

City of Fayetteville Staff Review Form

2019-0474

Legistar File ID

9/3/2019

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

Tim Nyander

8/2/2019

WATER SEWER (720)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval of a Professional Engineering Services Agreement with Garver, LLC in the amount of \$59,600.00 for rehabilitation design for the Round Mountain Water Standpipe project.

Budget Impact:

5400.720.5600-5314.00

Water and Sewer

Account Number

Fund

12009.1

Water System Rehabilitation/Replacement

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 8,953,977.00

Funds Obligated \$ 3,045,360.46

Current Balance \$ 5,908,616.54

Does item have a cost? Yes

Item Cost \$ 59,600.00

Budget Adjustment Attached? No

Budget Adjustment \$ -

Remaining Budget \$ 5,849,016.54

V20180321

Purchase Order Number: \_\_\_\_\_

Previous Ordinance or Resolution # \_\_\_\_\_

Change Order Number: \_\_\_\_\_

Approval Date: \_\_\_\_\_

Original Contract Number: \_\_\_\_\_

Comments:



**MEETING OF SEPTEMBER 3, 2019**

**TO:** Mayor and City Council

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

**FROM:** Corey Granderson, Utilities Engineer

**DATE:** August 2, 2019

**SUBJECT: APPROVAL OF AN ENGINEERING SERVICES AGREEMENT NOT TO EXCEED \$59,600.00 WITH GARVER, LLC FOR REHABILITATION DESIGN FOR THE ROUND MOUNTAIN WATER STANDPIPE**

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**RECOMMENDATION:**

Staff recommends approval of an engineering services agreement not to exceed \$59,600.00 with Garver, LLC for rehabilitation design for the Round Mountain water standpipe project.

**BACKGROUND:**

Routine life-cycle rehabilitation of the Round Mountain water standpipe is recommended per recent water tank inspection services. This standpipe is located at 14360 Round Mountain Road in the southeast region of Fayetteville's water service area and has a capacity of 100,000 gallons. Tank inspections across Fayetteville's water system were performed by Garver, LLC in 2018 to fulfill state requirements.

**DISCUSSION:**

This agreement will allow Garver to design interior and exterior coating replacements (paint), tank repairs as needed, new handrails, cable safety systems, footing repairs, site safety elements, tank mixing, and other items to bring this water storage tank into compliance with modern health and safety codes. This agreement includes all services needed from Garver for the engineering design, permitting, bidding, and construction management/observation. This engineering services contract is based on scope of work and professional fees, not to exceed \$59,600.00. Garver, LLC was selected to perform the engineering services per RFQ #19-01, Selection #9.

**BUDGET/STAFF IMPACT:**

Funding for this project is available from the Water System Rehabilitation account.

**Attachments:**

Engineering Services Agreement  
Water Master Plan Excerpts

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

THIS AGREEMENT is made as of \_\_\_\_\_, 2019, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and GARVER, LLC (hereinafter called ENGINEER).

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

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

**SECTION 1 - AUTHORIZATION OF SERVICES**

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

**SECTION 2 - BASIC SERVICES OF ENGINEER**

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

**SECTION 3 - RESPONSIBILITIES OF CITY OF FAYETTEVILLE**

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

- 3.1.1 Provide full information as to CITY OF FAYETTEVILLE's requirements for the Project.
- 3.1.2 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.
- 3.1.3 Assist ENGINEER in obtaining access to property reasonably necessary for ENGINEER to perform his services under this Agreement.
- 3.1.4 Examine all studies, reports, sketches, cost opinions, proposals, and other documents presented by ENGINEER and render in writing decisions pertaining thereto.
- 3.1.5 Provide such professional legal, accounting, financial, and insurance counseling services as may be required for the Project.
- 3.1.6 The Utilities Services Director is the CITY OF FAYETTEVILLE's project representative with respect to the services to be performed under this Agreement. The Utilities Services Director shall have complete authority to transmit instructions, receive information, interpret and define CITY OF FAYETTEVILLE's policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.
- 3.1.7 CITY OF FAYETTEVILLE and/or its representative will review all documents and provide written comments to ENGINEER in a timely manner.

#### **SECTION 4 - PERIOD OF SERVICE**

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

#### **SECTION 5 - PAYMENTS TO ENGINEER**

- 5.1 The maximum not-to-exceed amount authorized for this Agreement shall be based upon on a Unit Price or Lump Sum basis as described in Appendix A.
- 5.2 Statements
  - 5.2.1 Monthly statements for each calendar month shall be submitted to CITY OF FAYETTEVILLE or such parties as CITY OF FAYETTEVILLE may designate for professional services consistent with ENGINEER'S normal billing schedule. Once established, the billing schedule shall be maintained throughout the duration of the Project.

Applications for payment shall be made in accordance with a format to be developed by ENGINEER and as approved by CITY OF FAYETTEVILLE. Applications for payment



shall be accompanied each month by the updated project schedule as the basis for determining the value earned as the work is accomplished. Final payment for professional services shall be made upon CITY OF FAYETTEVILLE's approval and acceptance with the satisfactory completion of the study and report for the Project.

### 5.3 Payments

- 5.3.1 All statements are payable upon receipt and due within thirty (30) days. If a portion of ENGINEER's statement is disputed by CITY OF FAYETTEVILLE, the undisputed portion shall be paid by CITY OF FAYETTEVILLE by the due date. CITY OF FAYETTEVILLE shall advise ENGINEER in writing of the basis for any disputed portion of any statement. CITY OF FAYETTEVILLE will make reasonable effort to pay invoices within 30 days of date the invoice is approved, however, payment within 30 days is not guaranteed.

### 5.4 Final Payment

- 5.4.1 Upon satisfactory completion of the work performed under this Agreement, as a condition before final payment under this Agreement, or as a termination settlement under this Agreement, ENGINEER shall execute and deliver to CITY OF FAYETTEVILLE a release of all claims against CITY OF FAYETTEVILLE arising under or by virtue of this Agreement, except claims which are specifically exempted by ENGINEER to be set forth therein. Unless otherwise provided in this Agreement or by State law or otherwise expressly agreed to by the parties to this Agreement, final payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of CITY OF FAYETTEVILLE's claims against ENGINEER or his sureties under this Agreement or applicable performance and payment bonds, if any.

## **SECTION 6 - GENERAL CONSIDERATIONS**

### 6.1 Insurance

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

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

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

- 6.1.2 CITY OF FAYETTEVILLE and ENGINEER waive all rights against each other and their officers, directors, agents, or employees for damage covered by property insurance during and after the completion of ENGINEER's services.
- 6.2 Professional Responsibility
- 6.2.1 ENGINEER will exercise reasonable skill, care, and diligence in the performance of ENGINEER's services and will carry out its responsibilities in accordance with customarily accepted professional engineering practices. CITY OF FAYETTEVILLE will promptly report to ENGINEER any defects or suspected defects in ENGINEER's services of which CITY OF FAYETTEVILLE becomes aware, so that ENGINEER can take measures to minimize the consequences of such a defect. CITY OF FAYETTEVILLE retains all remedies to recover for its damages caused by any negligence of ENGINEER.
- 6.3 Cost Opinions and Projections
- 6.3.1 Cost opinions and projections prepared by ENGINEER relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on ENGINEER's experience, qualifications, and judgment as a design professional. Since ENGINEER has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction Contractors' procedures and methods, unavoidable delays, construction Contractors' methods of determining prices, economic conditions, competitive bidding or market conditions, and other factors affecting such cost opinions or projections, ENGINEER does not guarantee that actual rates, costs, performance, schedules, and related items will not vary from cost opinions and projections prepared by ENGINEER.
- 6.4 Changes
- 6.4.1 CITY OF FAYETTEVILLE shall have the right to make changes within the general scope of ENGINEER's services, with an appropriate change in compensation and schedule only after Fayetteville City Council approval of such proposed changes and, upon execution of a mutually acceptable amendment or change order signed by the Mayor of the CITY OF FAYETTEVILLE and the duly authorized officer of ENGINEER.
- 6.5 Termination
- 6.5.1 This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given:
- 6.5.1.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,
- 6.5.1.2 An opportunity for consultation with the terminating party prior to termination.
- 6.5.2 This Agreement may be terminated in whole or in part in writing by CITY OF FAYETTEVILLE for its convenience, provided that ENGINEER is given:

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

6.7 Rights and Benefits

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

6.8 Dispute Resolution

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

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

6.8.3 Notice of Dispute

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

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

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

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

6.10 Publications

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

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

6.11 Indemnification

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

6.12 Ownership of Documents

- 6.12.1 All documents provided by CITY OF FAYETTEVILLE including original drawings, disks of CADD drawings and cross sections, estimates, specification field notes, and data are and remain the property of CITY OF FAYETTEVILLE. ENGINEER may retain reproduced copies of drawings and copies of other documents.
- 6.12.2 Engineering documents, drawings, and specifications prepared by ENGINEER as part of the Services shall become the property of CITY OF FAYETTEVILLE when ENGINEER has been compensated for all Services rendered, provided, however, that ENGINEER shall have the unrestricted right to their use. ENGINEER shall, however, retain its rights in its standard drawings details, specifications, databases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of ENGINEER.
- 6.12.3 Any files delivered in electronic medium may not work on systems and software different than those with which they were originally produced. ENGINEER makes no warranty as to the compatibility of these files with any other system or software. Because of the potential degradation of electronic medium over time, in the event of a conflict between the sealed original drawings/hard copies and the electronic files, the sealed drawings/hard copies will govern.

6.13 Notices

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

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

ENGINEER's address:  
2049 E. Joyce Blvd, Suite 400  
Fayetteville, Arkansas 72703

6.14 Successor and Assigns

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

6.15 Controlling Law

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

6.16 Entire Agreement

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

**SECTION 7 - SPECIAL CONDITIONS**

7.1 Additional Responsibilities of ENGINEER

7.1.1 CITY OF FAYETTEVILLE's review, approval, or acceptance of design drawings, specifications, reports and other services furnished hereunder shall not in any way relieve ENGINEER of responsibility for the technical adequacy of the work. Neither CITY OF FAYETTEVILLE's review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

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

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

7.2 Remedies

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



decided in a court of competent jurisdiction within Arkansas.

### 7.3 Audit: Access to Records

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

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

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

7.3.3.1 Negotiated prime agreements:

7.3.3.2 Negotiated change orders or agreement amendments in excess of \$10,000 affecting the price of any formally advertised, competitively awarded, fixed price agreement:

7.3.3.3 Agreements or purchase orders under any agreement other than a formally advertised, competitively awarded, fixed price agreement. However, this right of access does not apply to a prime agreement, lower tier subagreement or purchase order awarded after effective price competition, except:

7.3.3.3.1 With respect to record pertaining directly to subagreement performance, excluding any financial records of ENGINEER;

7.3.3.3.2 If there is any indication that fraud, gross abuse or corrupt practices may be involved;

7.3.3.3.3 If the subagreement is terminated for default or for convenience.

### 7.4 Covenant Against Contingent Fees

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

7.5 Gratuities

7.5.1 If CITY OF FAYETTEVILLE finds after a notice and hearing that ENGINEER or any of ENGINEER's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of CITY OF FAYETTEVILLE, in an attempt to secure an agreement or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, CITY OF FAYETTEVILLE may, by written notice to ENGINEER terminate this Agreement. CITY OF FAYETTEVILLE may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which CITY OF FAYETTEVILLE bases such finding shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

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

7.6 Arkansas Freedom of Information Act

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

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

CITY OF FAYETTEVILLE, ARKANSAS

ENGINEER

By: \_\_\_\_\_  
Mayor, Lioneld Jordan

ATTEST:  
By: \_\_\_\_\_  
City Clerk

By:  Digitally signed by Joe Dollerschell  
Date: 2019.06.13 16:40:07-05'00'  
Vice President, C. Joseph Dollerschell

ATTEST:   
By: \_\_\_\_\_  
Senior Project Manager, Chris Buntin

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES



## **APPENDIX A – SCOPE OF SERVICES**

### **1. General**

Generally, the scope of services includes design, bidding services, and construction support services for improvements to the Round Mountain Standpipe (100,000 gallons) located at 14360 Round Mountain Road.

### **2. Project Management**

- A. Develop a project management plan, including project scope, project team, deliverables, communication protocol, and project schedule.
- B. Prepare monthly invoices and provide the CITY OF FAYETTEVILLE a project status update.

### **3. Design**

During the design phase of the project, ENGINEER will:

- A. Provide the design for removal and replacement of the interior and exterior coating with a high performance multi-layer epoxy coating (including seam treatment), and the work will include repairs to all rusted areas and pits. The exterior tank color will be selected by the CITY OF FAYETTEVILLE and exclude a logo.
- B. Provide the design for a new handrail and landing on top of the tank, next to the manway.
- C. Provide the design for a new cable safety climb device on the existing interior tank ladder.
- D. Provide the design for a grout rub on the tank footing and seal between the tank and footing.
- E. Provide the design for new pipe bollards to protect the propane tank for backup power.
- F. Provide the design for the replacement of the vent hood with a stainless steel one, including the insect screen.
- G. Provide the design for replacement of the PVC pipe fill/drain floor penetration seal.
- H. Provide the design to extend the overflow to the bottom of the tank with new screen and flap valve.
- I. Provide the design for tank mixing. The design will be based upon Medora Corporation's GridBee model GS-9 (120 volt submersible electric mixer and GS Series Control Box with SCADA Monitoring). Chemical injection is not included. The scope of services assumes there is a spare 4-20 mA input into the exiting telemetry controller for connection of the new mixer panel for SCADA monitoring.
- J. Prepare construction drawings consisting of a cover sheet, general notes sheet, site plan sheet, and details sheets.
- K. Prepare specifications. The ENGINEER will use CITY OF FAYETTEVILLE standard front end documents, including bid information, agreement, bonds and certificates, general conditions, supplementary conditions, and general requirements.
- L. Submit the draft design drawings, specifications, and opinion of probable construction cost (OPCC) with a contingency of 15 percent to the CITY OF FAYETTEVILLE for review and comment, meet with the CITY OF FAYETTEVILLE to discuss review comments, incorporate CITY OF FAYETTEVILLE review comments, and prepare the final plans and specifications as required to advertise for bids.
- M. Submit and coordinate approval from the Arkansas Department of Health (ADH). The ENGINEER will pay the \$200 ADH review fee.

### **4. Bidding Services**

During the bidding phase of the project, ENGINEER will:

- A. Prepare and submit advertisement for bids to the CITY OF FAYETTEVILLE for publication by the CITY OF FAYETTEVILLE. The CITY OF FAYETTEVILLE will pay advertising costs outside of this contract.

- B. Provide construction contract documents to the CITY OF FAYETTEVILLE. The CITY OF FAYETTEVILLE will provide construction contract documents to prospective bidders.
- C. Support the contract documents by preparing addenda as appropriate. The CITY OF FAYETTEVILLE will issue addenda to prospective bidders.
- D. Participate in a pre-bid meeting.
- E. Attend the bid opening.
- F. Evaluate bids and recommend award. The CITY OF FAYETTEVILLE will prepare the bid tabulation.
- G. Prepare construction contracts for execution by the CITY OF FAYETTEVILLE and contractor. The construction contracts will include addenda, and the ENGINEER will not conform the construction documents to reflect addenda.

## **5. Construction Phase Services**

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

- A. Issue a Notice to Proceed letter to the Contractor and attend preconstruction meeting.
- B. Evaluate and respond to construction material submittals and shop drawings. Corrections or comments made by ENGINEER on the shop drawings during this review will not relieve Contractor from compliance with requirements of the drawings and specifications. The check will only be for review of general conformance with the design concept of the project and general compliance with the information given in the contract documents. The Contractor will be responsible for confirming and correlating all quantities and dimensions, selecting fabrication processes and techniques of construction, coordinating his work with that of all other trades, and performing his work in a safe and satisfactory manner. ENGINEER's review shall not constitute approval of safety precautions or constitute approval of construction means, methods, techniques, sequences, procedures, or assembly of various components. When certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, either directly or implied for a complete and workable system, ENGINEER shall be entitled to rely upon such submittal or implied certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.
- C. Issue instructions to the Contractor on behalf of the CITY OF FAYETTEVILLE and issue necessary clarifications (respond to RFIs) regarding the construction contract documents.
- D. Review the Contractor's progress payment requests based on the actual quantities of contract items completed and accepted, and will make a recommendation to the FAYETTEVILLE regarding payment. ENGINEER's recommendation for payment shall not be a representation that ENGINEER has made exhaustive or continuous inspections to (1) check the quality or exact quantities of the Work; (2) to review billings from Subcontractors and material suppliers to substantiate the Contractor's right to payment; or (3) to ascertain how the Contractor has used money previously paid to the Contractor.
- E. Maintain a set of working drawings and prepare and furnish record drawings.
- F. Provide part-time resident construction observation services for the 60-calendar-day construction contract performance time. The proposed fee is based on 120 hours during the 60-calendar-day construction contract performance time. If the construction time extends beyond the time established in this agreement or if the FAYETTEVILLE wishes to increase the time or frequency of the observation, the FAYETTEVILLE will pay ENGINEER an additional fee agreed to by the FAYETTEVILLE and ENGINEER.
- G. When authorized by the FAYETTEVILLE, prepare change orders for changes in the work from that originally provided for in the construction contract documents. If redesign or substantial engineering or surveying is required in the preparation of these change order documents, the FAYETTEVILLE will pay ENGINEER an additional fee to be agreed upon by the FAYETTEVILLE and ENGINEER.
- H. Participate in final project inspection, prepare punch list, review final project closing documents, and submit final pay request.

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

- A. Consult with and advise the FAYETTEVILLE during the construction period.
- B. Maintain a file of quantities incorporated into the work, test reports, certifications, shop drawings and submittals, and other appropriate information.
- C. Maintain a project diary which will contain information pertinent to each site visit.

The proposed fee for Construction Phase Services is based on a 60-calendar-day construction contract performance time and 120 hours of construction observation. If the construction time extends beyond the time established in this agreement, and the FAYETTEVILLE wants ENGINEER to continue the applicable Construction Phase Services, the FAYETTEVILLE will pay ENGINEER an additional fee agreed to by the FAYETTEVILLE and ENGINEER.

In performing construction observation services, ENGINEER will endeavor to protect the FAYETTEVILLE against defects and deficiencies in the work of the Contractor(s); but ENGINEER cannot guarantee the performance of the Contractor(s), nor be responsible for the actual supervision of construction operations or for the safety measures that the Contractor(s) takes or should take. However, if at any time during construction ENGINEER observes that the Contractor's work does not comply with the construction contract documents, ENGINEER will notify the CITY OF FAYETTEVILLE immediately, so that appropriate action under the FAYETTEVILLE's contract with the Contractor can be taken.

## **6. Project Deliverables**

The following will be submitted to the FAYETTEVILLE, or others as indicated, by ENGINEER:

- A. One full size copy and electronic pdf of the draft and final drawings, specifications, and OPCC
- B. Two full size copies to the ADH.
- C. Electronic pdf of the bid documents (drawings and specifications)
- D. Three copies of the construction contract documents for execution by the CITY OF FAYETTEVILLE and the contractor.
- E. One full size copy of the executed construction contract documents (drawings and specifications with addenda) and three copies to the contractor. The contract documents will not be updated to reflect addenda (conformed documents).
- F. One full size copy and pdf and AutoCAD file of the record drawings.
- G. Use of these materials for modification, extension, or expansion of this Project or on any other project, unless under the direction of the ENGINEER, shall be without liability to the ENGINEER.

## **7. Extra Work**

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

- A. Redesign for the CITY OF FAYETTEVILLE'S convenience or due to changed conditions after previous alternate direction and/or approval.
- B. Submittals or deliverables in addition to those listed herein.
- C. Construction materials testing.
- D. Construction progress meetings.
- E. Generator or electrical service upgrades.
- F. PLC and SCADA programming.
- G. Services after construction, such as warranty follow-up.
- H. Legal and litigation services.

Extra Work will be as directed by the FAYETTEVILLE in writing for an addition fee as agreed upon by the FAYETTEVILLE and ENGINEER.

## 8. Schedule

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

Phase Description	Calendar Days
Draft Design	45 days from start
Final Design	14 days from draft design comments

## 9. Payment

For the work described under APPENDIX A - SCOPE OF SERVICES (except as may be modified for additional services required), the FAYETTEVILLE will pay the Engineer on an hourly rate basis. The FAYETTEVILLE represents that funding sources are in place with the available funds necessary to pay the Engineer.

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

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

WORK DESCRIPTION	ESTIMATED FEE AMOUNT	FEE TYPE
Project Management	\$1,800	
Design	\$22,300	Hourly Rate + Expenses
Bidding Services	\$ 6,400	
Construction Phase Services	\$29,100	
TOTAL FEE	\$59,600	

The CITY OF FAYETTEVILLE will pay ENGINEER, for time spent on the project, at the rates shown in Appendix B for each classification of ENGINEER's personnel (may include contract staff classified at ENGINEER's discretion) plus reimbursable expenses including but not limited to printing, courier service, reproduction, and travel. For informational purposes, a breakdown of the ENGINEER's estimated costs are included in Appendix B. The rates shown in Appendix B are subject to an annual rate increase on or about July, 2020.

The total amount paid to the ENGINEER under this agreement is estimated to be \$59,600. The actual total fee may not exceed this estimate without authorization from the CITY OF FAYETTEVILLE.

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

1. Direct cost for travel, long distance and wireless communications, outside reproduction and presentation material preparation, and mail/courier expenses.

2. Charges similar to commercial rates for reports, plan sheets, presentation materials, etc.
3. The amount allowed by the federal government for mileage with an additional \$0.05 for survey trucks/vans.

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

Additional Services (Extra Work). For work not described or included herein and for work beyond the total fee amount, a contract amendment will be required.



**APPENDIX B**  
**Round Mountain Standpipe Rehabilitation**  
**Garver Hourly Rate Schedule: July 2019 - June 2020**

<b>Classification</b>	<b>Rates</b>
<b>Engineers / Architects</b>	
E-1.....	\$ 110.00
E-2.....	\$ 127.00
E-3.....	\$ 154.00
E-4.....	\$ 180.00
E-5.....	\$ 219.00
E-6.....	\$ 274.00
E-7.....	\$ 365.00
<b>Planners / Environmental Specialist</b>	
P-1.....	\$ 132.00
P-2.....	\$ 166.00
P-3.....	\$ 206.00
P-4.....	\$ 234.00
P-5.....	\$ 271.00
P-6.....	\$ 309.00
P-7.....	\$ 374.00
<b>Designers</b>	
D-1.....	\$ 103.00
D-2.....	\$ 120.00
D-3.....	\$ 142.00
D-4.....	\$ 166.00
<b>Technicians</b>	
T-1.....	\$ 80.00
T-2.....	\$ 101.00
T-3.....	\$ 123.00
<b>Surveyors</b>	
S-1.....	\$ 49.00
S-2.....	\$ 65.00
S-3.....	\$ 87.00
S-4.....	\$ 125.00
S-5.....	\$ 166.00
S-6.....	\$ 188.00
2-Man Crew (Survey).....	\$ 218.00
3-Man Crew (Survey).....	\$ 259.00
2-Man Crew (GPS Survey).....	\$ 248.00
3-Man Crew (GPS Survey).....	\$ 290.00
<b>Construction Observation</b>	
C-1.....	\$ 97.00
C-2.....	\$ 124.00
C-3.....	\$ 152.00
C-4.....	\$ 186.00
<b>Management/Administration</b>	
M-1.....	\$ 374.00
X-1.....	\$ 63.00
X-2.....	\$ 85.00
X-3.....	\$ 119.00
X-4.....	\$ 151.00
X-5.....	\$ 186.00
X-6.....	\$ 236.00
X-7.....	\$ 281.00

APPENDIX B

City of Fayetteville  
Round Mountain Standpipe Rehabilitation

PROJECT MANAGEMENT

WORK TASK DESCRIPTION	E-5	E-4	E-2	T-1
	\$219.00 hr	\$180.00 hr	\$127.00 hr	\$80.00 hr
1. Civil Engineering				
Project Management Plan		2		
City of Fayetteville		8		
Subtotal - Civil Engineering	0	10	0	0
	0	0	0	0
	0	0	0	0
	0	0	0	0

Hours	0	10	0	0
Salary Costs	\$0.00	\$1,800.00	\$0.00	\$0.00
SUBTOTAL - SALARIES:		\$1,800.00		
DIRECT NON-LABOR EXPENSES				
Document Printing/Reproduction/Assembly	\$0.00			
Postage/Freight/Courier	\$0.00			
Office Supplies/Equipment	\$0.00			
Communications	\$0.00			
Survey Supplies	\$0.00			
Aerial Photography	\$0.00			
GPS Equipment	\$0.00			
Computer Modeling/Software Use	\$0.00			
Traffic Counting Equipment	\$0.00			
Locator/Tracer/Thermal Imager Equipment	\$0.00			
Travel Costs	\$0.00			
SUBTOTAL - DIRECT NON-LABOR EXPENSES:		\$0.00		
SUBTOTAL:		\$1,800.00		
SUBCONSULTANTS FEE:		\$0.00		
TOTAL FEE:		\$1,800.00		

**City of Fayetteville  
Round Mountain Standpipe Rehabilitation**

WORK TASK DESCRIPTION	E-5	E-4	E-2	T-2	C-3	- Select Category -	- Select Category -
	\$219.00	\$180.00	\$127.00	\$101.00	\$152.00	\$0.00	\$0.00
	hr	hr	hr	hr	hr	hr	hr
<b>1. Civil Engineering</b>							
Drawings/Details		4	8	16			
Cost Estimating		2	4				
Specifications		8	16	8			
Quality Control Review	4	4			8		
<b>Subtotal - Civil Engineering</b>	4	18	28	24	8		0
<b>2. Structural and Mechanical Engineering</b>							
Field work	2						
Landing and Handrail	2			4			
Safety Climb	1			2			
Foundation Rehabilitation	1			2			
Vent Hood Connection	1	2		2			
Floor Connection	1			2			
Overflow Pipe Extension	1			2			
Specifications	4						
Cost Estimating	2						
<b>Subtotal - Structural and Mechanical Engineering</b>	15	0	0	14	0		0
<b>3. Electrical Engineering</b>							
Field Work		4					
Tank Mixing Power		2		12			
Tank Mixing SCADA		2		12			
Details		2		4			
Specifications		2		4			
Cost Estimating		2					
<b>Subtotal - Electrical Engineering</b>	0	14	0	32	0		0
	0	0	0	0	0		0
<b>Hours</b>	19	32	28	70	8		0
<b>Salary Costs</b>	\$4,161.00	\$5,760.00	\$3,556.00	\$7,070.00	\$1,216.00		\$0.00

<b>SUBTOTAL - SALARIES:</b>		<b>\$21,763.00</b>
<b><u>DIRECT NON-LABOR EXPENSES</u></b>		
Document Printing/Reproduction/Assembly	\$287.00	
Postage/Freight/Courier	\$0.00	
Office Supplies/Equipment	\$0.00	
Communications	\$0.00	
Survey Supplies	\$0.00	
Aerial Photography	\$0.00	
GPS Equipment	\$0.00	
Computer Modeling/Software Use	\$0.00	
Traffic Counting Equipment	\$0.00	
Arkansas Department of Health Review Fee	\$200.00	
Travel Costs	\$50.00	
<b>SUBTOTAL - DIRECT NON-LABOR EXPENSES:</b>		<b>\$537.00</b>
<b>SUBTOTAL:</b>		
		<b>\$22,300.00</b>
<b>SUBCONSULTANT'S FEE:</b>		<b>\$0.00</b>
<b>TOTAL FEE:</b>		<b>\$22,300.00</b>



APPENDIX B

City of Fayetteville  
Round Mountain Standpipe Rehabilitation

BIDDING SERVICES

WORK TASK DESCRIPTION	E-5	E-4	E-2	T-1
	\$219.00 hr	\$180.00 hr	\$127.00 hr	\$80.00 hr
<b>1. Civil Engineering</b>				
Advertizement for Bids		1		
Construction Documents		1	2	
Pre-Bid Meeting		4	2	
Addenda	1	2	4	8
Bid Opening		2		
Evaluate bids and recommend award		4		
Prepare construction contracts		2		8
<b>Subtotal - Civil Engineering</b>	<b>1</b>	<b>16</b>	<b>8</b>	<b>16</b>
	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>Hours</b>	<b>1</b>	<b>16</b>	<b>8</b>	<b>16</b>
<b>Salary Costs</b>	\$219.00	\$2,880.00	\$1,016.00	\$1,280.00
<b>SUBTOTAL - SALARIES:</b>	<b>\$5,395.00</b>			
<b><u>DIRECT NON-LABOR EXPENSES</u></b>				
Document Printing/Reproduction/Assembly	\$955.00			
Postage/Freight/Courier	\$0.00			
Office Supplies/Equipment	\$0.00			
Communications	\$0.00			
Survey Supplies	\$0.00			
Aerial Photography	\$0.00			
GPS Equipment	\$0.00			
Computer Modeling/Software Use	\$0.00			
Traffic Counting Equipment	\$0.00			
Locator/Tracer/Thermal Imager Equipment	\$0.00			
Travel Costs	\$50.00			
<b>SUBTOTAL - DIRECT NON-LABOR EXPENSES:</b>	<b>\$1,005.00</b>			
<b>SUBTOTAL:</b>	<b>\$6,400.00</b>			
<b>SUBCONSULTANTS FEE:</b>	<b>\$0.00</b>			
<b>TOTAL FEE:</b>	<b>\$6,400.00</b>			

APPENDIX B

City of Fayetteville  
Round Mountain Standpipe Rehabilitation

CONSTRUCTION PHASE SERVICES

WORK TASK DESCRIPTION	E-5	E-4	E-2	C-3	T-1
	hr	hr	hr	hr	hr
<b>1. Civil Engineering</b>					
Preconstruction Meeting		4			
Monthly Pay Requests		4			
Shop Drawings/Material Submittals		4	8		
Record Drawings		2			8
On-Site Meetings		16			
Resident Construction Observation				120	
Prepare Change and Field Orders	2	4	4		4
Final Project Inspection and Punchlist		4			
<b>Subtotal - Civil Engineering</b>	<b>2</b>	<b>38</b>	<b>12</b>	<b>120</b>	<b>12</b>
	0	0	0	0	0
	0	0	0	0	0
	0	0	0	0	0

<b>Hours</b>	<b>2</b>	<b>38</b>	<b>12</b>	<b>120</b>	<b>12</b>
<b>Salary Costs</b>	\$438.00	\$6,840.00	\$1,524.00	\$18,240.00	\$960.00

SUBTOTAL - SALARIES: \$28,002.00

DIRECT NON-LABOR EXPENSES

Document Printing/Reproduction/Assembly	\$200.00
Postage/Freight/Courier	\$0.00
Office Supplies/Equipment	\$0.00
Communications	\$0.00
Survey Supplies	\$0.00
Aerial Photography	\$0.00
GPS Equipment	\$0.00
Computer Modeling/Software Use	\$0.00
Traffic Counting Equipment	\$0.00
Locator/Tracer/Thermal Imager Equipment	\$0.00
Travel Costs	\$898.00

SUBTOTAL - DIRECT NON-LABOR EXPENSES: \$1,098.00

SUBTOTAL:

\$29,100.00

SUBCONSULTANTS FEE:

\$0.00

TOTAL FEE:

\$29,100.00

## Round Mountain Pressure Plane

The Round Mountain pressure plane consists of a 0.1-MG standpipe tank. The tank is located on Round Mountain Road in the southeast region of the Fayetteville water service area, and has an overflow elevation of 1,624-feet msl. The pressure plane is supplied water from the Primary pressure plane through the Round Mountain pump station, which is located on Lake Sequoyah Drive.





