

**City of Fayetteville Staff Review Form**

**2019-0597**

**Legistar File ID**

**10/1/2019**

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

Tim Nyander

9/11/2019

WATER SEWER (720)

**Submitted By**

**Submitted Date**

**Division / Department**

**Action Recommendation:**

Staff recommends approval of an Engineering Services Agreement with Olsson, Inc., pursuant to RFQ #19-01, in the amount of \$114,220.00 for Planning and Design of Lake Sequoyah Dredging Operations and Water Quality Improvements.

**Budget Impact:**

5400.720.5600-5314.00	Water and Sewer																														
Account Number	Fund																														
17004.1	Lake Sequoyah Sediment Removal/Dredging																														
Project Number	Project Title																														
<table border="0" style="width: 100%;"> <tr> <td style="width: 30%;"><b>Budgeted Item?</b></td> <td style="width: 10%; text-align: center;">Yes</td> <td style="width: 30%; border-bottom: 1px solid black;">Current Budget</td> <td style="width: 10%; text-align: right;">\$</td> <td style="width: 10%; text-align: right;">908,164.00</td> </tr> <tr> <td></td> <td></td> <td style="border-bottom: 1px solid black;">Funds Obligated</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">-</td> </tr> <tr> <td></td> <td></td> <td style="border-bottom: 1px solid black;">Current Balance</td> <td style="text-align: right;"><b>\$</b></td> <td style="text-align: right;"><b>908,164.00</b></td> </tr> </table>	<b>Budgeted Item?</b>	Yes	Current Budget	\$	908,164.00			Funds Obligated	\$	-			Current Balance	<b>\$</b>	<b>908,164.00</b>	<table border="0" style="width: 100%;"> <tr> <td style="width: 30%;"></td> <td style="width: 10%;"></td> <td style="width: 30%; border-bottom: 1px solid black;">Item Cost</td> <td style="width: 10%; text-align: right;">\$</td> <td style="width: 10%; text-align: right;">114,220.00</td> </tr> <tr> <td></td> <td></td> <td style="border-bottom: 1px solid black;">Budget Adjustment</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">-</td> </tr> <tr> <td></td> <td></td> <td style="border-bottom: 1px solid black;">Remaining Budget</td> <td style="text-align: right;"><b>\$</b></td> <td style="text-align: right;"><b>793,944.00</b></td> </tr> </table>			Item Cost	\$	114,220.00			Budget Adjustment	\$	-			Remaining Budget	<b>\$</b>	<b>793,944.00</b>
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V20180321

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

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

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

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

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

**Comments:** RFQ #19-01, Selection #7



**MEETING OF OCTOBER 1, 2019**

**TO:** Mayor and City Council

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

**FROM:** Corey Granderson, Utilities Engineer

**DATE:** September 11, 2019

**SUBJECT:** **RFQ #19-01, Selection #7 – Engineering Services Agreement with Olsson, Inc. for Planning and Design of Lake Sequoyah Dredging Operations and Water Quality Improvements**

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**RECOMMENDATION:**

Staff recommends approval of an Engineering Services Agreement with Olsson, Inc., pursuant to RFQ #19-01, in the amount of \$114,220.00 for Planning and Design of Lake Sequoyah Dredging Operations and Water Quality Improvements.

**BACKGROUND:**

Lake Sequoyah is owned by the City of Fayetteville and is the responsibility of the Water and Sewer Division. The lake is fed by the Middle Fork and White River, and just downstream of the dam, confluences with the West Fork. The lake has historically acted as a sediment trap for these two feeding rivers and has accumulated significant amounts of sediment, prevented from migrating downstream into Beaver Lake. Previously the City, in partnership with Jacobs, performed a dredging pilot study (2012), coordinated initial permitting with many state agencies, and constructed a dredging dewatering area with associated access haul roads (2018).

**DISCUSSION:**

The next step in this process is to create a detailed plan of action for dredging and overall rehabilitation of this lake. This plan needs to consider the day-to-day dredging operation, end market for dirt generated, finalize permitting, quantify incoming sediment, and holistically ensure that a sustainable plan is in place for the long-term health of this reservoir and protection of downstream Beaver Lake. Olsson was formally selected per RFQ #19-01, Selection #7 on May 7<sup>th</sup>, 2019 to provide this engineering service for a not-to-exceed fee of \$114,220.00. The scope of work includes detailed bathymetric surveys and watershed loading analyses, evaluation of sediment removal options and methodologies, and preparation of a 30% concept design and cost estimations of the project, comprehensive of physical lake modifications, permitting, funding, and long term O&M. After completion, this project would be expanded to include a detailed engineering design, bidding, and implementation of the recommendations.

**BUDGET/STAFF IMPACT:**

Funding for this project is available within the Lake Sequoyah Sediment Removal account.

**Attachments:**

Engineering Services Agreement with Olsson  
Task/Fee Matrix

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

**LAKE SEQUOYAH DREDGING & WATER QUALITY IMPROVEMENTS**

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 Olsson, Inc. (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 its 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 The Utilities Director is the CITY OF FAYETTEVILLE's project representative with respect to the services to be performed under this Agreement. The Utilities 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.
- 3.1.6 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 in Appendix A.

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

- 5.1 The maximum not-to-exceed amount authorized for this Agreement is **\$114,220.00**. The CITY OF FAYETTEVILLE shall compensate ENGINEER based 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 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 Employers' Liability	Statutory \$500,000 Each Accident
Commercial General Liability Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Automobile Liability: Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Professional Liability Insurance	\$1,000,000 Each Claim

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

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

## 6.2 Professional Responsibility

6.2.1 ENGINEER will exercise reasonable skill, care, and diligence in the performance of ENGINEER's services and will carry out its responsibilities in accordance with customarily accepted professional engineering practices. CITY OF FAYETTEVILLE 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, CAD drawings, estimates, field notes, and project 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, computer models, drawings, specifications and other hard copy or electronic media 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:  
113 West Mountain Street  
Fayetteville, Arkansas 72701

ENGINEER's address:  
302 E. Millsap Road  
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

OLSSON, INC.

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

By:  \_\_\_\_\_  
Tony Stanton, PE

ATTEST:

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

Title: Senior Vice-President \_\_\_\_\_

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

**CITY OF FAYETTEVILLE  
AGREEMENT FOR ENGINEERING SERVICES**

**APPENDIX A - SCOPE OF SERVICES**

***Lake Sequoyah Dredging & Water Quality Improvements***

***Project Intent & Overview***

The scope of this project will result in a 30-percent concept design that will help form the foundation for achieving and preserving the City of Fayetteville's long-term goals for Lake Sequoyah. The study will evaluate various methods for addressing the on-going problems regarding sediment build-up and water quality as well as provide tools to assist the City with maintaining the lake for years to come.

Lake Sequoyah was constructed in 1961 and originally served as a supplemental municipal water supply for the City of Fayetteville; however, since the formation of the Beaver Water District, the lake has largely been a source of recreational fishing, small boating and lakeshore hiking. The construction of the lake has also shown to be a significant benefit for trapping vast amounts of sediment, which studies have shown contains large amounts of phosphorus, and prevented this sediment from being deposited into Beaver Lake, the regions sole source for drinking water. Due to the sediment accumulation; however, many of the long term uses of the lake have been compromised or reduced, including the ability of the lake to continue accumulating additional sediment.

**Project Scope**

***I. Project Management and Coordination***

- A. Coordinate regular progress meetings with City staff; document all meetings, noting key decisions and action items. Hold review meetings to review client comments on submittals. Meet with the Client as needed throughout the design process to review project issues.
- B. Conduct up to three (3) meetings with local partner or stakeholder groups (WCRC, etc.).
- C. Prepare monthly project status reports.

***II. Existing Conditions Review and Analysis***

- A. Collect and review available project data provided by City and identified stakeholders (i.e. Watershed Conservation Resource Center, Beaver Watershed Alliance, etc.):
  - Previous concept plans and reports.
  - Previous permit submittals and regulatory agency correspondence.
  - Lake sediment sampling and testing records (*depending on extent of prior data, Task II.B can be reduced or eliminated*).

- Water quality sampling records immediately upstream and downstream of Lake Sequoyah (minimum information needed would be at least 3 storm event grab samples tested for Total Suspended Solids).
- Lake and watershed GIS mapping including contour and land use data.
- Original dam as-built plans, including original lake pool area topography if available.
- Sediment disposal site topographic data.
- Current and future pollutant (*sediment and nutrient*) loadings (*depending on data available, Task III.A can be reduced*).
- Upper White River watershed Best Management Practices (*depending on data available, Task III.B can be reduced*).

**B. Sediment sampling and testing, report** (*if needed, dependent upon prior test data*)

1. Field Exploration. Obtain soil samples for analysis at eight locations to varying depths within the area of potential dredging/excavation operation. The sampling technique will involve utilizing a non-motorized boat to drive plastic pipe into the lake sediment bed. The lake sediment slugs obtained in the plastic pipe will then be sealed and delivered to the soils laboratory where a testing program will be implemented.
2. Laboratory Services. Visual soil classification (ASTM D-2488), hydrometer analysis (ASTM D-422), mechanical sieve analysis, chemical analysis, Atterberg limit tests. Sediment will also be tested for metals and potential harmful contaminants that may require special remedial measures.
3. Engineering Analysis and Memorandum Preparation:
  - Test boring logs will be prepared that delineate the various subsurface strata of the sediment and provide soil descriptions, estimated sediment depths and soil classification.
  - Laboratory evaluation to determine if the existing soil characteristics of the lake sediment are suitable for reuse as part of topsoil mix or general fill material.
  - Discussion regarding the soil classification of the existing lake sediment including its chemical composition.

**C. Bathymetric survey.** Conduct a survey of the lake pool area to determine water depth to sediment and approximate depth of sediment throughout lake. Approximately 110 probes (number dependent upon estimated size of area to be excavated/dredged and quality of original lake area topo, if available) will be taken with a rod to native ground in the lake. Approximately 10 of the 110 total probes will be taken about 200-feet north of the Lake Sequoyah bridge to determine the depth of sediment and create a cross section between the bridge and the dam.

**D. Watershed and project site base mapping.** Compile all information obtained in above tasks and prepare a site and watershed base map in CAD format.

**E. Agency Coordination.** Restart agency engagement to determine agency sentiment toward the project and potential project changes, and establish new permitting requirements based on previously completed submittals.

DELIVERABLES:

1. Watershed and site base maps
2. Bathymetric survey map
3. Geotechnical report with testing results
4. Memorandum of findings with documentation of site investigations/assessments

**III. Watershed Analysis**

**A. Pollutant Loading Estimations.** Conduct watershed annual pollutant (sediment and nutrient) load estimations for current and future conditions. Identify and quantify current and future water quality threats to the lake. Conduct brief evaluation on feasibility and requirements of potential nutrient credit program.

**B. Watershed Best Management Practices.** Evaluate feasibility and effectiveness of potential BMP packages to be implemented upstream of the lake, including stream restoration, streamside wetlands and detention. Develop conceptual plans of recommended BMPs if appropriate. Coordinate with local partner agencies on concept development and potential cost-shares.

DELIVERABLES:

1. Pollutant loading calculations
2. Map of watershed BMP options

**IV. Evaluate and Select Sediment Disposal Options**

Thoroughly review existing dredging and disposal concept plan, focusing on the following areas, and develop recommendations to enhance efficiencies, cost reductions, and long-term sustainability of the lake management program:

**A. Sediment Removal and Disposal Method Evaluation**

- Evaluate and compare sediment removal volumes, disposal area volumes and annual sediment loading volumes; determine if adjustments to current plan are needed and develop recommended sediment removal schedule.
- Evaluate and quantify local demand for sediment spoil material.
- Investigate alternative sediment disposal methods or volume reduction if soil quality is such that local demand is reduced.
- Evaluate partial lake drawdown with mechanical excavation in strategic locations.

**B. Method Review and Selection**

- Present findings to City staff along with recommended sediment management methods.
- Based on review and discussion with staff, select appropriate sediment removal and disposal methods and volumes for use on Concept Design development in subsequent Part V.



## **V. Concept Design Development, Review and Enhancements**

Based on information reviewed and decisions reached in Parts I-IV, develop a 30% concept design and supporting report that outlines the improvements, methods, long-term management actions, total estimated project costs and estimated annual cost of operation.

### **A. Sediment Removal and Disposal Methods**

- Indicate where sediment will be hydraulically dredged and mechanically excavated, including information on depths and volumes.
- Develop sediment disposal plan utilizing sites selected and developed previously by the City, as well as other disposal methods as necessary per Part IV.

### **B. Development of Concept Plans**

- Develop concept plans for future sediment loads (i.e. sediment forebay at the upper end of the lake for capture of future sediment and to isolate future maintenance needs, etc.).
- Develop conceptual water quality enhancements that can be potentially created with mechanical excavation (i.e. wetland plans at the upper end of the lake, just below the forebay, etc.)

### **C. Preliminary assessment of state and federal permitting requirements**

- Evaluate regulatory policy changes that may have occurred since the prior correspondence was conducted. Includes evaluating and determining most beneficial dewatering options for the City of Fayetteville (i.e. return to Lake Sequoyah or pumping to wastewater treatment plant).
- Describe impacts of any additional recommended plan enhancements.

### **D. Agency Funding**

- Contact various government agencies, non-profit organizations, etc. to determine possible funding grants available.

### **E. Outline Long-term Management and Maintenance Program**

- Outline annual maintenance program.
- Outline business plan to use dredged material for City projects and/or sell to public or other entities (i.e. landfills, developments, etc.).

**F. Client submittals and review meeting.** Submit final concept drawings and design memorandum to Client for review. Hold a review meeting to discuss Client comments and submit revised documents as necessary.

### **G. Final Report Preparation**

Prepare a final report that summarizes the above tasks and outlines final recommendations for:

- Sediment removal program – operations, removal and dewatering methods, timing, volumes and costs.
- Watershed planning, analysis and recommended BMP's to improve and/or sustain water quality in the lake.

- Technical design supporting information for sediment forebay and wetlands as pre-treatment for lake.
- Summary of permit requirements.
- Figures, maps and exhibits of proposed improvements for lake and watershed.
- Hydrologic and water quality modeling output files.

### **Project Schedule**

Olsson expects to begin its services under the Agreement within seven (7) working days of a Notice to Proceed (NTP) and shall complete all work as described in the Scope of Services above within 180 days from NTP.

### **Compensation**

CITY OF FAYETTEVILLE shall pay to Olsson, Inc. on the basis of Olsson's standard hourly rates in effect at the time the work is performed, plus reimbursable expenses. Rates are adjusted annually at the beginning of each calendar year. Olsson agrees to keep the CITY OF FAYETTEVILLE apprised in a timely manner of costs incurred. The maximum not-to-exceed amount for the services described in the Scope of Services above is **\$114,220.00**.

Hourly Fees Expenses  
 Lake Sequoyah Dredging and Water Quality Improvements  
 City of Fayetteville, AR

<b>Summary of Professional Hourly Fees</b>													
<i>City of Fayetteville, AR - Lake Sequoyah Dredging &amp; Water Quality Improvements</i>													
										8/27/2019			
<b>TASK DESCRIPTIONS</b>	<b>Project Manager</b>	<b>Sr. Engineer</b>	<b>Associate Engineer</b>	<b>Sr. Scientist</b>	<b>Assoc. Scientist</b>	<b>Landscape Arch.</b>	<b>Eng. Tech.</b>	<b>Admin. Asst.</b>	<b>Lisc. Surveyor</b>	<b>Survey Crew</b>	<b>Total Hours</b>	<b>Total Hourly Fees</b>	<b>Expenses</b>
	<b>\$190</b>	<b>\$210</b>	<b>\$135</b>	<b>\$145</b>	<b>\$100</b>	<b>\$110</b>	<b>\$90</b>	<b>\$50</b>	<b>\$140</b>	<b>\$150</b>			
<b>Staff Assignment:</b>	<b>Approx. Hourly Rate:</b>												
<b>I. Project Management &amp; Facilitation</b>													
A) Coordination meetings with City staff	12	8		4							24	\$4,540	
B) Coordination meetings with project partners and agencies	8			10							18	\$2,970	
C) Scheduling and reporting	8	2									10	\$1,940	
<b>SUBTOTAL</b>	<b>28</b>	<b>10</b>	<b>0</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>52</b>	<b>\$9,450</b>	
<b>II. Existing Conditions Review &amp; Analysis</b>													
A) Data collection	4		8				8				20	\$2,560	
B) Geotechnical field sampling, testing and analysis	4	2	16				20				42	\$5,140	\$5,080
C) Bathymetric survey and analysis	2								10	65	77	\$11,530	\$3,200
D) Base mapping	2						18		3		23	\$2,420	
E) Agency coordination	8			4							12	\$1,920	
<b>SUBTOTAL</b>	<b>20</b>	<b>2</b>	<b>24</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>46</b>	<b>0</b>	<b>13</b>	<b>65</b>	<b>174</b>	<b>\$23,570</b>	
<b>III. Watershed Planning &amp; Analysis</b>													
A) Watershed pollutant load estimations		8	28				24				60	\$7,620	
B) Watershed BMP analysis		12	40				16				68	\$9,360	
<b>SUBTOTAL</b>	<b>0</b>	<b>20</b>	<b>68</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>40</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>128</b>	<b>\$16,980</b>	
<b>IV. Evaluate and Select Sediment Disposal Options</b>													
A) Sediment removal and disposal options	4	4	28				12				48	\$6,460	
B) Method selection and construction analysis		4	24								28	\$4,080	
<b>SUBTOTAL</b>	<b>4</b>	<b>8</b>	<b>52</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>76</b>	<b>\$10,540</b>	
<b>V. Concept Design Development, Review &amp; Enhancements</b>													
A) Sediment removal and disposal		4	16								20	\$3,000	
B) Development of concept plans		12	24		10	16	32				94	\$11,400	
C) Permitting research and determination				20	16			4			40	\$4,700	
D) Agency funding	8			4							12	\$2,100	
E) Long term management & maintenance	2	8	8	8							26	\$4,300	
F) Submittal and review meetings	4	4									8	\$1,600	
G) Prepare report and concept plans	4	16	32	32	26	16	80	8	0	0	156	\$17,800	\$500
<b>SUBTOTAL</b>	<b>18</b>	<b>44</b>	<b>80</b>	<b>32</b>	<b>26</b>	<b>32</b>	<b>112</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>356</b>	<b>\$44,900</b>	
<b>Total All Phases</b>	<b>70</b>	<b>84</b>	<b>224</b>	<b>46</b>	<b>30</b>	<b>32</b>	<b>210</b>	<b>12</b>	<b>13</b>	<b>65</b>	<b>786</b>	<b>\$105,440</b>	<b>\$8,780</b>
											<b>Total Hourly Fees &amp; Expenses</b>		<b>\$114,220</b>

