

City of Fayetteville Staff Review Form

2020-0639

Legistar File ID

8/18/2020

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

Chris Brown

7/29/2020

ENGINEERING (621)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of a contract for continued professional services in the amount of \$194,525.00 (\$260,475.00 total design to date) with McClelland Consulting Engineers, Inc. for design services associated with the flooding near East Fairlane Street, South Elmhurst Avenue and East McClinton Street and approval of a Budget Adjustment.

Budget Impact:

4604.860.7420-5860.02

4604 - Drainage Projects 2019 Bonds

Account Number

Fund

46040.7420.1000

Elmhurst/McClinton
Drainage - Phase I

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 242,443.00

Funds Obligated \$ 63,223.89

Current Balance \$ 179,219.11

Does item have a cost? Yes

Item Cost \$ 194,525.00

Budget Adjustment Attached? Yes

Budget Adjustment \$ 22,975.00

Remaining Budget \$ 7,669.11

V20180321

Purchase Order Number:

Previous Ordinance or Resolution # 2020-19

Change Order Number:

Approval Date:

Original Contract Number:

Comments:



MEETING OF AUGUST 18, 2020

TO: Mayor and City Council

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

FROM: Alan Pugh, Staff Engineer

DATE: July 29, 2020

SUBJECT: **Approval of a contract for continued professional services in the amount of \$194,525.00 (\$260,475.00 total design to date) with McClelland Consulting Engineers, Inc. for design services associated with the flooding near East Fairlane Street, South Elmhurst Avenue and East McClinton Street and approval of a Budget Adjustment..**

RECOMMENDATION:

Staff recommends approval of a contract for continued professional services in the amount of \$194,525.00 (\$260,475.00 total design to date) with McClelland Consulting Engineers, Inc. for design services associated with the flooding near East Fairlane Street, South Elmhurst Avenue and East McClinton Street and approval of a Budget Adjustment.

BACKGROUND:

Currently, this neighborhood experiences street and home flooding during high intensity rain events. Runoff overflows into S Elmhurst Ave from the north and floods the street and adjacent property prior to re-entering a defined drainage way and continuing south. Given the type and frequency of flooding that occurs, this project was identified as a priority project by City Council after the April 2017 flooding event and has been identified as one of the projects to be funded for design by the first phase of the 2019 Drainage Bond Program with construction occurring within the second phase.

On October 1, 2019, City Council approved entering into a contract with McClelland Consulting Engineers (resolution 220-19) to investigate possible solutions to the flooding issues. This initial contract has been completed and the most feasible solutions identified.

DISCUSSION:

This contract will now take the conceptual solutions identified in the original contract and complete the design of the proposed improvements. These improvements are anticipated to include both water quality measures and detention/retention measures to reduce the overall peak flow of runoff. These improvements combined with traditional stormwater piping/box culverts should provide flooding relief for many residents in the area. The City has had preliminary meetings with the landowners most impacted by the proposed improvements and will continue to reach out to the public throughout the design process.

While the first phase of the bond will only include design, it is important to complete the design so that the project will be ready for bidding as soon as the phase II portion of the bond is approved. A total amount of \$375,000 for design of the full project has been budgeted within the Phase 1 Drainage Bond Program. The total estimate for the project is approximately \$2 Million and subject to change as the design progresses.

BUDGET/STAFF IMPACT:

The design for this project will be paid for with the funds from the 2019 Drainage Bond Project.

Attachments:

Engineering Agreement

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

THIS AGREEMENT is made as of August 18, 2020, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and ENGINEER (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 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. The anticipated schedule for this project is included as Appendix B.

SECTION 5 - PAYMENTS TO ENGINEER

- 5.1 The maximum not-to-exceed amount authorized for this Agreement is **\$ 194,525.00**, including reimbursable expenses. The CITY OF FAYETTEVILLE shall compensate ENGINEER based on a 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

ENGINEER's address:
1580 E. Stearns Street
Fayetteville, Arkansas 72703

6.14 Successor and Assigns

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

6.15 Controlling Law

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

6.16 Entire Agreement

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

SECTION 7 - SPECIAL CONDITIONS

7.1 Additional Responsibilities of ENGINEER

- 7.1.1 CITY OF FAYETTEVILLE's review, approval, or acceptance of design drawings, specifications, reports and other services furnished hereunder shall not in any way relieve ENGINEER of responsibility for the technical adequacy of the work. Neither CITY OF FAYETTEVILLE's review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- 7.1.2 ENGINEER shall be and shall remain liable, in accordance with applicable law, for all damages to CITY OF FAYETTEVILLE caused by ENGINEER's negligent performance of any of the services furnished under this Agreement except for errors, omissions or other deficiencies to the extent attributable to CITY OF FAYETTEVILLE or CITY OF FAYETTEVILLE-furnished data.
- 7.1.3 ENGINEER's obligations under this clause are in addition to ENGINEER's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that CITY OF FAYETTEVILLE may have against ENGINEER for faulty materials, equipment, or work.

7.2 Remedies

- 7.2.1 Except as may be otherwise provided in this Agreement, all claims, counter-claims, disputes and other matters in question between CITY OF FAYETTEVILLE and ENGINEER arising

out of or relating to this Agreement or the breach thereof will be decided in a court of competent jurisdiction within Arkansas.

7.3 Audit: Access to Records

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

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

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

7.3.3.1 Negotiated prime agreements:

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

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

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

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

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

7.4 Covenant Against Contingent Fees

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

contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

7.5 Gratuities

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

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

7.6 Arkansas Freedom of Information Act

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

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

CITY OF FAYETTEVILLE, ARKANSAS

ENGINEER

By: _____
Mayor, Lioneld Jordan

Kevin Beaumont Date: 2020.07.29
By: _____ 16:40:32-05'00'

ATTEST:

By: _____
City Clerk

Title: Vice President/ Principal

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

Professional Engineering Services Contract- 07.29.2020

FY19-2143

10

APPENDIX 'A'

SCOPE OF SERVICES

PROFESSIONAL SERVICES AGREEMENT

CITY OF FAYETTEVILLE, ARKANSAS

ELMHURST & MCCLINTON DRAINAGE IMPROVEMENTS

1. Scope of Project

Add the following scope of work to the existing Elmhurst & McClinton Drainage contract agreement. The anticipated tasks associated with the drainage improvements are as follows:

- Detail Drainage Design;
 - Develop drainage improvements recommended in Feasibility Study (Three Pond Option) into a detailed design, revise hydrology &/or hydraulics as needed.
 - Design detention pond north of Martin Luther King Boulevard, to include outlet structure and retaining walls.
 - Design detention pond in the southeast corner of Terry-Richter Property, incorporating LID measures as appropriate, to include establishment of wetland vegetation.
 - Undertake remediation of existing freshwater pond on northeast corner of Terry-Richter Property and verify pond geometry through survey for incorporation into drainage design
 - Design reinforced concrete box culvert starting at detention pond, routing across Fairlane St., down Elmhurst Ave., west on McClinton St. and then south to the existing dual 8' x 3' r.c. box culvert located at Nantucket Dr.
 - Design inlets and necessary storm sewer piping along Elmhurst Ave. and Fairlane St., incorporating into culvert design.
 - Verify drainage design as a complete system through use of hydraulic modeling software.
- Geotechnical Investigation;
 - Collect soil samples from two locations on Terry-Richter Property in vicinity of proposed pond, sampling at two feet and four feet depth.
 - Determine moisture content, Atterberg Limits, gradation of samples and classify using USCS on samples obtained from Terry-Richter property.
 - Conduct three borings to a depth of ten feet, to determine presence of any rock. No samples or SPT data will be collected. Two will be located on Elmhurst Ave. and one on McClinton St.
 - Provide a written Statement of Findings summarizing the investigation, exhibits of sample locations and results.
- Topographic Survey and Boundary Resolution;
 - Complete a detailed topographic survey of the project area. Items typically shown include (but not limited to): finished floor elevations, development of contours, curb & gutter, flowlines, utility poles and structures, roads, sidewalks, trees, storm water and sanitary sewer manholes and utility marks provided by utility location service.
 - Complete records research, field research and boundary resolution of the parcels shown with the project area. The property lines, easements and right-of-ways will be located and shown only on topographic survey and engineering drawings. The scope does not include separate signed/sealed boundary survey for each property.

- **Property Acquisition Documents**
 - Complete individual exhibit maps and descriptions for up to ten properties where easements will need to be acquired for the project. The exhibit maps will show any right-of-way, drainage or utility easement or temporary construction easement needed for the property, with a separate description of each area. An acquisition overview drawing/exhibit will be completed upon request.
- **Meetings and Coordination (Public, Private and City);**
 - Design meetings with City after each milestone to discuss review comments.
 - Prepare exhibits and documentation for any public forum to include; City, landowners and general public, for either in-person or virtual meetings.
 - Attend various public meetings and collect and evaluate comments and concerns via discussions with City.
 - Coordinate with Beaver Watershed Alliance with regard to City's proposed improvements and BWA current/future projects.
 - Coordinate with City on permitting and communication with Army Corp of Engineers regarding existing freshwater pond on Terry-Richter Property.

2. Basic Services

The Basic Services of the ENGINEER as described in this agreement shall be as stated in the Scope of Project above, in addition to those described in the original agreement for Elmhurst & McClinton Drainage Project, dated October 1st, 2019.

3. Project Deliverables

- a. Design Drawings for proposed drainage improvement for each submittal milestone (30%-60%-90%-100%), electronic submittal to City.
- b. Cost Estimate of projected construction costs of project at each milestone.
- c. Property Acquisition Documents for properties in project area that require drainage easements for proposed improvements.
- d. Project Manual, with front end documents and technical specifications.

APPENDIX 'B'

SCHEDULE

PROFESSIONAL SERVICES AGREEMENT

CITY OF FAYETTEVILLE, ARKANSAS

ELMHURST & MCCLINTON DRAINAGE

Task Name	Start	Finish
- Detailed Design	07/13/20	07/12/21
Draft Fee Proposal	07/13/20	07/24/20
Final Fee Proposal	07/24/20	07/29/20
Proposal to Council	08/18/20	08/18/20
Topographic Survey	09/07/20	10/09/20
Geotechnical Investigation	08/24/20	09/04/20
30% Design	10/12/20	11/20/20
City Review- 30% Design	11/23/20	12/04/20
60% Design	12/07/20	02/05/21
City Review- 60% Design	02/08/21	02/19/21
Public Meeting and Comment Period	02/22/21	03/05/21
90% Design	03/08/21	04/19/21
City Review-90%	04/20/21	05/03/21
Public Meeting and Comment Period	05/04/21	05/17/21
100% Design	05/18/21	06/28/21
City Review-100%	06/29/21	07/12/21

APPENDIX "C"

COMPENSATION

PROFESSIONAL SERVICES AGREEMENT

CITY OF FAYETTEVILLE, ARKANSAS

ELMHURST & MCCLINTON DRAINAGE

- 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.

Drainage Improvement Design	\$ 132,750.00
Geotechnical Investigation	\$ 3,060.00
Topographic Survey	\$ 24,900.00
Property Boundary Resolution	\$ 17,200.00
Easement Document Preparation	\$ 11,040.00

SUB-TOTAL Basic Services \$ 188,950.00

- 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	\$ 5,575.00
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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 \$194,525.00 in total.
- 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**

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

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