotiation audit of the Indirect Cost Rate, the negotiation of the Fee, request for cost reimbursement, request for payment, request for an adjustment, or assertion of a claim, the Owner, ARDOT, FHWA, or their authorized representatives, in order to evaluate the accuracy, completeness, and accuracy of the data, shall have the right to examine and audit all of the Subconsultant's records, including computations and projections, related to—
 - The determination or certification of the Indirect Cost Rate, including any independent CPA audit or certification thereof;
 - Any proposal for the Agreement, subcontract, or modification;
 - Discussions conducted on the proposal(s), including those related to negotiating;

- Fees or allowable costs under the Agreement, subcontract, or modification;
 - Performance of the Agreement, subcontract or modification; or,
 - The amount and basis of any claim or dispute.
- 6.4. *Audit.* The Owner, ARDOT, FHWA, or their authorized representatives, shall have access to and the right to examine any of the Subconsultant's records involving transactions related to this Agreement or a subcontract hereunder.
- 6.5. *Reports.* If the Consultant is required to furnish cost, funding, or performance reports, the Owner, ARDOT, FHWA, or their authorized representatives shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Consultant's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.
- 6.6. *Availability.* The Consultant shall retain and make available at its office at all reasonable times the records, materials, and other evidence described in this Section and in the Prime Agree Section 29, Disputes and Claims, for examination, audit, or reproduction, until five years after final payment under this Agreement, or for any longer period required by statute or by other clauses of this Agreement. In addition—
- 6.6.1. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be retained and made available for five years after the termination; and,
- 6.6.2. Records relating to any claim or dispute, or to litigation or the settlement of claims arising under or relating to this Agreement shall be retained and made available until after any such claims or litigation, including appeals, are finally resolved.
- 6.7. The Subconsultant shall insert a clause containing all the terms of this section in all subcontracts under this Agreement.

7. PATENT AND COPYRIGHT INFRINGEMENT

- 7.1. The Subconsultant shall report to the Consultant and to the Owner, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the Subconsultant has knowledge.
- 7.2. In the event of any claim or suit against the Owner on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed under this Agreement, the Subconsultant shall furnish to the Consultant and Owner, when requested by the Consultant and/or the Owner, all evidence and information in possession of the Subconsultant pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Subconsultant.
- 7.3. The Subconsultant agrees to include, and require inclusion of, the provisions of this section in all subcontracts at any tier for supplies or services.
- 7.4. The Subconsultant shall indemnify the Owner and its officers, agents, and employees against liability, including costs and attorneys' fees, for infringement of any United States patent or copyright arising from the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property under

this Agreement, or out of the use or disposal by or for the account of the Owner of such supplies or construction work.

- 7.5. This indemnity shall not apply unless the Subconsultant shall have been informed within ten (10) business days following the Owner's receipt of legal notice of any suit alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Owner directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the Agreement not normally used by the Subconsultant, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Subconsultant, unless required by final decree of a court of competent jurisdiction.

8. SUBCONTRACTING

- 8.1. Unless expressly disclosed in Appendix B, the Subconsultant may not subcontract any of the services to be provided herein without the express written approval of the Consultant and Owner. All subcontractors, including those listed in Appendix B, shall be bound by the terms of this Agreement. All subcontractors shall be subject to all contractual and legal restrictions concerning payment and determination of allowable costs, and subject to all disclosure and audit provisions contained herein and in any applicable federal or state law.
- 8.2. Unless the consent or approval specifically provides otherwise, neither consent by the Consultant or Owner to any subcontract nor approval of the Subconsultant's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the Subconsultant of any responsibility, obligation, or duty under this Agreement.
- 8.3. No subcontract placed under this Agreement shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations of the FAR.
- 8.4. Furthermore, notwithstanding any other provision within this Agreement, no reimbursement or payment for any markup of the cost of any subcontract shall be considered by the Owner without the express written agreement of the Owner.
- 8.5. *Prompt Payment.* The Subconsultant shall pay subcontractors for satisfactory performance of their subcontracts within 30 days of receipt of each payment by the Consultant to the Subconsultant. Any retainage payments held by the Subconsultant must be returned to the subcontractor within 30 days after the subcontractor's work is completed. Failure to comply with this provision shall be considered a Default by the Subconsultant. If the Subconsultant fails to comply with this provision, in addition to any other rights or remedies provided under this Agreement, the Owner, at its sole option and discretion, may:
- make payments directly to the subcontractor and offset such payments, along with any administrative costs incurred by the Owner, against reimbursements or payments otherwise due the Subconsultant;
 - notify any sureties; and/or,

- withhold any or all reimbursements or payments otherwise due to the Subconsultant until the Subconsultant ensures that the subcontractors have been and will be promptly paid for work performed.

9. RESTRICTIONS ON EMPLOYMENT OF PRESENT AND FORMER EMPLOYEES

The Subconsultant agrees to a 6 month restriction on employment of present and former employees of Owner regarding matters for which a former employee was officially responsible.

10. INSURANCE

- 10.1. *Professional Liability Insurance Coverage.* The Subconsultant shall maintain at all times during the performance of services under this Agreement professional liability insurance coverage for negligent acts, errors, and omissions to the extent caused by the performance of professional services under this Agreement in an amount per claim of \$1,000,000 per claim and aggregate. Such insurance shall extend to any errors, omissions, and negligent acts in the performance of services under this Agreement committed by the Subconsultant or alleged to have been committed by the Subconsultant subject to the terms of the policy.
- 10.2. *Deductible.* The Subconsultant may maintain a professional liability insurance policy with a deductible clause. The Subconsultant shall submit promptly to the Consultant, upon request as often as quarterly, detailed financial statements and any other information requested by the Consultant to reasonably determine whether or not the Subconsultant's financial resources are sufficient to adequately cover possible liability in the amount of the deductible.
- 10.3. *Worker's Compensation Insurance.* The Subconsultant shall at all times during the Term of this Agreement maintain Worker's Compensation and Employers Liability Insurance as required under Arkansas law.
- 10.4. *Automobile and General Liability Insurance.* The Subconsultant shall at all times during the term of this Agreement maintain commercial general liability insurance coverage for bodily injury and property damage in the combined single limit of \$1,000,000 per occurrence and aggregate, and business automobile liability insurance coverage for bodily injury and property damage in the combined single limit of \$1,000,000 per accident, which shall cover all owned, hired, and non-owned vehicles.
- 10.5. *Valuable Papers Insurance.* The Subconsultant shall at all times during the term of this Agreement maintain Valuable Papers Insurance, whether as a part of the General Liability Insurances referenced above or as a separate insurance, in an amount sufficient to cover all costs associated with repairing, restoring, or replacing any plans, drawings, field notes, and other documents kept or created by the Subconsultant as part of the services under this Agreement, in the event of casualty to, or loss or theft of such papers.
- 10.6. *Contractor's Pollution/Environmental Impairment Liability Insurance.* The Subconsultant shall at all times during the term of this Agreement maintain Contractor's Pollution/Environmental Impairment Liability Insurance in an amount per claim of \$5,000,000 per claim and aggregate.
- 10.7. *Insurance Certificates.* Prior to the execution of this Agreement, the Subconsultant shall furnish to the Consultant certificates of insurance reflecting policies in force, and it shall also provide certificates evidencing all renewals of any expiring insurance policy

required hereunder within thirty (30) days of the expiration thereof. The Subconsultant's failure to provide and continue in force and effect any insurance required under this Article shall be deemed a Default for which Consultant, in its sole discretion, may terminate this Agreement immediately or on such other terms as it sees fit.

10.8. *Additional Insurance Requirements.* All insurance maintained by the Subconsultant pursuant to this Section shall be written by insurance companies authorized to do business in Arkansas, in form and substance reasonably satisfactory to the Consultant, and shall provide that the insurance will not be subject to cancellation during its term except upon thirty (30) days prior written notice to the Consultant. In the event that the insurance is cancelled, during its term and thirty (30) days written notice cannot be provided to the Consultant, the Subconsultant shall provide any insurance required under this Article for continual coverage upon expiration of the existing policy or become financially responsible for any claims associated with the expired period.

10.9. *Duration of Insurance Obligations.* The Subconsultant shall maintain its professional insurance coverage required under this Agreement in force and effect for a period not less than one year after the final completion of the Subconsultant's services under this Agreement. Commercial General Liability Insurance Coverage and Valuable Papers Insurance Coverage required under this Agreement shall be in full force and effect until the final completion of the Subconsultant's services. All other insurance shall be maintained in full force and effect until final completion of the Subconsultant's services.

10.10. *Subconsultant's Insurance Primary.* All insurance policies maintained by the Subconsultant providing additional insured coverage pursuant to this Agreement shall provide that the Subconsultant's insurance shall be primary and the Consultant's own insurance shall be non-contributing.

10.11. *Additional Insured.* All liability insurance policies, except the professional liability policy, worker's compensation and valuable papers maintained by the Subconsultant pursuant to this Agreement shall be endorsed to include the Consultant, its officers, directors, employees, as additional insured,

10.12. Subconsultant shall be solely liable for the amount of any deductibles should claims or expenses (including attorneys' fees) under the insurance policies require payment. If applicable, Subconsultant shall require its subcontractors to furnish the above insurance and comply with all requirements of this paragraph, including but not limited to the furnishing of certificates to Consultant and its client if required. Subconsultant and its subcontractors shall not violate, or permit to be violated, any conditions or warranties of the above insurance policies and shall at all times satisfy the requirements of the insurance carriers, underwriters, brokers, or agents writing said policies.

11. COVENANT AGAINST CONTINGENCY FEES

11.1. The Subconsultant warrants that no person or agency has been employed or retained to solicit or obtain this Subconsultant Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the ARDOT and Consultant shall have the right to annul this Subconsultant Agreement without liability or, in its discretion, to deduct from the Contract Price or consideration, or otherwise recover, the full amount of the contingent fee.

- 11.2. *Bona fide agency*, as used in this section, means an established commercial or selling agency, maintained by the Subconsultant for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds itself out as being able to obtain any government contract or contracts through improper influence.
- 11.3. *Bona fide employee*, as used in this section, means a person, employed by the Subconsultant and subject to the Subconsultant's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain government contracts nor holds out as being able to obtain any government contract or contracts through improper influence.
- 11.4. *Contingent fee*, as used in this section, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a government contract.
- 11.5. *Improper influence*, as used in this section, means any influence that induces or tends to induce a government employee or officer to give consideration or to act regarding a government contract on any basis other than the merits of the matter.

12. TITLE VI ASSURANCES (NONDISCRIMINATION)

During the performance of this Subconsultant Agreement, the Subconsultant, for itself, successors, and assigns, certifies and agrees as follows:

- 12.1. *Compliance with Regulations*. The Subconsultant shall comply with the Regulations relative to Title VI (Nondiscrimination in Federally-assisted programs of the Department of Transportation and its operating elements, especially Title 49, CFR Part 21, as amended, and hereinafter referred to as the Regulations). These regulations are herein incorporated by reference and made a part of this Subconsultant Agreement. Title VI provides that the recipients of Federal financial assistance will maintain and implement a policy of nondiscrimination in which no person shall, on the basis of race, color, or national origin be excluded from participation in, denied the benefits of, or subject to discrimination under any program or activity by recipients of Federal financial assistance or their assignees and successors in interest.
- 12.2. *Nondiscrimination*. The Subconsultant, with regard to the work performed by it during the term of this Subconsultant Agreement, shall not discriminate on the basis of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Subconsultant shall not participate either directly or indirectly in any discrimination prohibited by Section 21.5 of the Regulations, including employment practices.
- 12.3. *Solicitations for Subcontracts, Including Procurements of Material & Equipment*. In all solicitations, either by competitive bidding or negotiation, made by the Subconsultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Subconsultant of the Subconsultant's obligations under this Subconsultant Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- 12.4. *Information and Reports*. The Subconsultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, and accounts, other sources of information, and its facilities as may be determined by the Owner, the ARDOT, or the USDOT and its Affiliated Modes to be

pertinent to ascertain compliance with such regulations and directives. Where any information required of the Subconsultant is in the exclusive possession of another who fails or refuses to furnish this information, the Subconsultant shall so certify to the Owner, the ARDOT or the USDOT and its Affiliated Modes, as appropriate, and shall set forth what efforts made by the Subconsultant to obtain the records or information.

12.5. *Sanctions for Noncompliance.* In the event of the Subconsultant's noncompliance with the nondiscrimination provisions of this Subconsultant Agreement, the Owner shall impose such contract sanctions as it, the ARDOT, or the USDOT and its Affiliate Modes may determine to be appropriate, including but not limited to, withholding of payments to the Consultant or Subconsultant under the Agreement until the Subconsultant complies with the provisions and/or cancellation, termination, or suspension of the Subconsultant Agreement, in whole or in part.

12.6. *Incorporation of Provisions.* The Subconsultant shall include the terms and conditions of this section in every subcontract including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Subconsultant shall take such action with respect to any subcontract or procurement as the Owner, the ARDOT, or USDOT and its Affiliated Modes may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; *provided*, however that, in the event the Subconsultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Subconsultant may request the Owner, the ARDOT, or the United States to enter into the litigation to protect the interests of the State and the United States, respectively.

13. DBE CLAUSE

13.1. *The Subconsultant shall not discriminate on the basis of race, color, sex, or national origin in the performance of this Subconsultant Agreement. The Subconsultant shall comply with the applicable requirements of 49 CFR Part 26 and perform any actions necessary to maintain compliance in the award and administration of DOT-assisted contracts. Failure by the Subconsultant to comply with or perform these requirements is a material breach of this Subconsultant Agreement, which may result in the cancellation, termination, or suspension of this Subconsultant Agreement in whole or in part, or such other remedy that the Owner or ARDOT may determine appropriate.*

13.2. The Subconsultant shall insert a clause containing all the terms of this section in all subcontracts under this Agreement.

14. COMPLIANCE WITH ALL OTHER LAWS REGARDING NONDISCRIMINATION

14.1. The Subconsultant will comply with the provisions of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, Title VI of the Civil Rights Act of 1964, FHWA Federal Aid Project Guidance, and any other Federal, State, and/or local laws, rules and/or regulations.

14.2. The Subconsultant, during the term of this Agreement, shall not discriminate on the basis of race, color, sex, national origin, age, religion, disability, or any other protected classes in admission or access to and treatment in programs and activities associated with this Agreement, or in the selection and retention of subcontractors, including procurement of material and leases of equipment. The Consultant shall not participate either directly or indirectly in any discrimination prohibited by the Regulations, including employment practices.

- 15.3. In accordance with Section 504 regulations 49 CFR Part 27.15, the Owner's Notice of Nondiscrimination is required in any bulletins, announcements, handbooks, pamphlets, brochures, and any other publications associated with this Agreement that are made available to the public, program participants, applicants or employees.

15. CERTIFICATION REGARDING LOBBYING

- 15.1. The Subconsultant certifies, to the best of their knowledge and belief, that:

15.1.1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

15.1.2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying".

The Subconsultant shall require that the language of this certification be included in the agreement for all subcontracts and that all subcontractors shall certify and disclose accordingly.

16. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

- 16.1. The Subconsultant certifies, to the best of its knowledge and belief, that—

16.1.1. The Subconsultant and any of its Principals—

16.1.1.1. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal or state agency;

16.1.1.2. Have not, within a 3-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

16.1.1.3. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subsection 16.1.1.2; and,

16.1.1.4. The Subconsultant has not within a 3-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency.

- 16.2. *Principals*, for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions). This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under section 1001, title 18, United States Code, as well as any other applicable federal and state laws.
- 16.3. The Subconsultant shall provide immediate written notice to the ARDOT if, at any time prior to contract award, the Subconsultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 16.4. The certification in subsection 16.1 is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Subconsultant knowingly rendered an erroneous certification, the ARDOT may terminate the contract resulting from this solicitation for default in addition to any other remedies available to the ARDOT.

17. CERTIFICATION REGARDING CONFLICT OF INTEREST

- 17.1. The Subconsultant certifies, that it has no financial interest in the proposed project or construction of the proposed project.
- 17.1.1. The Subconsultant nor any of its Principals have
- 17.1.1.1. No financial interest in work associated with this contract;
- 17.1.1.2. No ownership interest in work associated with this contract;
- 17.1.1.3. No Financial interest in the results of any agency decisions regarding approvals for work associated with this project;
- 17.1.1.4. Policies and procedures (provided statutory framework permits) for a contracting agency to pursue a range of civil actions and penalties including fines, suspension, or debarment associated with fraud, waste, abuse, and identified conflict of interest which were not disclosed.
- 17.2. For the duration of the contract, except for work expressly defined in this contract, the Subconsultant shall not be party to agreements for design or construction on projects associated with contract.
- 17.3. For the duration of the contract, except for work expressly defined in this contract, the Subconsultant shall not be party to enforceable promises or guarantees of future work associated with this contract.

18. DISPUTES, NEGOTIATIONS, MEDIATION, AND WITNESS FEES

- 18.1. If a dispute arises relating to the performance of the services to be provided and, should that dispute result in litigation, it is agreed that the substantially prevailing party (as determined in equity by the court) shall be entitled to recover all reasonable costs of litigation, including staff time, court costs, attorney's fees and other related expenses.
- 18.2. The parties shall participate in good faith negotiations to resolve any and all disputes. Should negotiations fail, the parties agree to submit to and participate in a third party-facilitated mediation as a condition precedent to resolution by litigation. Unless otherwise

agreed to, mediation shall be conducted under the rules of the American Arbitration Association and shall be held in Kansas City, Missouri.

- 18.3. The parties agree that any dispute between them, including any action against an officer, director or employee of a party, arising out of or related to this Agreement, whether in contract or tort, not resolved through direct negotiation and mediation, shall be resolved by litigation in the state or federal courts located in Jackson County, Missouri, and each party expressly consents to jurisdiction therein. Any litigation to compel or enforce, or otherwise affect the mediation shall be in state or federal courts located in Jackson County, Missouri, and each party expressly consents to jurisdiction therein.
- 18.4. Causes of action between the parties shall accrue, and applicable statutes of limitation shall commence to run the date Subconsultant's services are substantially complete.
- 18.5. Subconsultant's employees shall not be retained as expert witnesses in the defense of Consultant or Owner, except by separate written agreement.
- 18.6. Consultant agrees to pay Subconsultant pursuant to Subconsultant's then current schedule of hourly labor billing rates for time spent by any employee of Subconsultant responding to any subpoena by any party in any dispute as an occurrence witness or to assemble and produce documents resulting from Subconsultant's services under this Agreement.

19. OWNERSHIP OF DOCUMENTS & DATA

- 19.1. Except for any pre-existing intellectual property, all project documents and data, regardless of form and including but not limited to original drawings, disks of CADD drawings, cross-sections, estimates, files, field notes, and data, shall be the property of the Consultant. The Subconsultant shall further provide all documents and data to the Consultant upon the Consultant's request. The Subconsultant may retain reproduced copies of drawings and other documents. In the event that any patent rights or copyrights are created in any of the documents, data compilations, or any other work product, the Consultant shall have an irrevocable license to use such documents, or data compilations, or work product. These rights of the Consultant shall accrue to the Owner pursuant to the Prime Agreement between the Consultant and Owner. This provision and obligation shall survive termination of the Agreement.

20. INDEMNITY AND RESPONSIBILITY FOR CLAIMS AND LIABILITY

- 20.1. *Indemnity.* To the fullest extent permitted by law, Subconsultant shall defend, indemnify, and hold harmless Consultant and Owner and their respective officers, agents and employees from and against all and any claims, suits, damages, liabilities, costs and expenses, including attorneys' fees and costs of defense, stemming from any negligent, willful, intentional, or reckless act, error, or omission on the part of the Subconsultant and its subcontractors, agents, and employees. Subconsultant shall also indemnify and hold harmless Consultant and Owner, and their officers, agents, and employees against liability including costs and attorneys' fees for infringement of any patent or copyrights arising from Subconsultant's performance of services or the Agreement or any work product or documentation provided or prepared by Subconsultant. This provision and obligation shall survive termination of the Agreement.

21. SURVIVAL

All provisions, warranties, obligations, and representations, which expressly survive or by their terms, are to survive termination. Such terms include, but are not limited to, indemnity, ownership of documents, insurance, and other similar clauses.

22. NOTICE

22.1. All notices, approvals, requests, consents, or other communications required or permitted under this Agreement shall be mailed or hand-delivered to:

22.1.1. To the Subconsultant:

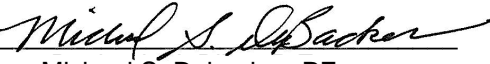
Mr. Kevin Beaumont, C.Eng.
McClelland Consulting Engineers, Inc.
1810 N. College Ave.
Fayetteville, AR 72703

22.1.2. To the Consultant:

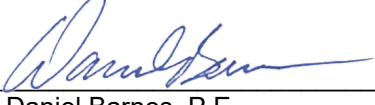
Steven Beam, PE
Burns & McDonnell Engineering Company, Inc.
6815 Isaacs Orchard Road, Suite B3
Springdale, AR 72764

IN WITNESS WHEREOF, the parties execute this Subconsultant Agreement, to be effective _____.

BURNS & MCDONNELL ENGINEERING
COMPANY, INC.

BY: 
Michael S. Debacker, PE
Transportation Director

MCCLELLAND CONSULTING
ENGINEERS, INC.

BY: 
Daniel Barnes, P.E.
President-Fayetteville

APPENDIX B-1A SAFETY PROVISIONS

1 The SUBCONSULTANT shall be solely responsible for the safety and protection of its persons and property at the Project Site and shall comply with all applicable federal, state, and local safety laws and regulations.

2 The SUBCONSULTANT shall conform to all OWNER's and CONSULTANT's Site-specific safety related regulations, policies, and manuals. CONSULTANT has provided its safety manual (Geotechnical Safety Plan) in its entirety to SUBCONSULTANT for its review pertaining to the intended project scope requirements. SUBCONSULTANT acknowledges it has received, reviewed and understands CONSULTANT's and OWNER's Geotechnical Safety Plan, safety manual, policies and procedures. Forms specifically required during the course of the geotechnical investigation activities (those forms to be provided either prior to accessing the Site to commence field activities or to be completed regularly while performing work activities) are attached hereto as **ATTACHMENT 1**.

3 SAFETY PRECAUTIONS AND PROCEDURES

3.1 SUBCONSULTANT shall take necessary safety precautions with respect to performance of the Services, shall comply with safety measures initiated by CONSULTANT and OWNER and with applicable laws, ordinances, rules, regulations, and orders of public authorities for the safety of persons or property and with the requirements of the OWNER's operations and safety procedures, and shall submit information to CONSULTANT which fulfills the requirements as indicated in the Geotechnical Safety Plan. Failure to comply with safety provisions outlined in the Geotechnical Safety Plan may result in back charges to SUBCONSULTANT or withholding of payment until safety violations or inadequacies are abated or corrected.

3.2 SUBCONSULTANT has reviewed the CONSULTANT's Geotechnical Safety Plan and understands all terms and requirements set forth in the Geotechnical Safety Plan. Furthermore, the work practices and requirements outlined in the Geotechnical Safety Plan will be the minimum requirements implemented and utilized during all activities.

3.3 Verbal notification shall immediately (within three (3) minutes) be provided to CONSULTANT of any workplace near miss, incident, accident, injury, illness, or related hospitalization of SUBCONSULTANT's employees or agents at the Site of the Project, and a written report shall be made to CONSULTANT within twenty-four (24) hours of the occurrence.

3.4 All SUBCONSULTANT employees proposed to work at the Site shall attend CONSULTANT project orientation training prior to the employees being allowed to work on the Site. If the CONSULTANT is not at the Site to conduct the project orientation training, SUBCONSULTANT shall conduct the project orientation training in accordance with the Geotechnical Safety Plan. If the OWNER has a project orientation training, employees shall attend the training prior to working on the Site. In addition, SUBCONSULTANT shall conduct weekly safety training (e.g., toolbox meeting) with its employees.

3.5 SUBCONSULTANT shall submit the Competent Person Designation Form located in **ATTACHMENT 1** to CONSULTANT prior to the start of Services.

3.6 SUBCONSULTANT shall immediately correct any unsafe conditions identified by CONSULTANT. In the event SUBCONSULTANT fails to immediately correct such unsafe conditions, CONSULTANT may either (1) have the unsafe conditions corrected by others at SUBCONSULTANT's expense, or (2) direct that the Services be stopped in the area of the unsafe condition; however, this right to stop the Services shall not give rise to any duty to SUBCONSULTANT or to any third party on the part of CONSULTANT to exercise this right.

3.7 SUBCONSULTANT is required to discipline employees who violate established rules and regulations of the Project.

3.8 SUBCONSULTANT shall comply with any permitting required by CONSULTANT or OWNER for construction activities.

3.9 SUBCONSULTANT shall provide all applicable OSHA-required training and other training as outlined in the Geotechnical Safety Plan and maintain records of such training on Site as required.

3.10 The personal protective equipment (PPE) provisions outlined in the Geotechnical Safety Plan shall be enforced by SUBCONSULTANT. The following are minimum requirements for all personnel on the Project Site:

- (a) Safety Glasses ANSI Z-87.1;
- (b) Safety Toe work boots that satisfy ASTM F2413-05 Standard Requirements for Protective Footwear or ANSI Z41-1999;
- (c) Hard Hat;
- (d) Shirt with 4-inch minimum sleeves;
- (e) Long Pants (no shorts);
- (f) Class II High-Visibility apparel.

3.11 CONSULTANT shall not be liable for any damages experienced by SUBCONSULTANT due to stoppage of SUBCONSULTANT's Services. SUBCONSULTANT shall submit no claim for increased costs or extension of time due to any such stoppage of Services. In the event the Project Site, or any portion of the Services at the Project Site, is stopped or suspended by CONSULTANT, any outside agency, or the OWNER, to the extent caused by any act, error, or omission of SUBCONSULTANT or its SUBCONSULTANTS, including, but not limited to, those activities related to safety or health, SUBCONSULTANT shall be responsible for all impact costs and damages suffered by CONSULTANT or OWNER due to such delay or disruption. In addition, SUBCONSULTANT shall be liable to CONSULTANT for any liquidated damages assessed by OWNER against CONSULTANT to the extent caused by SUBCONSULTANT.

3.12 SUBCONSULTANT shall complete and provide to CONSULTANT within the time frame stated in **ATTACHMENT 1** all Project-specific safety form submittals as identified and referenced in **ATTACHMENT 1**.

3.13 SUBCONSULTANT may attach copies of the utility location verification forms provided by the individual utility locators in lieu of the utility representative signatures required in Section 5 of **FORM J-4, ATTACHMENT 1**.

4 DRUG AND ALCOHOL SCREENING

4.1 SUBCONSULTANT shall institute and maintain a substance and alcohol abuse prevention program which meets or exceeds the requirements outlined in the Geotechnical Safety Plan. If the OWNER's requirements differ from those required by the CONSULTANT, then the substance and alcohol abuse prevention program will conform to the more stringent of these requirements.

4.2 Prior to mobilizing any employee on site, SUBCONSULTANT shall provide CONSULTANT with written documentation verifying that each employee has been tested and is drug and alcohol free per the requirements of the Geotechnical Safety Plan.

4.3 SUBCONSULTANT's compensation shall include all costs associated with substance abuse screening, including pre-employment screening for all on-site employees, as well as monthly random testing of SUBCONSULTANT's employees assigned to the Project site. If compensation is on a Lump Sum basis, the cost shall be included in the Lump Sum price; if on a Unit Price basis, SUBCONSULTANT can invoice

once per employee at such price, but additional re-testing due to any employee failing the test is not reimbursable to SUBCONSULTANT.

4.4 The pre-site access test must be taken by the employee within five (5) days prior to reporting to the Project site. Exceptions will be made at the discretion of CONSULTANT's Corporate Safety & Health Department. Circumstances warranting an extension of the 5-day requirement include substantiated project delays, adverse weather, delays by OWNER and other causes beyond SUBCONSULTANT's reasonable control.

4.5 SUBCONSULTANT shall submit prior to entry upon Project site **FORM C-18, ATTACHMENT 1**, representing compliance with Project-specific testing within the past required/stated days for all designated on-site personnel.

ATTACHMENT 1 – SITE SPECIFIC SAFETY FORMS

**FORMS B-3; C-8; C-9; C-10; C-12; C-13; C-17; C-18; and J-4
are attached hereto and incorporated by reference herein**

<u>Form</u>	<u>Frequency</u>
B-3 Form, Subcontractor Verification	Prior to work activities
C-8 Form, Project Orientation Training	Prior to work activities
C-9 Form, Certification of Training	Prior to work activities
C-10 Form, Pre-Task Analysis (PTA)	Daily (submit at end of project)
C-12 Form, Activity Hazard Analysis	Prior to work activities
C-13 Form, Weekly Toolbox Safety Training	Weekly (submit at end of project)
C-17 Form, Competent Person Designation Form	Prior to work activities
C-18 Form, Substance Abuse Site Access Verification	Prior to work activities
J-4 Form, Intrusive Activities Checklist	Prior to work activities

(Additional safety forms and/or equipment inspections may be needed depending upon the site activities; review Geotechnical Safety Plan for details.)



Subcontractor Verification Form

Project Name: _____ Project #: _____
Location: _____ Date: _____
Company: _____
Submitted by: _____

Subcontractor Executive Management Designate:	
Subcontractor President:	
Subcontractor Designated Safety Representative:	

Subcontractor Verification:

I have reviewed the Burns & McDonnell Project Safety and Health Program and I hereby understand all terms and requirements set forth in the Project Safety and Health Manual. Furthermore, the work practices and requirements outlined in the Project Safety and Health Manual will be the minimum requirements implemented and utilized during all construction activities.

<i>Company</i>	<i>Project Manager</i>	<i>Date</i>

Subcontractor Safety & Health Program Statement

_____ company is adopting the Burns & McDonnell Project Safety & Health

Program as its own for the _____ Project.

By signing this agreement, I acknowledge the understanding of all requirements and obligations stated in the Burns & McDonnell Project Safety & Health Program and the _____ company has the resources necessary to carry out such functions for the _____ Project.

<i>Printed Name</i>	<i>Signature</i>	<i>Date</i>

Project Manager and/or President:

Project Name: _____ Project #: _____
 Location: _____ Date: _____
 Company: _____
 Submitted By: _____ Worker Trained (print)

Instructions: Please Check the Appropriate Box in Front of Each Topic as the Topic is Covered by the Trainer.									
<input type="checkbox"/>	Burns & McDonnell Safety Commitment and Safety & Health Goals								
<input type="checkbox"/>	Reporting, Surveillance, and Correcting of Hazardous Conditions / Unsafe Acts / Work Practices								
<input type="checkbox"/>	Project Disciplinary Procedures - Violation Notification Policy and Consequences for Unsafe Acts, Unsafe Behaviors, or Creation of Unsafe Conditions								
<input type="checkbox"/>	Drug Free workplace: Substance & Alcohol Abuse Policy & Testing								
<input type="checkbox"/>	Site Emergency Action / Fire Prevention / Evacuation Plans & Emergency Response Procedures (Form E-1)								
<input type="checkbox"/>	Reporting of ALL Incidents / Accidents/Injuries / Near Misses								
<input type="checkbox"/>	Project Safety & Health Coordination and Submittal Requirements								
<input type="checkbox"/>	Inspections – Forms / Reports: Types & Frequencies: JHA, PTA, mobile equipment, vehicles, PPE etc.								
<input type="checkbox"/>	Project & Site-Specific Safety and Health Procedures / Rules:								
Hazards									
Yes	No		Yes	No		Yes	No		
<input type="checkbox"/>	<input type="checkbox"/>	Housekeeping	<input type="checkbox"/>	<input type="checkbox"/>	Compressed Air & Gases	<input type="checkbox"/>	<input type="checkbox"/>	Electrical Safety	
<input type="checkbox"/>	<input type="checkbox"/>	Ladders & Stairs	<input type="checkbox"/>	<input type="checkbox"/>	Cranes, Derricks & Hoists	<input type="checkbox"/>	<input type="checkbox"/>	LOTO	
<input type="checkbox"/>	<input type="checkbox"/>	Scaffolds & Safe Supports	<input type="checkbox"/>	<input type="checkbox"/>	Mobile Equipment	<input type="checkbox"/>	<input type="checkbox"/>	Hazardous Materials	
<input type="checkbox"/>	<input type="checkbox"/>	Aerial Lifts & Platforms	<input type="checkbox"/>	<input type="checkbox"/>	Material Handling	<input type="checkbox"/>	<input type="checkbox"/>	Flam. & Comb. Liquids	
<input type="checkbox"/>	<input type="checkbox"/>	Confined Spaces	<input type="checkbox"/>	<input type="checkbox"/>	Vehicles	<input type="checkbox"/>	<input type="checkbox"/>	Silica Dust	
<input type="checkbox"/>	<input type="checkbox"/>	Noise Exposure / HCP	<input type="checkbox"/>	<input type="checkbox"/>	Power & Hand Tools	<input type="checkbox"/>	<input type="checkbox"/>	Biological Hazards	
<input type="checkbox"/>	<input type="checkbox"/>	Process Safety Management	<input type="checkbox"/>	<input type="checkbox"/>	Hot Work, Welding & Cutting	<input type="checkbox"/>	<input type="checkbox"/>	Severe Weather	
<input type="checkbox"/>	<input type="checkbox"/>	HAZWOPER	<input type="checkbox"/>	<input type="checkbox"/>	Demolition	<input type="checkbox"/>	<input type="checkbox"/>	Heat Stress	
<input type="checkbox"/>	<input type="checkbox"/>	PPE	<input type="checkbox"/>	<input type="checkbox"/>	Steel Erection	<input type="checkbox"/>	<input type="checkbox"/>	Cold Stress	
<input type="checkbox"/>	<input type="checkbox"/>	Exit Routes / Emergencies	<input type="checkbox"/>	<input type="checkbox"/>	Hoisting & Rigging	<input type="checkbox"/>	<input type="checkbox"/>	Working Around Water	
<input type="checkbox"/>	<input type="checkbox"/>	Respiratory Protection	<input type="checkbox"/>	<input type="checkbox"/>	Fall Protection	<input type="checkbox"/>	<input type="checkbox"/>	Signage & Barricades	
<input type="checkbox"/>	<input type="checkbox"/>	Excavations	<input type="checkbox"/>	<input type="checkbox"/>	Concrete / Masonry	<input type="checkbox"/>	<input type="checkbox"/>	Sanitation & Waste Plan	
<input type="checkbox"/>	<input type="checkbox"/>	Fire Protection	<input type="checkbox"/>	<input type="checkbox"/>	Radiation (Non-& Ionizing)	<input type="checkbox"/> Other (List) _____			
<input type="checkbox"/>	<input type="checkbox"/>	Heaters	<input type="checkbox"/>	<input type="checkbox"/>	Explosives & Blasting				
Competent Person									
<input type="checkbox"/>	<input type="checkbox"/>	Competent Person Requirements & Designation Policies							
Training									
<input type="checkbox"/>	<input type="checkbox"/>	Regulatory required (e.g. fall protection, confined space, LOTO, rigging, equipment operator, etc.), certifications (e.g. riggers, signalman), licenses (e.g. operators)							
Hazard Communication Program									
<input type="checkbox"/>	<input type="checkbox"/>	Right-To-Know Explanation & Question Forum							
<input type="checkbox"/>	<input type="checkbox"/>	SDS Location							
<input type="checkbox"/>	<input type="checkbox"/>	Location and Storage of Products & Hazardous Materials							
Hazardous Energy Control / LOTO									
<input type="checkbox"/>	<input type="checkbox"/>	Lock-Out/Tag-Out Procedures							
<input type="checkbox"/>	<input type="checkbox"/>	Tagging Authority for Placing/Removing							
<input type="checkbox"/>	<input type="checkbox"/>	Permitting System - Records							
<input type="checkbox"/>	<input type="checkbox"/>	Necessary to Have Continued Training Prior to Using Program							
Reminders									
<input type="checkbox"/>	<input type="checkbox"/>	Daily PTA & Weekly Toolbox Meetings							
<input type="checkbox"/>	<input type="checkbox"/>	Daily, Weekly, Monthly, & Annual Inspections							
<input type="checkbox"/>	<input type="checkbox"/>	Viewed Postings: Employee Benefits, Emergency Numbers and Emergency Action Plan							
I understand that compliance to all project safety policies is mandatory and conditional to employment on this project. I understand that if I am in violation of any safety and health policies disciplinary action, including termination may result.									
Employee's Signature: _____					Instructor's Signature: _____				



Burns & McDonnell Safety & Health Form C-9 CERTIFICATION OF TRAINING



Project Name: _____ Project #: _____
Location: _____ Date: _____
Contractor Company: _____
Submitted By: _____

Check the type of training that was given (See next page for a listing of required training and if non-listed below, enter as "other")

Employee Name	Employee Identification Number	Confined Space Entry	Fall Protection	High voltage; T&D	Lockout / Tagout	Respiratory Protection	Scaffolds; Aerial lifts	Forklifts	Excavations & Trenching	First Aid / CPR	Other: _____	Other: _____	Other: _____
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

I certify that the signed employees either engaged in, supervising or serving as stand-bys for the noted operation have received contractor provided training in accordance with the appropriate standard

Instructor: _____

Instructor's Signature: _____ Date: _____

Company Representative: _____

Company Representative's Signature: _____ Date: _____

Form #: C-09	Certification of Training		Approval Date: 16 Feb 15
Location: http://intranet/dept/safety/Pages/landing.aspx Forms	Frequency of use: Prior to work activity	Page 1 of 2	Revision #: 3

Training Requirements from the OSHA Standards

Standard Training Topic	29 CFR 1926	29 CFR 1910
Emergency Plans & Fire Prevention Plans	.35	.38
Powered Platforms		.66
Ionizing - Non-ionizing	.53 & .54	.11
Hazard Communication	.59	.1200
Lead	.62	.1025
Process Safety Management	.64	.119
Hearing Protection / Conservation	.101	.95
Respiratory Protection	.103	.134
Fire Extinguisher	.150	.157
PPE	.28 & .95	.132
Signaling	.201	
Rigging	.251	
Powder Actuated Hand Tools	.302	
Welding & Cutting (Gas & Arc)	.350 - .351	.252 - 255
Fire Prevention	.352	
GFCI	.404	.268
Lockout / Tagout	.417	.147
Scaffolds	.454	
Confined Space Entry		.146
Fall Protection	.503	
Cranes & Derricks	.550 - .556	
Material Hoists, Personnel Hoists, & Elevators	.552	
Site Clearing	.604	
Excavations and Trenching	.651	
Underground Construction	.800	
Compressed Air / Decompression	.803	
Demolition	.850 - .859	
Blasting & Explosives	.900 - .909	.109
T&D; High voltage	.950 - .957	.269
Ladders	.1053 & .1060	
Commercial Diving	.1076	0.41
HAZWOPER	.65	.120
Asbestos	.1101	.1001
Other Hazardous Chemicals	.1102 - .1152	.1003 - 1050
Forklifts		.178 - .179
First Aid	.50	.151
Logging		.266
Bloodborne Pathogens		.1030
Derrick Trucks		.268
Powered Industrial Vehicles (Rollers, compactors, front-end loaders, bulldozers, earthmoving equipment: scrapers, loaders, crawler or wheel tractors, bulldozers, off-highway trucks, graders, agricultural & industrial tractors, forklifts and similar equipment.)	.602	.178

Form #: C-09	Certification of Training		Approval Date: 16 Feb 15
Location: http://intranet/dept/safety/Pages/landing.aspx Forms	Frequency of use: Prior to work activity	Page 1 of 2	Revision #: 3



Burns & McDonnell Safety Form C-10 Pre-Task Analysis (PTA)



Project Name: _____ Project #: _____ Date: _____
Location: _____ Building(s) or Sub Area(s) _____
Company: _____ Submitted By: _____

The PTA shall be completed daily by the front line supervisor for each major work task. Each employee involved in the task shall sign the PTA. At the end of the task, turn this form in to your company's on-site safety representative or the Burns & McDonnell safety department. If deviation from known safe work practice or procedure occurs, work must be stopped immediately.

Task / Activity Description: _____

AHA #: _____ Employees trained on the AHA? ☐ Yes ☐ No Does task require special training? ☐ Yes ☐ No If yes, note in certifications below, or Other: _____

Communication plans: In place? ☐ Yes ☐ No Communication Method(s): _____ Emergency Number: _____

DAP - Designated Assembly Points Primary Secondary

Safety Equipment: Safety shower & Eyewash location(s): _____ First Aid Kit Location(s): _____

Wind: Direction: _____ Speed: _____ mph/knots Weather conditions: _____ Temperature: _____ °F Weather acceptable for task? ☐ Yes ☐ No

Nearest Hospital: _____ Nearby Occupational Health Clinic: _____

Contaminants of Concern: _____ Safety Department involved in planning this job? ☐ Yes ☐ No

Air Monitoring Equipment: ☐ H2S Monitor ☐ 4-Gas ☐ Other: _____ Calibration/Bump Test Date: _____

Construction Project Standard PPE is Required: safety-toed footwear w/6" upper & defined heel, shirt w/ 4" sleeve, long pants, safety glasses w/ side shields, hardhat

Additional job/task specific PPE required? ☐ Yes ☐ No If Yes, indicate below Environmental PPE: ☐ Level D (Std.) ☐ Level D(modified) ☐ Level C ☐ Level B ☐ Level A

Fall Protection ☐ Full Body Harness ☐ SA Lanyard ☐ SR Lanyard ☐ Roof clamps ☐ Life Lines ☐ Guardrails ☐ Barricades ☐ Hole Covers ☐ Other

Eye/Head/Face ☐ Mono goggles ☐ Full face shield ☐ Chemical goggles ☐ Welding/Cutting lenses ☐ Welding hood ☐ Other

Respirator Air: ☐ SCBA ☐ Supplied APR: ☐ Full Face ☐ 1/2 face ☐ Hood Cartridges: ☐ Particulate ☐ HEPA ☐ Chemical ☐ Combination Cartridge ☐ Other

Foot ☐ Rubber boots ☐ Chemical Boots ☐ Ice cleats ☐ Metatarsal guards ☐ Other

Hand(Gloves) ☐ Leather general ☐ Chemical Resistant ☐ Cut resistant ☐ Gripping ☐ Driving ☐ Welding ☐ Cryogenic ☐ Heat Resistant ☐ Electrical ☐ Other

Special Clothing ☐ Coveralls ☐ Chemical Resistant ☐ FRC Welding ☐ FRC Electric ☐ FRC Fire ☐ Reflective Vest ☐ Cooling Vest ☐ Wind Resistant ☐ Raincoat ☐ Other

Daily inspections completed - ☐ Yes ☐ No Utilities Contacted (One Call) ☐ Yes ☐ No Date: _____ Utility contact (Name) _____ Utilities Located ☐ Yes ☐ No

Permits/Plans/Procedures/Programs - Required and IN-PLACE: ☐ Yes ☐ No; Check below as appropriate Name of competent person(s): _____

☐ Excavation/Trenching ☐ LOTO ☐ Confined Space Entry ☐ Cranes/Critical Lifts ☐ Abatement-Asbestos ☐ System Testing ☐ Lead Abatement

☐ Hot Work ☐ Steel Erection ☐ Geo Drilling/Pushing ☐ Materials Storage / Hdlg ☐ Heat/Cold Stress ☐ Line Breaking/Hot Tapping ☐ High Voltage Electrical

☐ Fall Protection ☐ Scaffolds ☐ Signs/Barricades ☐ Railway/Blue Flag/De-railer ☐ Demolition ☐ Housekeeping ☐ Blasting/Explosives

☐ Decontamination ☐ Hazardous Waste ☐ Other (Specify) _____

Employee Certification's Required: ☐ Yes ☐ No ☐ Crane Operator ☐ Scaffold Erection ☐ Mobile Equipment Operator ☐ High Voltage ☐ Lead or Asbestos ☐ Blasting/Explosives

☐ Rigging ☐ Confined Space Entry ☐ Forklift Operator ☐ LOTO ☐ HAZWOPER ☐ CPR/First Aid

☐ Signalman ☐ Fall Protection ☐ Powder Actuated Tool User ☐ Welding & Cutting ☐ Radiation

Food & Consumer Products Precautions: ☐ Hairnet ☐ Beard cover ☐ Appropriate attire ☐ No loose items worn (watches, rings, earrings, necklaces, false eyelashes or nails)

☐ Hygiene – Wash or sanitize hands prior to entering facility ☐ No food, drink, medication inside facility ☐ No loose items in pockets (pens, pencils, glasses, etc.)

List all hazards associated with this task! (Refer to the AHA and include the daily activities.)	Involved Crew Members Participation REPORT all injuries/illnesses, near misses and property damage		SAFETY ASSIGNMENT POST TASK ASSESSMENT	
	Print in at start of shift	Sign out at end of shift		
			1 Was anyone injured or did an unplanned incident occur today? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes; Explain. _____	
			2 Was the injury or incident reported to the safety department? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If no; Explain. _____	
			3 What problems did you have with today's work assignment? _____	
			4 What can be done tomorrow to improve performance? _____	
			5 Number of TSOs completed: _____	
Actions taken to eliminate/control above hazards?				
			Example Potential Hazards <div> <div> Electrocution or Electrical Shock Noise Radiation- Ionizing & Non-ionizing Work Overhead / Dropped materials Fall From Heights Poor Work Position Repetitive Motion Lifting: Manual/Mechanical Restricted Access/Confined Space Rough/Sharp Material Slippery/Uneven Surfaces Concrete, Masonry, Steel Erection Excavations/Trenches Compressed Air/Gases Demolition, Explosives/Blasting </div> <div> Machinery – Rotating/Moving Pinch Points Hot Surfaces Flammable/combustible Materials Chemicals (MSDS) Dust – Asbestos, Lead, Silica Flying Particles Poor Lighting Vehicle Traffic, Railway Traffic Welding Fume, Welding Arc Heat Stress/Cold Stress Power & Hand tools Ladders, Scaffolds, Stairs Pressurized systems Weather conditions </div> </div>	
			RETURN TO SAFETY DEPARTMENT <div> <div> Front Line Supervisor's Signature <div></div> </div> <div> Date <div></div> </div> </div> <div> <div> Superintendent Signature <div></div> </div> <div> Date <div></div> </div> </div> <div> <div> Received By <div></div> </div> <div> Date <div></div> </div> </div>	

Burns & McDonnell Safety Form C-12

Activity Hazard Analysis (AHA)

Project Name: _____ Project Number: _____
 Location: _____ Submitted Date: _____
 Company: _____
 Submitted By: _____

Note: AHA must be completed based on the initial scope of work. A new AHA must be completed if the scope of work changes.

Site Specific Locations		Unit:					Area:				
		Page		of		AHA No.		Date Created:	Created by:		
Job Description:				Review and Approval							
				Foreman:				Competent Person			
				Superintendent:				Qualified Person			
				Manager				Safety Representative:			
Plans & Permits Required:		<input type="checkbox"/> Hot Work <input type="checkbox"/> Confined Space <input type="checkbox"/> Lockout <input type="checkbox"/> Excavation <input type="checkbox"/> Critical Lift <input type="checkbox"/> Safety Work Checklist <input type="checkbox"/> Other: _____		Supporting Documentation:		<input type="checkbox"/> Pre-Task Analysis (PTA) <input type="checkbox"/> Work Area Inspection Checklist <input type="checkbox"/> Equipment Inspections <input type="checkbox"/> Vehicle Inspections <input type="checkbox"/> Tool Inspections <input type="checkbox"/> PPE Inspection			<input type="checkbox"/> SDS Review <input type="checkbox"/> Competent Person Training <input type="checkbox"/> Special Training Required: _____ <input type="checkbox"/> Other: _____		
Step / Sequence of Job			Potential Hazards				Recommended Controls, Inspection Requirements, Training, and / or Equipment				
1.											
2.											
3.											
4.											
5.											
6.											

Project Name: _____ **Project #:** _____
Location: _____ **Date:** _____
Company: _____
Submitted By: _____

Topic(s) Covered:			
Attachments: Yes <input type="checkbox"/> No <input type="checkbox"/> (List attachments) _____			
Company Name:		Employee Name:	ID #
Instructor's Signature			
	Signature		Date

Project: _____ **Company:** _____ **Project #:** _____
Location: _____ **Submitted By:** _____ **Date:** _____
Designated Safety Representative: _____

OSHA Standard Requirement	Applicable to Contractor	Designated Competent Person(s)
Subpart C – General Provisions		
1926.20 General Safety	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Subpart D – Health and Environmental Controls		
1926.53 Ionizing Radiation	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.54 Non-ionizing Radiation	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.55 Gases, Vapors, Fumes, Dusts, Mists	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.57 Ventilation	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.59 Hazard Communication	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.62 Lead	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Subpart E – Personal Protective Equipment		
1926.101 Hearing	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.103 Respirator Protection	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Subpart H – Materials Handling, Storage		
1926.251 Rigging Equipment for Material Handling	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Subpart J – Welding and Cutting		
1926.354 Welding, Cutting and Heating	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Subpart K – Electrical		
1926.404 Wiring Design and Protection	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Subpart L – Scaffolding		
1926.451 Scaffolding	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Subpart M – Fall Protection		
1926.502 Fall Protection Criteria and Practices	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.503 Training	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Subpart N – Helicopters, Hoists, Elevators, and Conveyors		
1926.551 Helicopters	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.552 - Material Hoists, Personnel Hoists, & Elevators	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.554 - Overhead hoists.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.555 - Conveyors.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Subpart O – Motor Vehicles and Equipment		
1926.601 Motor Vehicles	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.602 - Material Handling Equipment	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.603 - Pile Driving Equipment	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Subpart P – Excavations		
1926.651 Specific Excavation Requirements	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.652 Requirements for Protective Systems	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Subpart Q – Concrete and Masonry Construction		
1926.701 General Requirements	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.703 Cast-in-Place Concrete	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.705 Lift-Slab Operations	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Subpart R – Steel Erection		

OSHA Standard Requirement	Applicable to Contractor	Designated Competent Person(s)
1926.752 Bolting, Riveting, Fitting-up, Rigging, Etc.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Subpart S – Tunnels, Shafts, Caissons		
1926.800 Tunnels and Shafts	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.802 Compressed Air	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Subpart T – Demolition		
1926.850 Preparatory Operations	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.852 Chutes	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.859 Mechanical Demolition	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Subpart U – Blasting and Use of Explosives		
1926.900 General Provisions	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.901 Blaster Qualifications	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.911 Misfires	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Subpart V – Power Transmission and Distribution		
1926.950 Information Transfer	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.952 Job Briefing	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.955 Ladders & Platforms	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.962 - Grounding For The Protection Of Employees.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.964 Overhead Lines	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.966 Construction in Energized Substations	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.967 Special Conditions	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Subpart X – Stairways and Ladders		
1926.1053 Ladders	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.1060 Training Requirements	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Subpart Z – Toxic and Hazardous Substances		
1926.1101 Asbestos	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.1102 – 1926.1152 As required for the named Toxic or hazardous substance	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.1153– Respirable Crystalline Silica	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Subpart AA – Confined Spaces in Construction		
1926.1203 General Requirements	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.1204 Permit-Required Confined Space Program.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.1205 Permitting Process	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Subpart CC – Cranes & Derricks in Construction		
1926.1402 Ground Conditions	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.1404 Assembly/Disassembly--General Requirements	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.1408-1411 Power Line Safety	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.1412 Inspections	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.1413 Wire Rope Inspections	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.1417 Operation	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.1423 Fall Protection	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.1430 Training	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1926.1431 Hoisting Personnel	<input type="checkbox"/> Yes <input type="checkbox"/> No	



Burns & McDonnell Safety Form C-18 Site Access Drug Screening



Project Name: _____ Project #: _____
Location: _____ Date: _____
Company: _____ Representative: _____

Date: _____

Burns & McDonnell
Project Address: _____

Subject: Subcontractor's Name: _____
Project Name: _____
Site Access Drug and Alcohol Testing

Attention: Burns & McDonnell Site Manager's Name: _____

The following employee(s) has (have) submitted to drug and alcohol testing for
☐ Pre-site Access, ☐ Monthly Random, ☐ Post Incident, or ☐ Reasonable Suspicion / Cause and they
have been found to be ☐ compliant or ☐ noncompliant (*choose one*) with the Substance Abuse
Program established for the project:

Last Name / First Name	ID#	Test Date	Last Name / First Name	ID#	Test Date

NOTE: This list shall be updated as each transferred or newly hired subcontract employee is drug tested.

Sincerely,

Subcontractor Company Name

Print Name and Title of Signer

Signature

Project Name: _____ **Project #:** _____
Location: _____ **Date:** _____
Company: _____
Submitted By: _____

Intrusive activities include drilling, direct-push boring, and excavation.

	<u>YES</u>	<u>NO</u>	<u>N/A</u>
1. Reviewed work plans with client representative: Client representative _____ Date of review _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Requested maps of aboveground and underground utilities:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Reviewed utility maps (water supply, firewater, sewer, process sewer, electric, gas, telephone, other underground piping):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Met with utility representative to review utility locations and asked each utility the following questions:			
a. Any underground utilities at work site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Any ongoing construction that would affect field activities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Any vapor releases associated with unit operations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Any other hazards associated with operating units?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Any special requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Utility Representatives:			
Utility Representative (Name): _____	Company: _____		
Contact Date: _____	Phone Number: _____		
Utility Representative (Name): _____	Company: _____		
Contact Date: _____	Phone Number: _____		
Utility Representative (Name): _____	Company: _____		
Contact Date: _____	Phone Number: _____		
Utility Representative (Name): _____	Company: _____		
Contact Date: _____	Phone Number: _____		
Utility Representative (Name): _____	Company: _____		
Contact Date: _____	Phone Number: _____		
Utility Representative (Name): _____	Company: _____		
Contact Date: _____	Phone Number: _____		

6. Utility Location Services Reference Number:

7. Final approval for commencement of work:

Site Health & Safety Supervisor Signature: _____

Subcontractor Foreman Signature: _____

NOTE: Field activities will commence only when this form and clearance have been approved by the SHSS.

CERTIFICATION OF CONSULTANT

I hereby certify that I, Benjamin J. Biller, P.E., am the Vice-president and duly authorized representative of the firm of Burns & McDonnell Engineering Company, Inc. whose headquarters address is 9400 Ward Parkway, Kansas City, MO 64114, and that neither I nor the above firm I here represent has:

(a) employed or retained for a commission, brokerage, contingent fee, or other considerations, any firm or person (other than a bona fide employee working solely for me) to solicit or secure this contract,

(b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or

(c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me) any fee contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the contract;

(d) included any costs which are not expressly allowable under the cost principles of the FAR of 48 CFR 31, whether direct or indirect. All known material transactions or events that have occurred affecting the firm's ownership, organization and indirect cost rates have been disclosed.

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Arkansas Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal Aid Highway Funds, and is subject to applicable State and Federal laws, both criminal and civil.

Furthermore, as a recipient of Federal Aid Highway Funds, I certify and hereby agree to the conditions of Title VI Assurances as outlined in Section 31 of this Agreement and shall insert the Notice of Nondiscrimination Statement as shown below in all solicitation of work or procurement of materials or equipment. I certify and hereby agree to the conditions of Certification Regarding Lobbying as outlined in Section 34 of this Agreement and shall insert the Certification Regarding Lobbying in all solicitation of work or procurement of materials or equipment. I certify and hereby agree to the conditions of Certification Regarding Lobbying as outlined in Section 34 of this Agreement and shall insert the Certification Regarding Lobbying in all solicitation of work or procurement of materials or equipment. I certify and hereby agree to the conditions of Certification Regarding Conflict of Interest as outlined in Section 36 of this Agreement and shall insert the Certification Regarding Conflict of Interest in all solicitation of work or procurement of materials or equipment.

NOTICE OF NONDISCRIMINATION STATEMENT

Burns & McDonnell Engineering Company, Inc. ("Consultant"), complies with all civil rights provisions of federal statutes and related authorities that prohibited discrimination in programs and activities receiving federal financial assistance. Therefore, the Consultant does not discriminate on the basis of race, sex, color, age, national origin, or disability, in the admission, access to and treatment in Consultant's programs and activities, as well as the Consultant's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the Consultant's nondiscrimination policies may be directed to Melissa Wood (ADA/504/Title VI Coordinator 816-822-3129 (Voice/TTY 711), or the following email address: mwood@burnsmcd.com.

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.

Authorized Firm Representative

Date

CERTIFICATION OF SUBCONSULTANT

I hereby certify that I, Daniel Barnes, P.E., am the President-Fayetteville and duly authorized representative of the firm of McClelland Consulting Engineers, Inc. whose headquarters address is 900 W. Markham, Little Rock, AR 72201, and that neither I nor the above firm I here represent has:

- (a) employed or retained for a commission, brokerage, contingent fee, or other considerations, any firm or person (other than a bona fide employee working solely for me) to solicit or secure this contract,
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me) any fee contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the contract;
- (d) included any costs which are not expressly allowable under the cost principles of the FAR of 48 CFR 31, whether direct or indirect. All known material transactions or events that have occurred affecting the firm's ownership, organization and indirect cost rates have been disclosed.

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Arkansas Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal Aid Highway Funds, and is subject to applicable State and Federal laws, both criminal and civil.

Furthermore, as a recipient of Federal Aid Highway Funds, I certify and hereby agree to the conditions of Title VI Assurances as outlined in Section 12 of this Agreement and shall insert the Notice of Nondiscrimination Statement as shown below in all solicitation of work or procurement of materials or equipment. I certify and hereby agree to the conditions of Certification Regarding Lobbying as outlined in Section 15 of this Agreement and shall insert the Certification Regarding Lobbying in all solicitation of work or procurement of materials or equipment. I certify and hereby agree to the conditions of Certification Regarding Lobbying as outlined in Section 15 of this Agreement and shall insert the Certification Regarding Lobbying in all solicitation of work or procurement of materials or equipment. I certify and hereby agree to the conditions of Certification Regarding Conflict of Interest as outlined in Section 16 of this Agreement and shall insert the Certification Regarding Conflict of Interest in all solicitation of work or procurement of materials or equipment

NOTICE OF NONDISCRIMINATION STATEMENT

McClelland Consulting Engineers, Inc. ("Subconsultant"), complies with all civil rights provisions of federal statutes and related authorities that prohibited discrimination in programs and activities receiving federal financial assistance. Therefore, the Subconsultant does not discriminate on the basis of race, sex, color, age, national origin, or disability, in the admission, access to and treatment in Subconsultant's programs and activities, as well as the Subconsultant's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the Subconsultant's nondiscrimination policies may be directed to Blake Downing (ADA/504/Title VI Coordinator), (501) 376-4522 (Voice/TTY 711), or the following email address: bdowning@mcclelland-engrs.com.

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.

Authorized Firm Representative

Date

CERTIFICATION OF CITY OF FAYETTEVILLE, ARKANSAS

I hereby certify that I am the Mayor of the City of Fayetteville, Arkansas and that the aforementioned consulting firm or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay, or agree to pay, to any firm, person, or organization, any fee contributions donation, or consideration of any kind:

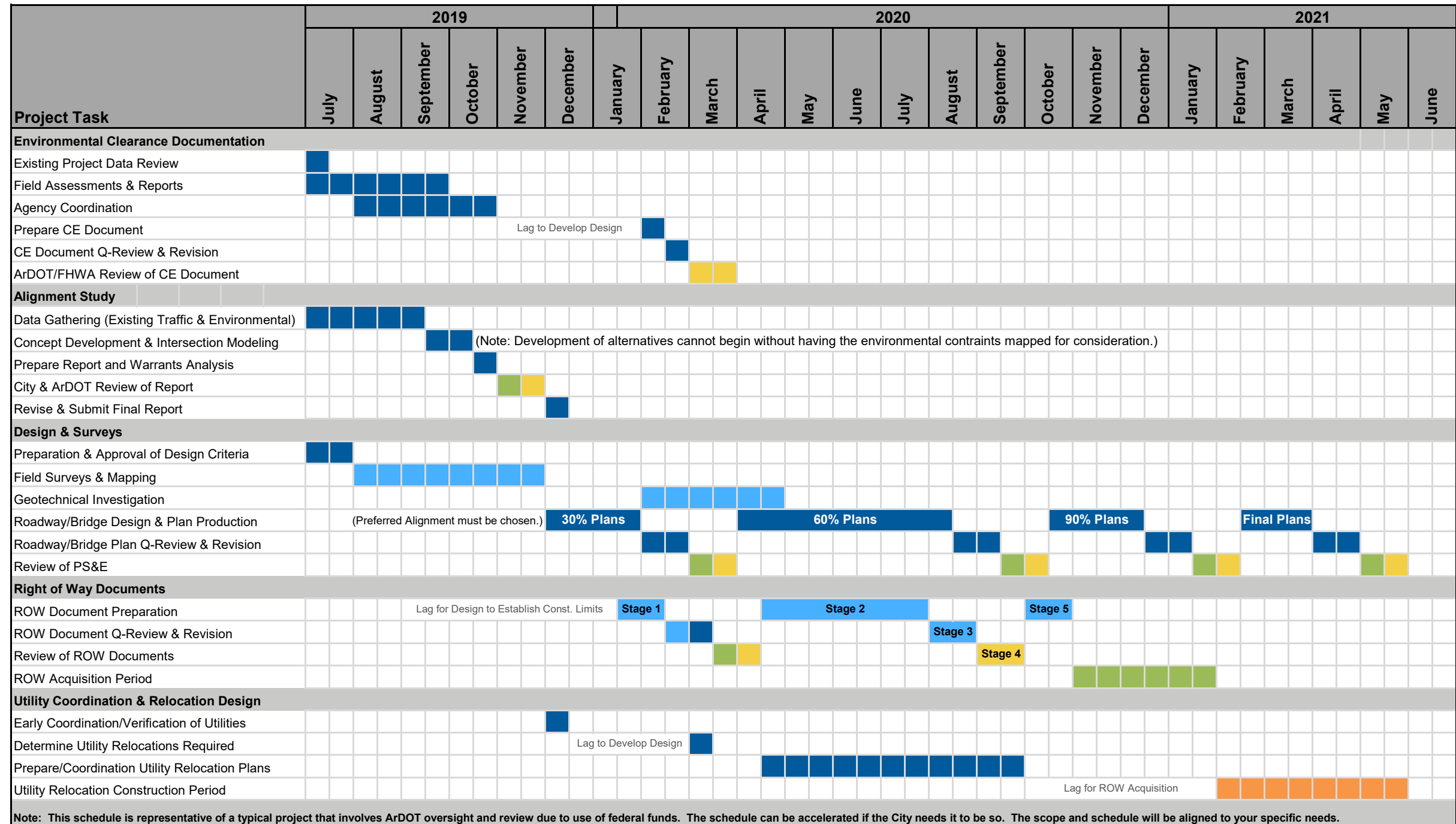
except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Arkansas Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal-Aid Highway Funds, and is subject to applicable State and Federal laws, both criminal and civil.

Mayor Lioneld Jordan, City of Fayetteville

Date

PROJECT SCHEDULE
Highway 112 - Poplar St. to Drake St.
Fayetteville, Arkansas



- Activity led by Burns & McDonnell
- Activity led by City of Fayetteville
- Activity led by ArDOT
- Activity led by Burns & McDonnell subconsultant
- Activity led by others

AGREEMENT OF UNDERSTANDING
BETWEEN
THE CITY OF FAYETTEVILLE
AND
THE ARKANSAS DEPARTMENT OF TRANSPORTATION
RELATIVE TO

Implementation of **Highway 112 Improvements between Highway 16 and Interstate 49** in Fayetteville, Washington County (hereinafter called the "Projects").

WHEREAS, the City of Fayetteville (hereinafter called the "City") has expressed interest in partnering with the Arkansas Department of Transportation (hereinafter called the "Department") for the Projects; and

WHEREAS, Resolution No. 27-17 from the City agrees to contribute \$3,358,600 for the Projects and to accept ownership and responsibility of the portions of Highway 112 between Highway 16 and Interstate 49 upon completion of the improvements; and

WHEREAS, Arkansas State Highway Commission Minute Order 2017-012 has authorized the Director to enter into the necessary partnering agreements with the City for the Projects; and

WHEREAS, it is understood that the City and the Department will adhere to the General Requirements for Recipients and Sub-Recipients Concerning Disadvantaged Business Enterprises (DBEs) (Attachment A) and that, as part of these requirements, the Department may set goals for DBE participation in the Project, ranging from 0% to 100%, that are practical and related to the potential availability of DBEs in desired areas of expertise.

IT IS HEREBY AGREED that the City and the Department will accept the additional responsibilities and assigned duties as described hereinafter.

THE CITY WILL:

1. Be responsible for the following in relation to Job 040582, Razorback Rd.-Garland Ave. (Hwy. 112) (Fayetteville) (S) and overlays on Highway 112 from Maple Street to North Street and from Leroy Pond Drive to the beginning of Job 040582:
 - a. Be responsible for \$3,358,600 in project costs as shown in Attachment B for Job 040582.
 - b. Be responsible for any increases in construction, right of way, or utility costs resulting from changes in project scope proposed by the City.
 - c. Be responsible for any desired revisions to the current design of Job 040582, along with associated engineering costs.
 - d. Be responsible for any costs resulting from inclusion of desired revisions in project scope outside the Department's typical overlay design for the Highway 112 overlays.
 - e. Prepare plans, specifications, and a cost estimate for construction. A registered professional engineer must sign the plans and specifications for the Project. (See Attachment C for items to be included in the bid proposal.)

- f. Understand that **expenditures for work performed by the City's forces (including preliminary and construction engineering, environmental documentation, and right of way acquisition services) are not eligible for reimbursement with federal funds.**
- g. Ensure that the plans and specifications comply with the Americans with Disabilities Act (ADA), the American Association of State Highway and Transportation Officials (AASHTO) design standards, and all other applicable state and federal regulations, including airport clearance when necessary, for the type of work involved.
- h. Submit final plans for Department review.
- i. Submit a certification letter (Attachment D), including all items noted, to the Department when requesting authority to advertise the Projects for construction bids.
- j. Advertise for bids in accordance with federal procedures as shown in Attachment E. **NOTE: FHWA authorization and Department approval must be given prior to advertising for construction bids.**
- k. Forward a copy of all addenda issued for the Project during the advertisement to the Department.
- l. After bids are opened and reviewed, submit a Certification Letter Requesting Concurrence in Award (Attachment F), including all items noted, to the Department.
- m. Prior to issuing the notice to proceed to the Contractor, hold a pre-construction meeting with the Contractor and invite the Department's Resident Engineer assigned to the Project.
- n. Make payments to the contractor for work accomplished in accordance with the plans and specifications. Then request reimbursement from the Department for costs exceeding \$2,359,118 on the Construction Certification and Reimbursement Request (CCRR) form (Attachment G). Reimbursement requests should be submitted, at minimum, every three (3) months and not more than once per month.
- o. Provide construction engineering and inspection services, including associated costs, for the Project.
- p. Attach LPA Report of Daily Work Performed (Attachment H) for all days that correspond with each CCRR submittal.
- q. Prior to executing the work, submit construction contract change orders to the Department's Resident Engineer in charge of reimbursements for review and approval.
- r. Be responsible for any increased costs resulting from desired revisions in project scope, whether during the design phase or during construction as a change order.
- s. Upon completion of the Project, hold a final acceptance meeting for the Project and submit the LPA Final Acceptance Report form certifying that the Project was accomplished in accordance with the plans and specifications (Attachment I). This form must be signed by the engineer performing construction inspection on the Project, the Department's Resident Engineer assigned to the project, the City's full-time employee in responsible charge, and the City's Mayor.
- t. Upon completion of these improvements to Highway 112, accept ownership and responsibility of the portion of Highway 112, Section 0 between Highway 16 (W. 15th Street) and Highway 112 Spur (Wedington Drive).

2. Be responsible for the following in relation to projects scheduled to widen Highway 112 between Poplar Street and Interstate 49:
- a. Be responsible for hiring a consultant engineering firm(s) in accordance with the Local Agency Consultant Selection Procedures (Attachment K) to provide engineering services which include environmental documentation, preliminary engineering, and construction engineering for the Project. **NOTE: FHWA authorization and Department approval must be given prior to issuing a work order to the consultant for federal funds to be allowed in this phase.**
 - b. Prepare plans, specifications, and a cost estimate for construction. A registered professional engineer must sign the plans and specifications for the Project. (See Attachment C for items to be included in the bid proposal.)
 - c. Understand that **expenditures for work performed by the City's forces (including preliminary and construction engineering, environmental documentation, and right of way acquisition services) are not eligible for reimbursement with federal funds.**
 - d. Make periodic payments to the consultant for preliminary engineering for the Project and request reimbursement from the Department. Reimbursement requests should be submitted, at minimum, every three (3) months and not more than once per month.
 - e. Prepare the necessary environmental documentation as required by FHWA and conduct any required public involvement meetings and public hearings.
 - f. Ensure that the plans and specifications comply with the Americans with Disabilities Act (ADA), the American Association of State Highway and Transportation Officials (AASHTO) design standards, and all other applicable state and federal regulations, including airport clearance when necessary, for the type of work involved.
 - g. Before acquiring property or relocating utilities, contact the Department's Right of Way Division to obtain the procedures for acquiring right-of-way and adjusting utilities in compliance with federal regulations. **NOTE: Failure to notify the Department prior to initiating these phases of work may result in all project expenditures being declared non-participating in federal funds.**
 - h. Acquire property in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (commonly referred to as the "Uniform Act"), and request reimbursement from the Department
 - i. Ensure the preparation of utility adjustment and right-of-way plans are in accordance with Arkansas State Highway Commission Policy.
 - j. Provide a copy of the registered deed or other approved documentation and an appropriate certification stating the City's clear and unencumbered title to any right-of-way to be used for the Project (See Attachment L). **NOTE: Any property that is to become Department right-of-way must be acquired in the Highway Commission's name.**
 - k. Submit plans at 10%, 30%, 60%, and 90% completion stages for Department review.
 - l. Submit a certification letter (Attachment D), including all items noted, to the Department when requesting authority to advertise the Project for construction bids.
 - m. Advertise for bids in accordance with federal procedures as shown in Attachment E. **NOTE: FHWA authorization and Department approval must be given prior to advertising for construction bids.**

- n. Forward a copy of all addenda issued for the Project during the advertisement to the Department.
 - o. After bids are opened and reviewed, submit a Certification Letter Requesting Concurrence in Award (Attachment F), including all items noted, to the Department.
 - p. Prior to issuing the notice to proceed to the Contractor, hold a pre-construction meeting with the Contractor and invite the Department's Resident Engineer assigned to the Project.
 - q. Make periodic payments to the consultant for construction engineering for the Project and request reimbursement from the Department. Reimbursement requests should be submitted, at minimum, every three (3) months and not more than once per month.
 - r. Make payments to the contractor for work accomplished in accordance with the plans and specifications and approved by the Department. Then request reimbursement from the Department on the Construction Certification and Reimbursement Request (CCRR) form (Attachment G). Reimbursement requests should be submitted, at minimum, every three (3) months and not more than once per month.
 - s. Attach LPA Report of Daily Work Performed (Attachment H) for all days that correspond with each CCRR submittal.
 - t. Prior to executing the work, submit construction contract change orders to the Department's Resident Engineer in charge of reimbursements for review and approval.
 - u. Be responsible for any increased costs resulting from desired revisions in project scope that exceed typical highway design criteria, whether during the design phase or during construction as a change order.
 - v. Upon completion of the Project, hold a final acceptance meeting for the Project and submit the LPA Final Acceptance Report form certifying that the Project was accomplished in accordance with the plans and specifications (Attachment I). This form must be signed by the engineer performing construction inspection on the Project, the Department's Resident Engineer assigned to the project, the City's full-time employee in responsible charge, and the City's Mayor.
 - w. Upon completion of these improvements to Highway 112, accept ownership and responsibility of the portion of Highway 112, Section 1 between Highway 112 Spur (Wedington Drive) and the northbound ramps of Interstate 49.
3. Notify the Department in writing who the City designates as its full-time employee to be in responsible charge of the day to day oversight of the Projects (Attachment M). The duties and functions of this person are to:
- Oversee project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
 - Maintain familiarity of day to day project operations, including project safety issues;
 - Make or participate in decisions about changed conditions or scope changes that require change orders and/or supplemental agreements;
 - During construction, visit and review the project on a daily basis;
 - Review financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse;

- Direct project staff, City or consultant, to carry out project administration and contract oversight, including proper documentation;
 - Be aware of the qualifications, assignments and on-the-job performance of the City and consultant staff at all stages of the project.
4. Maintain accounting records to adequately support reimbursement with Federal-aid funds and be responsible for the inspection, measurement and documentation of pay items, and certification of all work in accordance with the plans and specifications for the Projects and for monitoring the Contractor and subcontractor(s) for compliance with the provisions of FHWA-1273, Required Contract Provisions, Federal-aid Construction Contracts, and Supplements.
 5. Pay all unpaid claims for all materials, labor, and supplies entered into contingent or incidental to the construction of said work or used in the course of said work including but not limited to materials, labor, and supplies described in and provided for in Act Nos. 65 and 368 of 1929, Act No. 82 of 1935, and Acts amendatory thereof.
 6. Assure that its policies and practices with regard to its employees, any part of whose compensation is reimbursed from federal funds, will be without regard to race, color, religion, sex, national origin, age, or disability in compliance with the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, The Americans with Disabilities Act of 1990, as amended, and Title 49 of the Code of Federal Regulations Part 21 (49 CFR 21), Nondiscrimination in Federally-Assisted Programs of the Department of Transportation.
 7. Retain all records relating to inspection and certification, the Contractor's billing statements, and any other files necessary to document the performance and completion of the work in accordance with requirements of 49 CFR 18.42 - Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Attachment N).
 8. Grant the right of access to the City's records pertinent to the Projects and the right to audit by the Department and Federal Highway Administration officials.
 9. Be responsible for 100% of all project costs incurred should the Project not be completed as specified.
 10. Sign and transmit to the Department the Certification for Grants, Loans, and Cooperative Agreements (Attachment O), which is necessary for Project participation.
 11. Repay to the Department the federal share of the cost of any portion of the Projects if, for any reason, federal participation is removed due to actions or inactions of the City, its agents, its employees, or its assigns or the City's consultants or contractors or their agents. Such actions or inactions shall include, but are not limited to, federal non-participation arising from problems with design plans, specifications, construction, change orders, construction inspection, or contractor payment procedures. The City understands and agrees that the Department may cause necessary funds to be withheld from the City's Motor Fuel Tax allotment should the City fail to pay to the Department any required funds, fail to complete the Project as specified, or fail to adequately maintain or operate the Projects.
 12. Be responsible for all costs not provided by the Federal Highway Administration or the Department.
 13. Repay to the Department the federal share of the cost of this project if for any reason the Federal Highway Administration removes federal participation.

14. Retain total, direct control over the Projects throughout the life of all project improvements outside of the Department's right-of-way and **not, without prior approval from the Department:**
 - sell, transfer, or otherwise abandon any portion of the Projects;
 - change the intended use of the Projects;
 - make significant alterations to any improvements constructed with Federal-aid funds; or
 - cease maintenance or operation of a project due to the Project's obsolescence.
15. Be responsible for satisfactory maintenance and operation of all improvements and for adopting regulations and ordinances as necessary to ensure this. Failure to adequately maintain and operate the Projects in accordance with Federal-aid requirements may result in the City's repayment of federal funds and may result in withholding all future Federal-aid.
16. Submit to the Department a Single Audit in accordance with the Office of Management and Budget (OMB) Circular A-133 each fiscal year that the City expends more than \$500,000 of Federal-aid from any federal source including, but not limited to, the U.S. Department of Transportation. The fiscal year used for the reporting is based on the City's fiscal year. The \$500,000 threshold is subject to change after OMB periodic reviews.
17. Complete and transmit to the Department both pages of the Federal Funding Accountability and Transparency Act (FFATA) Reporting Requirements (Attachment P).
18. Agree to promptly refund to the Department in full any and all revenue paid by the Department based upon claims adjudicated by the Arkansas Claims Commission or other legal forum sustained on account of the operations or actions of the City, including any act of omission, neglect or misconduct of the City. This obligation survives the termination or expiration of this Agreement.

THE DEPARTMENT WILL:

1. Be responsible for the following in relation to Job 040582, Razorback Rd.-Garland Ave. (Hwy. 112) (Fayetteville) (S) and overlays on Highway 112 from Maple Street to North Street and from Leroy Pond Drive to the beginning of Job 040582:
 - a. Be responsible for all funding beyond the City's share of Job 040582, except for any increases in cost resulting from changes in project scope proposed by the City.
 - b. Provide the funding necessary to overlay the segments of Highway 112. Costs will be limited to those associated with the Department's typical overlay design.
 - c. Maintain an administrative file for the project and be responsible for administering Federal-aid funds.
 - d. Provide environmental clearance for Highway 112 overlays.
 - e. Review final plans and specifications submitted by the City.
 - f. Ensure substantial compliance with federal contracting requirements through review of the bidding proposal for inclusion of required federal forms, review of the administration of the DBE program provisions, and general compliance with 23 CFR 635.
 - g. Advise the City when to proceed with advertisement of the Project for construction bids.
 - h. Review and concur in award of the construction contract for the Project.

- i. Ensure that the City and the City's consultant provide adequate supervision and inspection of the Project by performing periodic inspections with the City's representatives and their consultant to verify that the work being performed by the City's contractor, and documented and certified by the City, meets the requirements of the Project plans, specifications, and all applicable FHWA and Department procedures. The Department intends to perform these inspections, at a minimum, when the construction work is approximately 10% and 50% completed. The Department will also participate in the final inspection of the Project.
 - j. Review and approve any necessary change orders for project/program eligibility.
 - k. Be responsible for increases in project costs due to change orders for normal bid item adjustments.
 - l. Reimburse the City 100% for eligible construction costs approved in the CCRR form (Attachment I). This reimbursement will be limited to the funding available at the time payment is requested. If the payment requested exceeds the funding available at the time, the difference will be reimbursed as additional funds for the Project become available.
 - m. Subject to the availability of funding allocated for the Project, pay the City the remaining amount due upon completion of the Project and submittal of the certified LPA Final Acceptance Report form (Attachment K).
 - n. Upon completion of these improvements to Highway 112, remove the portion of Highway 112, Section 0 between Highway 16 (W. 15th Street) and Highway 112 Spur (Wedington Drive) from the State Highway System and transfer ownership and responsibility to the City.
2. Be responsible for the following in relation to projects scheduled to widen Highway 112 between Poplar Street and Interstate 49:
- a. Provide the City the amount of funding necessary for all phases of work to develop and construct the typical design section for an urban state highway, as shown on Attachment J, for this portion of Highway 112.
 - b. Evaluate the proposed typical design section versus the typical design section for an urban state highway, as shown on Attachment J, and determine how any changes will affect the estimated cost. City-requested changes to the typical design section that are determined to be budget-neutral will not require additional funding from the City.
 - c. Maintain an administrative file for the project and be responsible for administering Federal-aid funds.
 - d. Coordinate with the City to procure required professional services such as design consultants, construction engineering and inspection consultants, and right of way consultants.
 - e. Review environmental documentation as prepared by the City.
 - f. Review plans and specifications submitted by the City.
 - g. Reimburse the City 100% for eligible professional services, procured using Department-approved procedures, upon review and approval of reimbursement requests.

- h. Notify the City when right-of-way and/or utility plans are approved and the City may proceed with right-of-way acquisition and/or utility adjustments.
- i. Ensure substantial compliance with federal contracting requirements through review of the bidding proposal for inclusion of required federal forms, review of the administration of the DBE program provisions, and general compliance with 23 CFR 635.
- j. Advise the City when to proceed with advertisement of the Project for construction bids.
- k. Review and concur in award of the construction contract for the Project.
- l. Ensure that the City and the City's consultant provide adequate supervision and inspection of the Project by performing periodic inspections with the City's representatives and their consultant to verify that the work being performed by the City's contractor, and documented and certified by the City, meets the requirements of the Project plans, specifications, and all applicable FHWA and Department procedures. The Department intends to perform these inspections, at a minimum, when the construction work is approximately 10% and 50% completed. The Department will also participate in the final inspection of the Project.
- m. Review and approve any necessary change orders for project/program eligibility.
- n. Be responsible for increases in project costs due to change orders for normal bid item adjustments.
- o. Reimburse the City 100% for eligible construction costs approved in the CCRR form (Attachment G). This reimbursement will be limited to the funding available at the time payment is requested. If the payment requested exceeds the funding available at the time, the difference will be reimbursed as additional funds for the Project become available.
- p. Subject to the availability of funding allocated for the Project, pay the City the remaining amount due upon completion of the Project and submittal of the certified LPA Final Acceptance Report form (Attachment I).
- q. Upon completion of these improvements to Highway 112, remove the portion of Highway 112, Section 1 between Highway 112 Spur (Wedington Drive) and Interstate 49 from the State Highway System and transfer ownership and responsibility to the City.

IT IS FURTHER AGREED that should the City fail to fulfill its responsibilities and assigned duties as related in this Agreement, such failure may disqualify the City from receiving future Federal-aid highway funds.

IT IS FURTHER AGREED, that should the City fail to pay to the Department any required funds due for project implementation or fail to complete the Project as specified in this Agreement, or fail to adequately maintain or operate the Project, the Department may cause such funds as may be required to be withheld from the City's Motor Fuel Tax allotment.

IN WITNESS WHEREOF, the parties thereto have executed this Agreement this 19th day of September, 2017.

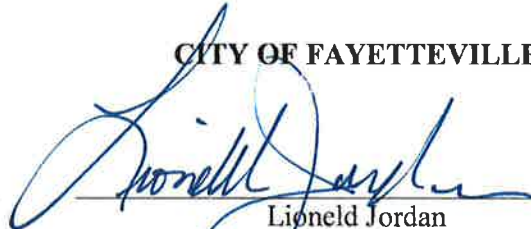
**ARKANSAS DEPARTMENT OF
TRANSPORTATION**



Scott E. Bennett, P.E.
Director

Joanna P. McFadden

CITY OF FAYETTEVILLE



Lioneld Jordan
Mayor



Kit Williams
City Attorney

ARKANSAS DEPARTMENT OF TRANSPORTATION

NOTICE OF NONDISCRIMINATION

The Arkansas Department of Transportation (Department) complies with all civil rights provisions of federal statutes and related authorities that prohibit discrimination in programs and activities receiving federal financial assistance. Therefore, the Department does not discriminate on the basis of race, sex, color, age, national origin, religion (not applicable as a protected group under the Federal Motor Carrier Safety Administration Title VI Program), disability, Limited English Proficiency (LEP), or low-income status in the admission, access to and treatment in the Department's programs and activities, as well as the Department's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding the Department's nondiscrimination policies may be directed to Joanna P. McFadden Section Head - EEO/DBE (ADA/504/Title VI Coordinator), P. O. Box 2261, Little Rock, AR 72203, (501) 569-2298, (Voice/TTY 711), or the following email address: joanna.mcfadden@ardot.gov

Free language assistance for Limited English Proficient individuals is available upon request.

This notice is available from the ADA/504/Title VI Coordinator in large print, on audiotape and in Braille.

GENERAL REQUIREMENTS
FOR
RECIPIENTS AND SUB-RECIPIENTS
CONCERNING DISADVANTAGED BUSINESS ENTERPRISES

It is the policy of the U. S. Department of Transportation that disadvantaged business enterprises (DBEs) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this Agreement.

The recipient or its contractor agrees to ensure that DBEs as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

If as a condition of assistance the recipient has submitted and the Department has approved a disadvantaged business enterprise affirmative action program, which the recipient agrees to carry out, this program is incorporated into this financial assistance agreement by reference. This program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of this financial assistance agreement. Upon notification to the recipient of its failure to carry out the approved program, the Department shall impose such sanctions as noted in 49 CFR Part 26, Subpart F, which sanctions may include termination of the Agreement or other measures that may affect the ability of the recipient to obtain future DOT financial assistance.

The recipient shall advise each sub-recipient, contractor or subcontractor that failure to carry out the requirements set forth in 49 CFR Part 26, Subsections 26.101 and 26.107 shall substitute a breach of contract and after the notification of the Department, may result in termination of the agreement or contract by the recipient or such remedy as the recipient deems appropriate.

(NOTE: Where appropriate, the term "recipient" may be modified to mean "sub-recipient", and the term "contractor" modified to include "subcontractor".)

**Arkansas State Highway and Transportation Department
City of Fayetteville / Washington County
Highway 112
December 12, 2016**

Project Information

Project Information				
Job Number	Description	Length (miles)	Phase	Total Cost
	Maple Street - North Street	0.47	Const + CENG	247,500
040582	Razorback Road - Garland Avenue	0.37	Utilities	640,882
			Construction	4,250,000
			CENG (10%)	425,000
Sub-Total				5,315,882
	Leroy Pond Drive - North	0.54	Const + CENG	192,500
Total		1.38		5,755,882

City Funds

STP-A	Match	Total
512,706	128,176	640,882
1,887,294	471,824	2,359,118
	358,600	358,600
2,400,000	958,600	3,358,600
2,400,000	958,600	3,358,600

ESTIMATED ADDITIONAL STATE FUNDS

Additional Federal and State funding made available for improvements if the City agrees to assume ownership and maintenance of Hwy. 112. This amount will either be increased or decreased based on the lowest responsive bid received that is awarded to contract. This amount does not represent a minimum or maximum of funding made available for the project.

Federal	Match	Total
198,000	49,500	247,500
1,512,706	378,177	1,890,883
53,120	13,280	66,400
1,565,826	391,457	1,957,283
154,000	38,500	192,500
1,917,826	479,457	2,397,283

Note: Job 040582's construction cost estimate is based on the current design. City funds are capped at \$3,358,600 in STP-A and matching funds. AHTD is committed to providing the full amount of gap funding necessary for Job 040582, contingent upon receiving a responsive bid that is within an acceptable range of the engineer's estimate. The City of Fayetteville will revise the current design to incorporate some desired changes. Funding for any increases in scope will be the responsibility of the City and will be added to the \$3,358,600 cap amount. Once the project is let to contract, an increase in cost due to added scope will be the responsibility of the City. An increase in cost due to normal change in conditions will be the responsibility of the Department.

AHTD is committed to providing funds for the overlay projects using our basic design standards. Funding for any increases in scope will be the responsibility of the City and be added to the \$3,358,600 cap amount.

REQUIRED CONTENTS OF BIDDING PROPOSALS FEDERAL-AID SURFACE TRANSPORTATION PROGRAM PROJECTS

1) FHWA-1273

Each set of contract documents shall include FHWA-1273, "Required Contract Provisions, Federal-aid Construction Contracts," and such supplements that may modify the FHWA-1273. Copies of FHWA-1273 and supplements will be provided by the Department.

2) Anti-Collusion and Debarment Certification

The certification shall either be in the form of an affidavit executed and sworn to by the bidder before a person who is authorized by the laws of the State to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the law of the United States. The required form for the Anti-Collusion and Debarment Certification will be provided by the Department. The certification includes:

- Anti-collusion - A statement executed by, or on behalf of the person, firm, association, or corporation submitting the bid certifying that such person, firm, association, or corporation has not, either directly or in-directly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted bid.
- Debarment - A statement regarding debarment, suspension, ineligibility and voluntary exclusion as required by Title 49 of the Code of Federal Regulations, Part 29 (49 CFR 29).

Failure to submit the executed Certification as part of the bidding documents will make the bid nonresponsive and not eligible for award consideration.

3) Lobbying Certification

This certification is required by 49 CFR 20. The form for this certification will be provided by the Department.

4) Davis-Bacon Pre-determined Minimum Wage Rates

Davis-Bacon requirements apply to all projects greater than \$2,000 that are physically located within the existing right-of-way of a functionally classified city street. The Davis-Bacon wage rates will be provided by the Department.

CERTIFICATION LETTER
REQUESTING AUTHORITY TO ADVERTISE FOR BIDS

DATE

Mr. Emanuel Banks
Deputy Director and Chief Engineer
Arkansas Department of Transportation
P. O. Box 2261
Little Rock, AR 72203

Re: Job #
Job Name
County

Dear Mr. Banks:

The following documents are submitted concerning the referenced project:

1. One reproducible set of plans and specifications.
2. A copy of the engineer's estimate of cost.
3. Copies of any technical specifications or special provisions.

I certify that the plans, specifications and estimate were prepared by or under the direct supervision of a Professional Engineer licensed to practice in the State of Arkansas and that the plans and specifications comply with the Americans with Disabilities Act (ADA), the American Association of State Highway and Transportation Officials (AASHTO) design standards, and all other applicable state and federal regulations, including airport clearance when necessary, for the type of work involved.

I understand that if any project items are declared non-participating in federal funds due to failure to comply with any State or federal requirements, the City will promptly repay such funds to the Arkansas Department of Transportation (ArDOT). Further, I hereby authorize the Director of the Arkansas State Department of Finance and Administration to transfer such funds from the City's gasoline tax allotment to the ArDOT's RRA Fund upon notification by the Director that such funds are due ArDOT and have not been paid by the City.

Approval to proceed with advertisement of the project for bids is requested.

Sincerely,

NAME & OFFICE
(City's CEO)

Enclosures

GUIDELINES FOR ADVERTISING AND OPENING BIDS FEDERAL-AID PROJECTS

Upon receipt of written authorization from the Arkansas Department of Transportation, the project may be advertised for bids. The following minimum guidelines for advertising must be met:

- The minimum advertising period is three weeks.
- In addition to meeting the State requirements for advertising for construction projects, the project must be advertised a minimum of two times in a statewide newspaper.
- The notice must contain: (1) the time, date, and place that sealed bids are to be accepted, opened, and publicly read; (2) a brief description of the kind or type of work contemplated; and (3) the place at which prospective bidders may obtain plans and specifications.
- The City will include the following language in the solicitation for bids:

“The City hereby notifies all bidders that this contract is subject to applicable labor laws, non-discrimination provisions, wage rate laws and other federal laws including the Fair Labor Standards Acts of 1938. The Work Hours Act of 1962 and Title VI of the Civil Rights Act of 1964 also apply.”
- All bids received in accordance with the terms of the advertisement shall be publicly opened and at a minimum, the total amount bid must be read (the City may choose to read the bids item by item).
- If any bid received is not read aloud, the name of the bidder and the reason for not reading the bid aloud shall be publicly announced at the letting.
- In accordance with 23 CFR 635.110, any procedures and requirements for qualifying and licensing contractors must be approved by the Federal Highway Administration.
- **Negotiation with contractors during the period following the opening of bids and before the award of the contract is not permitted.**

CERTIFICATION LETTER
REQUESTING CONCURRENCE IN AWARD OF THE CONTRACT

DATE

Mr. Emanuel Banks
Deputy Director and Chief Engineer
Arkansas Department of Transportation
P. O. Box 2261
Little Rock, AR 72203

Re: Job #
Job Name
County

Dear Mr. Banks:

The following documents are submitted concerning the referenced project:

1. One set of bid tabulations.
2. Justification of award (if low bid amount is greater than 10% over the estimate).

I certify that the referenced project was advertised and bids were received in accordance with the regulations governing Federal-aid projects and all other applicable state and federal regulations, and that this process has been reviewed and approved by the City Attorney. Additionally, I certify that the bid is being awarded to the lowest responsive and qualified bidder and that there has not been, nor will there be, any negotiations with the contractor or other bidders regarding the amount bid.

Your concurrence in the award of this contract to CONTRACTOR is requested.

Sincerely,

Mayor

City Attorney

Enclosures

CONSTRUCTION CERTIFICATION AND REIMBURSEMENT REQUEST

Revised: 7/25/17

PAGE 1 OF 2 PAGES

Job No.: _____	Payee/City: _____	DATE: _____
FAP: _____	address _____	
County: _____	_____	PAY REQUEST # _____
Job Name: _____	Federal Tax ID No.: _____	FROM: _____ TO: _____

CITY'S REQUEST FOR PAYMENT

1 Original Contract Amount	_____
2 Net Changes by Change Orders	_____
3 Present Contract Total	_____
4 Work Completed to Date	_____
5 Previous Reimbursements	_____
6 Amount Due this Estimate (subtract Line 5 from Line 4)	

Designated Full Time Employee In Responsible Charge

The information provided in this document is true and correct and I recommend that payment be made to the Contractor for this work.

By: _____ Date: _____

Title: _____

CHANGE ORDER SUMMARY

	ADDITIONS	DEDUCTIONS
Total changes previously approved		
Total approved this Request Period		
TOTALS		
NET CHANGES by Change Order (Line 2 above)		

City's CEO

Payment is requested from the Arkansas Department of Transportation for the Amount Due. I certify that the Contractor and/or subcontractor(s) are complying with the provisions of FHWA-1273, Required Contract Provisions, Federal-aid Construction Contracts, and Supplements; that the work has been completed by the Contractor in accordance with the plans and specifications; and that the Contractor has been paid for this work.

By: _____ Date: _____

Title: _____

DEPARTMENT USE ONLY

Recommended for Payment in Accordance with Project Agreement _____ Resident Engineer	Approved for Payment _____ State Construction Engineer	PAID Voucher No. _____ Date: _____
---	--	---

DETAIL ESTIMATE

PAGE 2 OF 2 PAGES

REQUEST NO: _____ DATE: _____
FROM: _____ TO: _____
CONTRACTOR: _____

[illegible]

Attachment G

COPY OF CITY'S PAYMENT CHECK FOR THIS ESTIMATE MUST BE ATTACHED TO THIS FORM

CITY
LPA Report of Daily Work Performed

Job Name: _____	Job No.: _____
FAP No.: _____	Contractor: _____
Date: _____	Hours Worked: _____ - _____
Report No.: _____	

Project Conditions		
<u>Site Conditions</u> _____ Useable _____ Partly Useable _____ Not Useable Min Temp. (F) _____ Max Temp. (F) _____	<u>Weather</u> _____ Sunny _____ Partly Cloudy _____ Rain Rainfall Amt. (in.) _____	<u>Number of Contractor's Personnel</u> _____ Laborers _____ Carpenters _____ Concrete Laborers _____ Equip. Operators _____ Electricians _____ Plumbers _____ Foreman _____ Other _____ _____ Other _____
<u>Comments</u>		

Location and Description of Work Performed

Special Instructions and/or Conversations

Signed: _____ <div style="text-align: center;">Designated Full-time Employee</div>

CITY
LPA Final Acceptance Report

Job Name:		Date:
Job No:	FAP No:	
County:	Route:	
Contractor:		
Date Work Began:	Date Work Completed:	
Attendees:		
Remarks:		
Project Completed in Substantial Compliance with Plans and Specifications and Recommended for Final Acceptance by City		Recommended for Acceptance in Accordance with Project Agreement
<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Engineer	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> ArDOT Resident Engineer	

Project Recommended for Acceptance

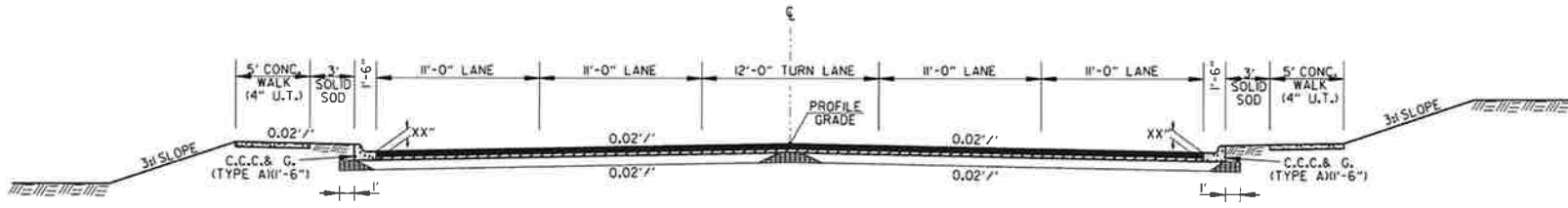
Designated Full-time Employee: _____

I certify that the Contractor and/or subcontractor(s) have complied with the provisions of FHWA-1273, Required Contract Provisions, Federal-aid Construction Contracts, and Supplements; that the project has been completed by the Contractor in accordance with the plans and specifications; that the Contractor has been paid for this work, and the project is hereby accepted.

CITY's CEO

DATE REVISED	DATE FILMED	DATE REVISED	DATE FILMED	FIGURE DATE	STATE	FEDERAL PROJECT	SHEET NO.	TOTAL SHEETS
				6	ARK.			
				JOB NO.	XXXXXX			

2 TYPICAL SECTIONS OF IMPROVEMENT



HWY. XXX-FULL DEPTH
C.C.C. & G. LT. & RT.

TYPICAL SECTIONS OF IMPROVEMENT

B/12/2016

R060357.DGN

LOCAL AGENCY CONSULTANT SELECTION PROCEDURES

Section I – Application

These procedures apply to federally funded contracts for engineering and design services for projects. The federal laws and regulations that govern the procurement of engineering and design related services with Federal-aid highway funds are:

- 23 U.S.C. 112 “Letting of contracts”.
- 23 CFR 172 “Administration of Engineering and Design Related Service Contracts”,
- 49 CFR 18 “Uniform Administration Requirements for Grants and Cooperative Agreements to State and Local Governments” or more commonly known as the “Common Rule”,
- 40 U.S.C. Chapter 10 Subchapter VI, paragraphs 541-544 or commonly called the “Brooks Act”.

In accordance with the above federal laws and regulations, the Arkansas Department of Transportation (ArDOT) has approved these procedures for use by the Local Agency for the “competitive negotiation” method of procurement as defined in 23 CFR 172.5, Methods of Procurement.

The Local Agency will use these procedures for Federal-aid contracts and may elect to use them for non-Federal-aid contracts.

These procedures do not apply to design-build Contracts.

Section II – Advertisement for Letters of Interest (LOIs).

The Local Agency may employ a consultant engineering firm when a need exists for engineering services and it is in the Local Agency's best interest to employ an engineer or engineering firm.

As a minimum, the Local Agency will advertise in a statewide newspaper, the ArDOT's website and the Local Agency's website (if available), advising that consultant engineering services are being sought. In addition, the Local Agency may advertise in appropriate national trade magazines or websites for specialized services. Interested firms must furnish a Letter of Interest with primary contact information and Architect-Engineer Qualifications Standard Form 330 Parts I and II. The advertisement will be for either a specific single project, a group of projects, or for an indefinite delivery of projects to be determined at a later date with specific task orders issued for each project.

When the Local Agency advertises a specific project, the advertisement will describe the work in general terms so that firms may evaluate their interest in performing the desired services.

When the Local Agency advertises a group of projects, a general description of work will be furnished. Firms will be asked to specify the projects they are interested in performing. When the Local Agency decides to proceed with a certain project, those firms having expressed interest in that project will be considered for selection.

When the Local Agency advertises for an indefinite delivery of projects with later specified task orders, the advertisement will include a general description of work for the project tasks.

Section III – Selection Committee.

The Local Agency will designate a Selection Committee (Committee) to evaluate and analyze the LOIs and Proposals.

Section IV – Evaluation of LOIs.

The Committee will evaluate each consultant firm based on the following:

No.	Evaluation Factors for LOIs	Maximum Points Possible
1	Professional staff including the education, experience, number of personnel available, and any partnerships with sub-consultants	10
2	General and professional reputation, including responsiveness to civil rights and equal employment opportunity requirements and opportunities	10
3	Past work performance	10
4	Experience with projects of a similar nature as those advertised	10
	Total Points for LOI	40

Following their review, the selection committee will prepare a short list of engineering firms and recommend to the Local Agency that these firms submit detailed proposals for further evaluation.

Section V – Request for Proposal (RFP).

The Local Agency will prepare a scope of work statement and request proposals from the engineering firms on the short list. For projects with FHWA oversight, the Local Agency will forward the scope of work statement to ArDOT to forward to FHWA for review and approval before soliciting RFPs. A Local Agency's scope of work will typically include the following:

1. A detailed description of the work
2. Services that will be furnished by the Local Agency
3. Services expected of the consultant
4. Project conditions of the work
5. Special conditions of the work
6. Assurance of participation of Disadvantaged Business Enterprises (DBE) in Federal-aid projects. The Local Agency may establish a DBE goal of a certain percentage of the work for DBE's to assure DBE's participation in Federal-aid projects. When a DBE goal is specified, the Local Agency will ensure that a certified DBE(s) performs the identified engineering work and that the payments to the DBE(s) verify that the goal was reached. The establishment of a DBE goal does not preclude a DBE from being the prime consultant for the project.

The short-listed firms should submit proposals that contain the following:

1. A cover letter with primary contact information
2. A detailed work plan that identifies the major tasks of work
3. A list of major concerns associated with completing the work
4. A detailed work schedule for specific projects as requested
5. A manpower estimate for specific projects as requested
6. Updated Standard Form 330 Parts I and II if necessary

The Committee will review the proposals with particular attention to the following evaluation factors and the consideration of Section IV. The evaluation factors and their relative importance will be listed in the RFP if any of the factors are different from the list below.

No.	Evaluation Factors for Proposals	Maximum Points Possible
1	Obvious indication that the scope of work is clearly understood	10
2	Comprehensive, coherent, and detailed work plan	10
3	Realistic work schedule when applicable	10
4	Proposed working office location, need for a local office, and any local representative*	5
5	Identification of sub-consultants and responsiveness to DBE goals and opportunities	5
6	Total Points for LOI	40
	Total Points for Proposals	80

*Locality preference may be used on a project by project basis where it is not based on political boundaries.

Based on these various items, the Committee will rank the firms in order of preference and submit the list to the Local Agency who will either:

1. Select one firm to enter negotiations with;

2. Select multiple firms for an indefinite delivery contract; or
3. Select two or more firms to interview (a firm may present additional information concerning their proposal at the interview). After the interviews, the Committee will re-evaluate the firms based on the interview and the same evaluation factors as noted previously. The ranked list will be submitted to the Local Agency for review and final selection.

The contract file will contain records of the rankings and supporting data; however, the rankings will not be public information. Copies of the LOI advertisement, the rankings, and supporting data shall be submitted to ArDOT for the contract file.

Section VI – Negotiation and Contract Preparation.

Once a firm is selected for negotiation for a specific job or a group of projects, it will prepare a draft contract including a cost estimate for the project. The other firms on the short list will be advised of the firm selected, subject to successful negotiations.

More than one firm may be selected for an indefinite delivery contract. The contract will establish a maximum cost for the contract as well as an expiration date. As individual task orders are issued, individual task order cost estimates will be negotiated.

The selected firm will prepare a draft contract based on a sample contract furnished by the ArDOT. In accordance with the principles of 23 CFR 172, the draft contract must include an overhead rate that is approved by the ArDOT. The overhead rate shall be verified by an audit by a certified public accountant on behalf of the consultant if the contract exceeds \$250,000. If the contract is less than \$250,000, the overhead rate shall also be verified by an audit by a certified public accountant on behalf of the consultant if at least one of the following conditions applies:

1. when there is insufficient knowledge of the consultant's accounting system;
2. when there is previous unfavorable experience regarding the reliability of the consultant's accounting system; or
3. when the contract involves procurement of new equipment or supplies for which cost experience is lacking.

Pursuant to this requirement, the ArDOT will notify the Local Agency if an audit by a certified public accountant for the selected firm is necessary. The certified audit needs to be provided by the selected firm prior to the submission of the final draft contract.

The Local Agency will review the draft contract proposal and either approve it as submitted or enter into negotiations with the selected firm to establish a contract and contract amount that the Local Agency deems is fair and reasonable. If a satisfactory contract cannot be negotiated with the selected firm, negotiations will be formally terminated. The Local Agency will then enter into negotiations with the second ranked firm. If negotiations with that firm fail, the Local Agency will formally terminate those

negotiations and begin to negotiate with the third ranked firm, and so on. If the Local Agency cannot negotiate a satisfactory contract with any of the firms on the short list, the Local Agency shall either:

1. Request proposals from additional firms who have submitted LOIs and are considered competent and qualified; evaluate and rank the firms based on the criteria described in Section V; and continue the negotiation process, or
2. Terminate all negotiations and begin the selection process again.

When the Local Agency and the consultant agree on a negotiated contract, the consultant will prepare a final draft and submit it to the Local Agency and ArDOT for review. After review and a determination that it is acceptable, the consultant will sign the contract. The Local Agency will then execute the contract. The contract will subsequently be submitted to ArDOT for final review and approval. When approved, copies of the signed contract will be distributed within the Local Agency and to the consultant.

For projects with FHWA oversight and for indefinite delivery contracts utilizing federal funds, the ArDOT will forward the initial and final drafts of the contract to FHWA for review and comment. The FHWA approves the final executed contract by stamp and signature and retains a copy.

After the Local Agency executes an indefinite delivery contract, it will assign specific projects by task order for the duration of the contract period. The consultant will prepare each task order based on the scope of work furnished by the Local Agency. The task order will include a manpower estimate and cost. The Local Agency will review the task order and approve it as submitted or negotiate with the consultant to establish a task order and task order amount that the Local Agency deems is fair and reasonable. After review and a determination that the task order is acceptable, the consultant will sign the task order. The Local Agency will execute the task order. The task order will subsequently be submitted to ArDOT for final review and approval. When approved, copies of the signed task order will be distributed within the Local Agency and to the consultant. For projects with FHWA oversight, the ArDOT will forward the initial and final drafts of the task order to FHWA for review and comment. The FHWA approves the final executed task order by stamp and signature and retains a copy.

Section VII – Monitoring the Contract.

The Local Agency may identify staff members as key liaisons for specific projects or for technical matters during the administration of the contract period.

The Local Agency will:

1. Maintain the contract files.
2. Arrange and attend periodic progress meetings.
3. Coordinate reviews and approval actions with other agencies when necessary.

4. Review progress payments.
5. Coordinate questions from the consultant.
6. Negotiate any change or amendment to the contract and submit to ArDOT for review and approval.
7. Prepare an evaluation of the consultant's performance after completion of the contract. A copy of the evaluation shall be submitted to the ArDOT.

Section VIII – Consultant Liability

The Local Agency will include a contract requirement that the consultant will warrant that all services and work products provided as part of the contract are free from defects in workmanship at the time of acceptance and that the work conforms to the requirements of the contract. This warrant is effective regardless of the degree of inspection and acceptance by the Local Agency or others.

If the consultant is required to correct or re-perform any work or services, the work will be performed at no cost to the Local Agency, and any work or services corrected or re-performed by the consultant shall also be warranted that it is free from defects in workmanship. If the consultant fails or refuses to correct or re-perform, the Local Agency may, by contract or otherwise, correct or replace the deficient items or services with similar work or services, and charge the cost to the consultant or make an equitable adjustment in the consultant's reimbursement.

Acceptance is an act of an authorized representative of the Local Agency by which the Local Agency approves specific services, as partial or complete performance of the contract. Correction is the elimination of a defect.

CITY LETTERHEAD

JOB NUMBER
JOB DESCRIPTION
COUNTY

Title to the right of way necessary for the construction of this project has been acquired, *or will be acquired*, in accordance with applicable Federal Highway Administration procedures.

↓ indicate total number in each category here. Delete any categories not used in this job.

- ___ Tract(s)
 - ___ Options(s)
 - ___ Paid
 - ___ Donation(s)
 - ___ Negotiation Pending* - include tract number(s) and statement: "It is anticipated that this/these tract(s) will be acquired by (date)."
 - ___ Condemnation(s) – (include Order of Possession date or date the Court Order was filed)
 - ___ Condemnation(s) Pending* - include tract number(s) and anticipated filing date
- * If applicable

↓delete the statement in each pair that does not apply

There are no displacees on this project.

-Or-

Relocation Assistance has been provided in accordance with applicable Federal Highway Administration procedures and all displacees have moved from this project. There was/were # displaced (residence(s)/business(es)/personal property/etc) on the project.

There are no structures located within the right of way area.

-Or-

All structures have been removed from this project, except for those to be included as demolition items in the highway contract.

No conflicting utilities are known to exist in the right of way area.

-Or-

Necessary utility relocation has been, or will be, completed as shown in the attached Utility Status Report.

There are no railroads involved on this project

-OR-

Tract(s) #___ shown above include(s) #___ (Permanent/Temporary Construction Easements) for ___ Railroad.

No right of way in excess of that needed for construction or future maintenance of this project was acquired.

Certified by: _____
(Type name)
(Type title)

Date: _____

City Letterhead

*(Designating Full-Time Employee
in Responsible Charge)*

DATE

Mr. Jared D. Wiley
Division Engineer – Program Management
Arkansas Department of Transportation
P. O. Box 2261
Little Rock, AR 72203

Re: **Job Name**
County

Dear Mr. Wiley:

The full-time employee in responsible charge of the day to day oversight for the referenced project will be (insert employee's name). This letter certifies that the employee is aware of the duties and functions they are in charge of as outlined in the Agreement of Understanding. They can be contacted at (insert phone number) or at (insert email address).

Sincerely,

NAME & OFFICE
(City's CEO)

49 CFR 18.42

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Post-Award Requirements

Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see Sec. 18.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period--*(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the

end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records--*(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The right of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

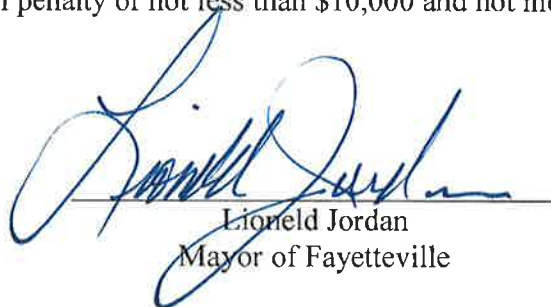
(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

CERTIFICATION FOR GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The undersigned certifies to the best of his knowledge and belief that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including sub grants, and contracts and subcontracts under grants, sub grants, loans and cooperative agreements) which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Lioneld Jordan
Mayor of Fayetteville

Federal Funding Accountability and Transparency Act (FFATA)

Reporting Requirements

(For more information go to <https://www.fsrs.gov/>)

FFATA was signed on September 26, 2006. The intent is to empower every American with the ability to hold the government accountable for each spending decision. The end result is to reduce wasteful spending in the government. The FFATA legislation requires information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is www.USASpending.gov.

A Prime Grant Recipient (hereinafter called ArDOT (the Arkansas Department of Transportation)) awarded a new Federal grant greater than or equal to \$25,000 as of October 1, 2010 is subject to FFATA sub-award reporting requirements as outlined in the Office of Management and Budget guidance issued August 27, 2010. **ArDOT is required to file a FFATA sub-award report for any sub-grant awarded to a sub-awardee greater than or equal to \$25,000.** As a sub-awardee, CITY OF FAYETTEVILLE shall provide the following information to ArDOT in order to fulfill FFATA reporting requirements:

- ✓ A unique identifier (Dun & Bradstreet DUNS Number) of the sub-awardee receiving the award and the parent entity of the recipient, should the sub-awardee be owned by another entity;
- ✓ The names and total compensation of the five most highly compensated officers of the sub-awardee **if** the sub-awardee in the preceding Federal fiscal year received 80 percent or more of its annual gross revenues in Federal awards; and \$25,000,000 or more in annual gross revenues from Federal awards; and the public does not have access to information about the compensation of the senior executives of the sub-awardee through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. See FFATA § 2(b)(1).

Required Sub-Awardee Information(A) Sub-Awardee – DUNS Number: 075657742

Parent (if applicable) – DUNS Number: _____

- (B) In the preceding completed Federal fiscal year, did your business or organization (the legal entity to which the DUNS number entered above belongs) receive (1) 80 percent or more of its annual gross revenues in U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements?

Yes / No (Circle one)*If "Yes" is selected, answer (C).*

- (C) Does the public have access to information about the compensation of the executives in your business or organization (the legal entity to which the DUNS number entered above belongs) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?

Yes / No (Circle one)

*If "Yes" is selected, visit <http://www.sec.gov/edgar.shtml> for reference.**If "No" is selected, answer (D).*

- (D) **If "No" was selected in Question "C"**, complete the following information for the five (5) most highly compensated executives in your business or organization (the legal entity to which the DUNS number entered above belongs). Amount should reflect the Total Compensation Amount in the preceding completed Federal fiscal year in U.S. whole dollars.

Sub-Awardee Names and Compensation of Most Highly Compensated Officers

1. Name: _____ Amount: \$ _____
2. Name: _____ Amount: \$ _____
3. Name: _____ Amount: \$ _____
4. Name: _____ Amount: \$ _____
5. Name: _____ Amount: \$ _____



113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Resolution: 27-17

File Number: 2016-0666

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT:

A RESOLUTION TO ALLOW THE CITY OF FAYETTEVILLE TO ENTER INTO A PARTNERING AGREEMENT WITH THE ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT FOR IMPROVEMENTS TO HIGHWAY 112 BETWEEN RAZORBACK ROAD AND GARLAND AVENUE, AND TO APPROVE THE RECLASSIFICATION OF HIGHWAY 112 BETWEEN 15TH STREET AND INTERSTATE 49 AS A CITY STREET.

WHEREAS, the City of Fayetteville (City) and the Arkansas State Highway and Transportation Department (Department) have identified a need for improvements to Highway 112 between Razorback Road and Garland Avenue in Fayetteville; and

WHEREAS, the original partnering agreement between the Department and the City was as follows:

1. The Department was responsible to fund and handle project development, which is complete. The Department is also responsible for advertising, awarding the bid, and providing construction inspection.
2. The City is to fund utilities, construction and construction inspection; and

WHEREAS, bids were received twice on this project, and each time the low bid was significantly over the City's budget; and

WHEREAS, in order to move this project forward, a revised partnering agreement is proposed as follows:

1. The amount of City funds available for Job 040582 is capped at \$3,358,600.00 as shown on Attachment A to this Resolution. The Department will provide the gap funding needed to construct the project.

2. The City will revise the current design. However, any increase in the current scope that results in a higher project cost will be the responsibility of the City and will be in addition to the cap amount of \$3,358,600.
3. The Department will advertise and award the project. The City may inspect the project. The Department will inspect the project if requested by the City.
4. Once the project is let to contract, an increase in cost due to added scope by change order will be the responsibility of the City. An increase in cost due to a change order for a normal bid item adjustment will be the responsibility of the Department.
5. The Department will fund the cost to overlay the segments from Maple Street to North Street and from Leroy Pond Drive north to the beginning of Job 040582. The City may develop, advertise, award and inspect the project. The Department will provide these services if requested by the City. Any additional scope items to the Department's typical overlay design that add cost to this improvement will be the responsibility of the City.
6. The Statewide Transportation Improvement Program for Federal Fiscal Years 2016-2020 (STIP) includes a project to widen Highway 112 from Poplar Street to Van Asche Drive. The City desires to handle all phases of project development, advertise, award, and inspect the portion from Poplar Street to Interstate 49. The Department will provide the amount of funding necessary for all phases of work to develop and construct the typical design section for an urban state highway as shown on Attachment B to this Resolution. The cost of additional features outside of this standard scope that increase the total cost beyond that of the typical design section will be the responsibility of the City; and

WHEREAS, upon completion of the improvements aforementioned, the City agrees to assume ownership and responsibility of Highway 112 from Highway 16 (15th Street) to Interstate 49 as shown on Attachment C to this Resolution.

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

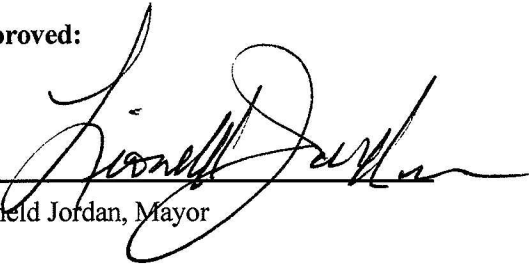
Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves the City's participation in this Partnering Agreement in accordance with its designated responsibilities in this project.

Section 2. That the City Council of the City of Fayetteville, Arkansas authorizes Mayor Jordan to execute all appropriate agreements and contracts necessary to expedite the construction of this project.


Section 3. That the City Council of the City of Fayetteville, Arkansas hereby pledges its full support and hereby requests that the Arkansas State Highway and Transportation Department initiate action to implement this project.


PASSED and APPROVED on 1/3/2017

Approved:


Lioneld Jordan, Mayor

Attest:


Sondra E. Smith, City Clerk Treasurer





City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Text File

File Number: 2016-0666

Agenda Date: 1/3/2017

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In Control: City Council Meeting

File Type: Resolution

Agenda Number: C. 4

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT:

A RESOLUTION TO ALLOW THE CITY OF FAYETTEVILLE TO ENTER INTO A PARTNERING AGREEMENT WITH THE ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT FOR IMPROVEMENTS TO HIGHWAY 112 BETWEEN RAZORBACK ROAD AND GARLAND AVENUE, AND TO APPROVE THE RECLASSIFICATION OF HIGHWAY 112 BETWEEN 15TH STREET AND INTERSTATE 49 AS A CITY STREET

WHEREAS, the City of Fayetteville (City) and the Arkansas State Highway and Transportation Department (Department) have identified a need for improvements to Highway 112 between Razorback Road and Garland Avenue in Fayetteville; and

WHEREAS, the original partnering agreement between the Department and the City was as follows:

1. The Department was responsible to fund and handle project development, which is complete. The Department is also responsible for advertising, awarding the bid, and providing construction inspection.
2. The City is to fund utilities, construction and construction inspection; and

WHEREAS, bids were received twice on this project, and each time the low bid was significantly over the City's budget; and

WHEREAS, in order to move this project forward, a revised partnering agreement is proposed as follows:

1. The amount of City funds available for Job 040582 is capped at \$3,358,600.00 as shown on Attachment A to this Resolution. The Department will provide the gap funding needed to construct the project.
2. The City will revise the current design. However, any increase in the current scope that results in a higher project cost will be the responsibility of the City and will be in addition to the cap amount of \$3,358,600.
3. The Department will advertise and award the project. The City may inspect the project. The Department will inspect the project if requested by the City.
4. Once the project is let to contract, an increase in cost due to added scope by change order will be the

responsibility of the City. An increase in cost due to a change order for a normal bid item adjustment will be the responsibility of the Department.

5. The Department will fund the cost to overlay the segments from Maple Street to North Street and from Leroy Pond Drive north to the beginning of Job 040582. The City may develop, advertise, award and inspect the project. The Department will provide these services if requested by the City. Any additional scope items to the Department's typical overlay design that add cost to this improvement will be the responsibility of the City.

6. The Statewide Transportation Improvement Program for Federal Fiscal Years 2016-2020 (STIP) includes a project to widen Highway 112 from Poplar Street to Van Asche Drive. The City desires to handle all phases of project development, advertise, award, and inspect the portion from Poplar Street to Interstate 49. The Department will provide the amount of funding necessary for all phases of work to develop and construct the typical design section for an urban state highway as shown on Attachment B to this Resolution. The cost of additional features outside of this standard scope that increase the total cost beyond that of the typical design section will be the responsibility of the City; and

WHEREAS, upon completion of the improvements aforementioned, the City agrees to assume ownership and responsibility of Highway 112 from Highway 16 (15th Street) to Interstate 49 as shown on Attachment C to this Resolution.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves the City's participation in this Partnering Agreement in accordance with its designated responsibilities in this project.

Section 2. That the City Council of the City of Fayetteville, Arkansas authorizes Mayor Jordan to execute all appropriate agreements and contracts necessary to expedite the construction of this project.

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby pledges its full support and hereby requests that the Arkansas State Highway and Transportation Department initiate action to implement this project.



UNIVERSITY OF ARKANSAS

Facilities Management

December 15, 2016

Chris Brown
City Engineer
City of Fayetteville
113 W. Mountain St.
Fayetteville, AR 72701

Dear Chris:

Per your request via attached email of Wednesday, December 14, 2016, the University of Arkansas (UA) remains committed to our cost-sharing (10% City / 10% UA) on the required 20% local match on AHTD Job #040582 Razorback Rd-Garland Ave (Highway 112) (Fayetteville).

This UA Commitment is on a not-to-exceed basis of \$479,300 per the draft resolution and supporting documents.

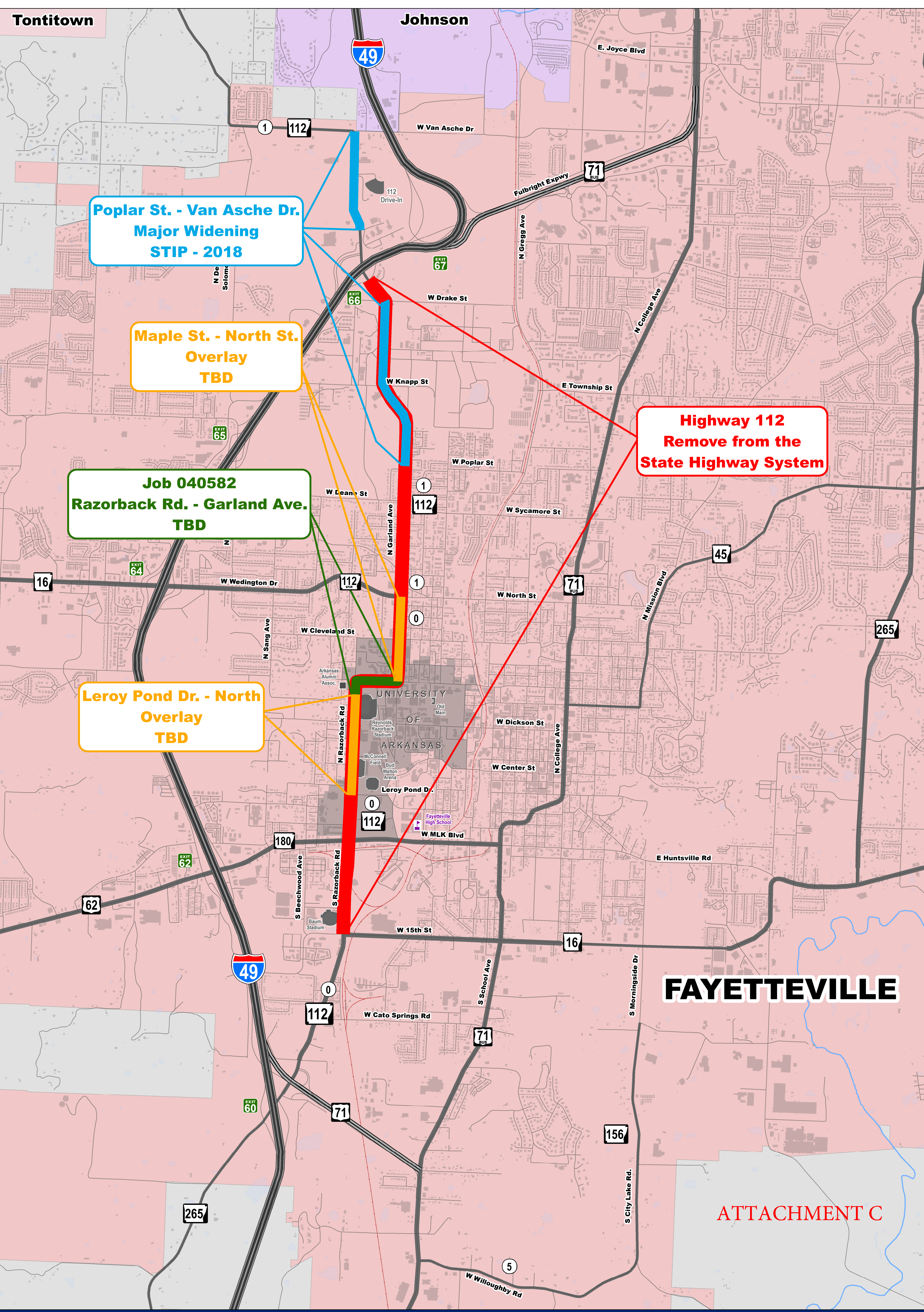
The UA remains committed to also working out an appropriate long-term agreement on current and future maintenance for the roadway sections between 15th Street and North Street / Wedington Drive. Our maintenance efforts essentially commenced in 2002-2003 upon completion of the initial section of roadway between Maple Street and North Street / Wedington Drive. They now include the entire length mentioned above and for those specific areas covered which will be incorporated in our future agreement. Potential UA areas in this future agreement to be covered include irrigation systems, tree maintenance, grass maintenance, pedestrian light maintenance where they exist, core campus crosswalk maintenance, sidewalk maintenance and related areas.

We look forward to our continued partnership as we complete this long-needed series of safety improvements and physical changes to this critical link running through our campus and the larger community.

Sincerely,

M.R. Johnson
Associate Vice Chancellor for Facilities

Attachment: Email of 12/14/16 (w/attachments)



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