

City of Fayetteville Staff Review Form

2020-0496

Legistar File ID

7/21/2020

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

Matt Casey

6/17/2020

ENGINEERING (621)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of a contract amendment for construction phase services and materials testing in the amount of \$85,894.00 with McClelland Consulting Engineers, Inc. for the Zion Road – Vantage to Crossover Project and approval of a budget adjustment.

Budget Impact:

4602.860.7212-5860.02	4602 - Streets Bond Projects
5400.720.5700-5314.00	5400 - Water and Sewer Capital Fund
Account Number	Fund
46020.7212	Streets Bond Projects, Zion Rd. Improvements
06035.2750	
Project Number	Project Title
Budgeted Item? Yes	Current Budget \$ 27,301.43
	Funds Obligated
	Current Balance \$ 27,301.43
Does item have a cost? Yes	Item Cost \$ 85,894.00
Budget Adjustment Attached? Yes	Budget Adjustment \$ 85,894.00
	Remaining Budget \$ 27,301.43

V20180321

Purchase Order Number: 2019-00000609

Previous Ordinance or Resolution # 168-19

Change Order Number:

Approval Date:

Original Contract Number:

Comments: Transportation Bond (\$52,794.00) Water and Sewer Fund (\$33,100.00)



**MEETING OF JULY 21, 2020**

**TO:** Mayor and City Council

**THRU:** Susan Norton, Chief of Staff  
Garner Stoll, Development Services Director  
Chris Brown, City Engineer

**FROM:** Matt Casey, Engineering Design Manager

**DATE:** June 25, 2020

**SUBJECT:** **Approval of a contract amendment for construction phase services and materials testing in the amount of \$85,894.00 with McClelland Consulting Engineers, Inc. for the Zion Road – Vantage to Crossover Project and approval of a budget adjustment.**

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**RECOMMENDATION:**

Approval of a contract amendment for construction phase services and materials testing in the amount of \$85,894.00 with McClelland Consulting Engineers, Inc. (MCE) for the Zion Road – Vantage to Crossover Project and approval of a budget adjustment.

**BACKGROUND:**

Zion Road from College Avenue to Highway 265 was included in the previous Transportation Improvement Bond Program. The first phase of construction between College Avenue and Vantage Drive was completed in 2008. In 2013, the second phase, between Vantage Drive and Highway 265, was approved for funding through the bond program. On May 6, 2014, the Fayetteville City Council approved a contract with MCE. for the design of the second phase of Zion Road. The design was completed in early 2015, but there were not sufficient bond funds remaining at the time to fully fund the construction of the project.

On July 16, 2019, the Council approved a contract with MCE to update the plans to include a revised cross section consisting of a three-lane section with a 10' wide multi-use trail on the north side and a 6' wide sidewalk on the south side. On January 7, 2020, the Council approved a contract amendment to include lighting and tree planting in the design scope.

The project bid opening is scheduled for 6/24/20. The construction contract is planned to be presented to the City Council for consideration at the July 21, 2020 city council meeting.

**DISCUSSION:**

The approved contract with MCE does not include construction phase services and materials testing. Staff has worked with MCE to develop a scope that will include support for the contractor and city staff as needed through the construction of this project. In addition, they will provide as-built plans at the end of the job documenting any field changes made during

construction. MCE has provided a fee in the amount of **\$85,894.00** for this additional work. The contract will be paid based on hourly rates for work completed, up to the total contract amount.

**BUDGET/STAFF IMPACT:**

This contract amendment and the construction of the project will be funded by the 2019 Transportation Bond Program (\$52,794.00) and the Water and Sewer Fund (\$33,100.00). A budget adjustment is included with this council item.

**Attachments:**

Engineering Agreement  
Vicinity Map

AGREEMENT  
For  
PROFESSIONAL ENGINEERING SERVICES  
Between  
CITY OF FAYETTEVILLE, ARKANSAS  
And  
MCCLELLAND CONSULTING ENGINEERS, INC.

THIS AGREEMENT is made as of \_\_\_\_\_, 2020 by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and MCCLELLAND CONSULTING ENGINEERS (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.1 & A.2** 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 City Engineer is the CITY OF FAYETTEVILLE's project representative with respect to the services to be performed under this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define CITY OF FAYETTEVILLE's policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.
- 3.1.6 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, effective at commencement of project construction.

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

- 5.1 The CITY OF FAYETTEVILLE shall compensate ENGINEER based on an hourly NTE basis described in **Appendix C.**
- 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

MCCLELLAND CONSULTING ENGINEER's address:  
1810 N. College Avenue  
Fayetteville, Arkansas 72701

#### 6.14 Successor and Assigns

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

#### 6.15 Controlling Law

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

#### 6.16 Entire Agreement

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

### **SECTION 7 - SPECIAL CONDITIONS**

#### 7.1 Additional Responsibilities of ENGINEER

- 7.1.1 CITY OF FAYETTEVILLE's 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

MCCLELLAND CONSULTING ENGINEERS,  
INC.

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

By: Kevin Beaumont

ATTEST:

Kevin Beaumont  Date: 2020.06.30  
15:49:53-05'00'

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

Title: Vice President

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

Zion Road; Construction Related Services

Meadow View Drive to North Crossover (Hwy 265)

**APPENDIX 'A.1'**

**SCOPE OF SERVICES**

**PROFESSIONAL SERVICES AGREEMENT**

**CITY OF FAYETTEVILLE, ARKANSAS**

**ZION ROAD;**

**MEADOW VIEW DRIVE TO NORTH CROSSOVER ROAD (HWY 265)**

**1. Scope of Project**

1. Make the following additions to the Zion Road Project.
  - a. Provide Construction Administration Support for the street component (excludes Water & Sewer) for the duration of the project based on the 540-calendar day contract proposed. Scope of professional services to comprise design assistance with field changes or other construction related issues, estimated to not exceed 154 hours.
  - b. Provide Construction Administration Support for the water & sewer component for the duration of the project. Scope of professional services shall be in accordance with Appendix "A.2" attached hereto.
  - c. Compile As-Built drawings for both the street and water/ sewer components upon completion of construction phase.
  - d. Provide Materials Testing Services for project. Refer to attached CMTS Proposal.

**APPENDIX 'A.2'**  
**SCOPE OF SERVICES;**  
**PROFESSIONAL SERVICES AGREEMENT**  
**CITY OF FAYETTEVILLE, ARKANSAS**

**ZION ROAD;**  
**MEADOW VIEW DRIVE TO NORTH CROSSOVER ROAD (HWY 265)**  
**WATER AND SEWER UTILITY RELOCATIONS**

**1.0 General**

The scope of additional services includes construction administration services for the water and sewer utility relocation for the referenced project, which includes approximately 5,600 linear feet of 12-inch water main; 600 linear feet of 8-inch water main; 3,500 linear feet of 15-inch sewer main; 1,100 linear feet of 8-inch sewer main; new water/sewer services; and related appurtenances and interconnections along Zion Road. It is assumed that the water and sewer utility construction will occur over a 270 consecutive calendar day period as part of the overall construction contract for the roadway improvements. The CITY OF FAYETTEVILLE will provide construction observation services for the water and sewer utilities.

**2.0 Construction Administration**

- 2.1 Attend the pre-construction meeting with the Contractor.
- 2.2 Review and respond to Contractor submittals on water and sewer related items for conformance to the Contract Documents, Drawings, and Specifications. Up to five (5) submittals are anticipated on this project. The initial review and one (1) re-submittal review are included in this scope of services. Additional re-submittal reviews will be considered Additional Services.
- 2.3 Review Contractor's Requests for Information (RFIs) on water and sewer related items and issue clarifications as required. Up to ten (10) RFIs are anticipated on this project.
- 2.4 Assist the CITY OF FAYETTEVILLE with the evaluation, negotiation, and processing of Contractor change order requests related to water and sewer related items, if required.
- 2.5 Engineer of Record shall conduct monthly site visits and attendance at monthly progress meetings as required to observe the progress and quality of the executed work to determine compliance with approved Contract Documents, Drawings, and Specifications in accordance with Arkansas State Law 22-9-101. A total of twenty (20) site visits/progress meetings are estimated over the course of the assumed 270 consecutive calendar day construction schedule for water and sewer utilities.

- 2.6 Assist the CITY OF FAYETTEVILLE with the final inspection walk-through on the water and sewer related items. Develop a punch list of outstanding items, and review project closeout documents.
- 2.7 Prepare Record Drawings for water and sewer utilities based upon information furnished by the Contractor and field representatives.

### **3.0 Project Deliverables**

- 3.1 PDF copy of the approved shop drawings and submittals from the Contractor.
- 3.2 One (1) hard copy set, a PDF copy and AutoCAD file of the Record Drawings for the water and sewer utilities.
- 3.3 Other electronic files as requested by the CITY OF FAYETTEVILLE.

### **4.0 General**

- 4.1 All water and sewer main construction shall follow the guidelines described in the CITY OF FAYETTEVILLE Standard Specifications for Design and Construction of Water Lines and Sewer Lines (2017 Edition), the Contract Documents, Drawings, and Specifications.
- 4.2 Attendance at meetings other than progress meetings and the pre-construction meeting will be considered Additional Services.
- 4.3 Should construction delays occur, which are beyond the control of the ENGINEER and cause the water and sewer utility construction to be completed later than 270 consecutive calendar days, the ENGINEER and CITY OF FAYETTEVILLE will review the ENGINEER' remaining budget and mutually agree upon a plan of action, whether it be a reduction in the scope of services to stay within budget, or authorize Additional Services.
- 4.4 Subcontracting of services by the ENGINEER shall have prior approval of the OWNER.



## **APPENDIX "C"**

### **COMPENSATION**

#### **PROFESSIONAL SERVICES AGREEMENT**

##### **CITY OF FAYETTEVILLE, ARKANSAS**

##### **ZION ROAD;**

##### **MEADOW VIEW DRIVE TO NORTH CROSSOVER ROAD (HWY 265)**

- CITY OF FAYETTEVILLE shall pay ENGINEER for Basic Services rendered an amount equal to the cumulative hours charged to the Project for each class of ENGINEER's employees multiplied by ENGINEER'S Hourly Rates as shown on the attached Exhibit "1", plus approved Reimbursable Expenses and ENGINEER's Consultant charges, if any. ENGINEER's Hourly Rates as shown on the attached Exhibit "1" shall be adjusted annually each January 1. For ENGINEER's Consultant charges, the CITY OF FAYETTEVILLE shall pay the ENGINEER the amount billed to the ENGINEER times a factor of 1.00.
- Basic Services: Payment by CITY OF FAYETTEVILLE based on ENGINEER's Hourly Rates shall approximate the following schedule. Payment for a specific phase shall not exceed the scheduled amount prior to completion of that phase. Underruns in one phase may be used to offset overruns in another phase as long as the contract amount is not exceeded.

Construction Administration Support; Street	\$ 19,750.00
As-Built Drawings; Street	\$ 5,200.00
Construction Administration Support; W&S	\$ 29,320.00
As-Built Drawings; W&S	\$ 3,780.00
Materials Testing Services (Refer to attached CMTS Proposal)	\$ 27,544.00

SUB-TOTAL Basic Services	<u>\$ 85,594.00</u>
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- Additional Services: Any and all Additional Services must be approved, and maximum amount to be paid for said services agreed to, in writing by CITY OF FAYETTEVILLE prior to rendering of same. CITY OF FAYETTEVILLE shall pay ENGINEER for Additional Services rendered an amount equal to the cumulative hours charged to the Project for each class of ENGINEER's employees multiplied by ENGINEER'S Hourly Rates as shown on the Attached Exhibit "1", plus approved Reimbursable Expenses and ENGINEER'S Consultant charges, if any. For ENGINEER's Consultant charges, the CITY OF FAYETTEVILLE shall pay the ENGINEER the amount billed to the ENGINEER times a factor of 1.00.
- CITY OF FAYETTEVILLE shall pay ENGINEER the actual cost of Reimbursable Expenses

incurred in connection with Basic and Additional Services. Reimbursable Expenses must be approved by the CITY OF FAYETTEVILLE prior to the incurrence of such expenses. The estimated amount of Reimbursable Expenses to be incurred in connection with Basic Services is:

SUB-TOTAL Reimbursable Expenses	\$ 300.00
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- **The maximum payment to the ENGINEER for all of the Basic Services and Reimbursable Expenses identified within this Agreement shall not exceed \$85,894.00.**
- ENGINEER shall submit invoices monthly for services rendered and expenses borne. The invoices shall be accompanied by a copy of the timesheets for all ENGINEER's personnel working on the project.
- The Hourly Rates used as a basis for payment mean salaries and wages (basic and incentive) paid to all personnel engaged directly on the PROJECT, including, but not limited to, engineers, architects, surveyors, designers, draftsman, specification writers, estimators, other technical personnel, stenographers, typists and clerks; plus the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto; plus operating margin or profit, non-project operating costs, and all general and administrative overhead costs, including but not limited to, furnishing and maintaining office facilities, furniture, utilities, vehicles and equipment.

Reimbursable Expenses mean the actual expenses incurred directly or indirectly in connection with the PROJECT for printing and reproduction costs and ENGINEER's consultant charges. Any and all expenditures for reimbursable expenses must be approved by the CITY OF FAYETTEVILLE prior to rendering or obtaining same. Overtime salary costs are not considered Reimbursable Expenses.



**2020**

**McCLELLAND CONSULTING ENGINEERS, INC.**

**\*STANDARD HOURLY RATES**

<b>Chief Draftsman</b>	<b>\$95 - \$110</b>
<b>Clerical</b>	<b>\$45 - \$75</b>
<b>Construction Observer</b>	<b>\$70 - \$135</b>
<b>Draftsman</b>	<b>\$65 - \$95</b>
<b>Environmental Scientist/Designer</b>	<b>\$105 - \$120</b>
<b>Geotech Engineer</b>	<b>\$85 - \$170</b>
<b>HR/Payroll Admin</b>	<b>\$75-\$100</b>
<b>Landscape Architect</b>	<b>\$90 - \$130</b>
<b>Media Specialist</b>	<b>\$80 - \$100</b>
<b>Principal</b>	<b>\$160 - \$230</b>
<b>Project Accountant</b>	<b>\$70 - \$145</b>
<b>Project Designer</b>	<b>\$80 - \$140</b>
<b>Project Engineer</b>	<b>\$120 - \$175</b>
<b>Project Manager</b>	<b>\$120 - \$200</b>
<b>Registered Land Surveyor</b>	<b>\$95 - \$140</b>
<b>Soils Lab Technician</b>	<b>\$50 - \$135</b>
<b>Specification Writer</b>	<b>\$50 - \$90</b>
<b>Sr. Project Manager</b>	<b>\$140 - \$240</b>
<b>Survey (2 man or Robotic) Crew</b>	<b>\$115 - \$160</b>
<b>Survey (3 man) Crew</b>	<b>\$135 - \$180</b>
<b>Survey Field (1 Man or Rodman)</b>	<b>\$45 - \$95</b>
<b>Survey GPS</b>	<b>\$75 - \$130</b>
<b>Survey Technician</b>	<b>\$65 - \$95</b>
<b>Water Lab Supervisor</b>	<b>\$70 - \$120</b>
<b>Expenses</b>	<b>@ Cost</b>
<b>Mileage</b>	<b>.575/mi</b>

*\* Standard Hourly Rates may be adjusted annually in accordance with the normal salary review practices of McClelland Consulting Engineers.*

April 27, 2020



**Engineering Division**

125 West Mountain Street  
Fayetteville, Arkansas 72701

**ATTN:** Mr. Matt Casey P.E.  
Engineering Design Manager

**RE:** Proposal for Construction Materials Testing Services  
Zion Road Phase II Improvements  
Fayetteville, Arkansas

Dear Mr. Casey,

We are pleased to present a Proposal for Construction Materials Testing Services relevant to the planned Zion Road Phase II Improvements project located in Fayetteville, Arkansas. The information below and on the following pages provides further detail regarding the anticipated construction materials testing scope on the project. This includes number of trips for each service, time spent onsite for each service, and other anticipations which are integral in to the proposed not-to-exceed fee.

## Site Description

The project site is generally located in the northeastern portion of Fayetteville, Arkansas along the existing alignment of Zion Road from Vantage Drive in the west to Highway 265 in the east. Based on the provided project drawings dated April, 2020, and our general understanding of the project, the scope consists of improvements to the existing Zion Road and surrounding drainage features and utilities.

## Project Description

Based on the current project plans, we understand the project scope to include pavement improvements and new road construction within the existing dimensions of Zion Road from Vantage Drive in the west to Highway 265.

The anticipated pavement improvements include approximately 3,132 linear feet of full-depth pavement reconstruction and approximately 2,006 linear feet of mill-and-overlay within the project dimensions. Additionally, the project is expected to include new pedestrian sidewalks on both sides of the roadway improvements as well as the new construction of a roundabout at the existing intersection of Old Missouri Road and Zion Road. Several aprons, driveways, and utility improvements are also anticipated being included as part of the project scope.

**If any of the anticipated or assumed information is incorrect, please allow us to make appropriate revisions to the proposed scope of work prior to construction.**

## Scope of Work

To better your understanding of our associated fees, we have presented estimated per-trip prices for the construction materials testing services that we anticipate on the project.

### Construction Materials Testing Services

It is anticipated that construction materials testing will consist of subgrade observations/recommendations, soil and base density testing, concrete testing, and asphalt testing. The following outline identifies material tests that we anticipate along with their associated cost;

- A Geotechnical Engineer/engineering technician spending one (1) hour onsite for proof-roll observations and/or subgrade recommendations regarding pavement improvement area subgrade
- MCE conducting proctors for select fill material to be utilized at the project site
- A certified technician spending 30 minutes on-site for each soil and base course density testing trip.
  - Three (3) tests are anticipated for each density trip
  - Reporting fees are included in the per-trip amount for this service
- A certified technician spending 30 minutes on-site for each cast-in-place concrete testing trip.
  - Five (5) 4"x8" concrete samples being conducted each trip
  - Reporting fees are included in the per-trip amount for this service
  - Additional time spent on-site and concrete cylinder samples may be required for concrete placement operations exceeding 50 cubic yards
- A certified technician spending one (1) hour on-site to assist with establishing a roll pattern during the placement of asphalt.
  - Reporting fees are included in the per-trip amount for this service
  - Additional time spent on-site may be required if asphalt placement operations require rolling patterns at intervals per the project specifications or if the contractor requests a technician remain on-site to assist until daily placement operations conclude
- A certified technician spending three (3) hours at an asphalt plant to sample asphalt during placement operations.
- A certified technician spending one (1) hour on-site coring asphalt samples for laboratory testing.
  - A travel mileage fee from the office to the job site is already included with this service

We expect that the project duration will be approximately 12 months. Fees related to travel, reporting, and administration are incorporated into the provided per trip estimates for each service, if applicable. From the assumptions and project details referenced above, we estimated the following per-trip prices and subtotals for each service anticipated being required:

**Proof Roll Observations/Subgrade Recommendations** **\$200.00 per trip**

- Sidewalk Subgrade – 5 trips
- Roadway Subgrade – 7 trips

**Subtotal: \$2,400.00**

**Laboratory Proctor Test** **\$400.00 per test**

- It is anticipated that one (1) proctor test will be conducted for the duration of the project.

**Subtotal: \$400.00**

**Soil & Base Density Testing** **\$120.00 per trip**

- Sidewalk Select Fill Material – 10 trips
- Sidewalk Base Course Material – 10 trips
- Roadway Select Fill Material – 14 trips
- Roadway Base Course Material – 7 trips
- Utility-Related Base Course Material – 10 trips

**Subtotal: \$6,120.00**

**Cast-In-Place Concrete** **\$220.00 per trip**

- Sidewalks – 15 trips
- Curb & Gutter – 10 trips
- Utility Improvements – 20 trips
- Aprons and other Improvements – 12 trips

**Subtotal: \$12,540.00**

**Concrete Cylinder Pick-Up** **\$53.00 per trip**

- A charge for concrete cylinder pick-up will only be applied in the event that is the sole reason for the site visit on days where no other testing is scheduled. We have assumed that only one-half ( $\frac{1}{2}$ ) of the total concrete testing trips will be needed for this service.

**Subtotal: \$1,484.00**

### Asphalt Rolling Pattern

**\$80.00 per trip**

- A certified technician conducting asphalt rolling patterns during asphalt placement operations. It is anticipated that five (5) trips will be required for this service.

**Subtotal: \$400.00**

### Asphalt Bulk Sampling

**\$600.00 per sample(s)**

- A certified technician sampling asphalt from the designated asphalt provider for laboratory testing. It is anticipated that three (3) bulk samples for asphalt binder and four (4) asphalt surface samples will be required for quality verification. It is anticipated that four (4) trips to the asphalt plant for asphalt bulk sampling will be required for this project.

**Subtotal: \$2,400.00**

### Asphalt Coring

**\$450.00 per trip**

- A certified technician coring asphalt samples for final laboratory acceptance testing. It is anticipated that 36 cores will be required for laboratory testing: 14 binder cores and 22 surface cores. This frequency expects one (1) core per 500 linear feet of new pavement, per lane. The cores will be tested for air voids and thickness verification. It is anticipated that up to four (4) trips may be required for this service.

**Subtotal: \$1,800.00**

## Proposed Fee

Based on the assumptions detailed in the forgoing proposal, we can provide construction phase services on this project for a not-to-exceed amount as detailed below:

- Proof Roll Observations/Subgrade Recommendations..... \$2,400.00
- Laboratory Proctor Test..... \$400.00
- Soil & Base Density Testing..... \$6,120.00
- Cast-In-Place Concrete..... \$12,540.00
- Concrete Cylinder Pick-Up..... \$1,484.00
- Asphalt Rolling Pattern..... \$400.00
- Asphalt Bulk Sampling..... \$2,400.00
- Asphalt Coring..... \$1,800.00

**Total Not-to-Exceed Amount: \$27,544.00**

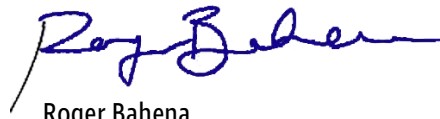
Our estimated number of trips for each testing service is based on our experience on projects in the area with similar scope and size. Our fees are directly related to the number of trips made for each service and time spent onsite. If the project scope or timeline varies after submittal of this document and prior to construction, please allow for the review/revision of this document.

We appreciate the opportunity to submit this proposal for construction materials testing services relevant to the Zion Road Phase II Improvements project located in Fayetteville, Arkansas. Please contact us with any questions or concerns that you might have regarding the information contained in this proposal.

Sincerely,

A blue ink signature of Steven J. Head, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

Steven J. Head, P.E.  
Principal | Geotechnical Department Head

A blue ink signature of Roger Bahena, featuring a cursive style with a large initial 'R' and a series of connected loops.

Roger Bahena  
Construction Materials Testing Supervisor

### **Work Authorization Agreement**

**McClelland Consulting Engineers, Inc., is authorized to proceed in accordance with this Letter of Proposal, consisting of five (5) pages.**

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Signature

Title

Date



