

City of Fayetteville Staff Review Form

2022-0550

Legistar File ID

7/5/2022

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

Tim Nyander

6/15/2022

WATER SEWER (720)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval of an engineering services agreement with Freese and Nichols, Inc. for professional services associated with the rehabilitation of the Gulley Elevated Water Storage Tank in an amount not to exceed \$131,900.00.

Budget Impact:

5400.720.5600-5314.00

Water and Sewer

Account Number

Fund

14010.1

Water Tank Improvements

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 2,201,528.00

Funds Obligated \$ 1,001,196.78

Current Balance \$ 1,200,331.22

Does item have a cost? Yes

Item Cost \$ 131,900.00

Budget Adjustment Attached? No

Budget Adjustment \$ -

Remaining Budget \$ 1,068,431.22

V20210527

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments: RFQ 22-01, Selection #6



MEETING OF JULY 5, 2022

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Tim Nyander, Utilities Director

FROM: Corey Granderson, Utilities Engineer

DATE: June 15, 2022

SUBJECT: **Engineering Services Agreement with Freese and Nichols, Inc. for Rehabilitation of the Gulley Elevated Water Storage Tank**

RECOMMENDATION:

Staff recommends approval of an engineering services agreement with Freese and Nichols, Inc. for professional services associated with the rehabilitation of the Gulley Elevated Water Storage Tank in an amount not to exceed \$131,900.00.

BACKGROUND

The original Gulley elevated water storage tank was constructed in 1999 and is a steel tank with 750,000-gallons of storage capacity. Per the 2018 water tank inspections performed by Garver, Inc. this tank is in need of re-coatings work both internally and externally. A formal selection committee was held on March 17, 2022 at which Freese & Nichols was selected for contract negotiations (RFQ 22-01, Selection #6) related to these services.

DISCUSSION:

This engineering contract will provide plans, specifications, bidding services, and inspection services during construction. In addition to re-coatings, the design will also include installation of safety climbing cables, active tank mixing, and reconfiguration of some SCADA equipment. The backup generator and overflow pipe were upgraded as part of the recently completed contract for the construction of a sister tank at this location.

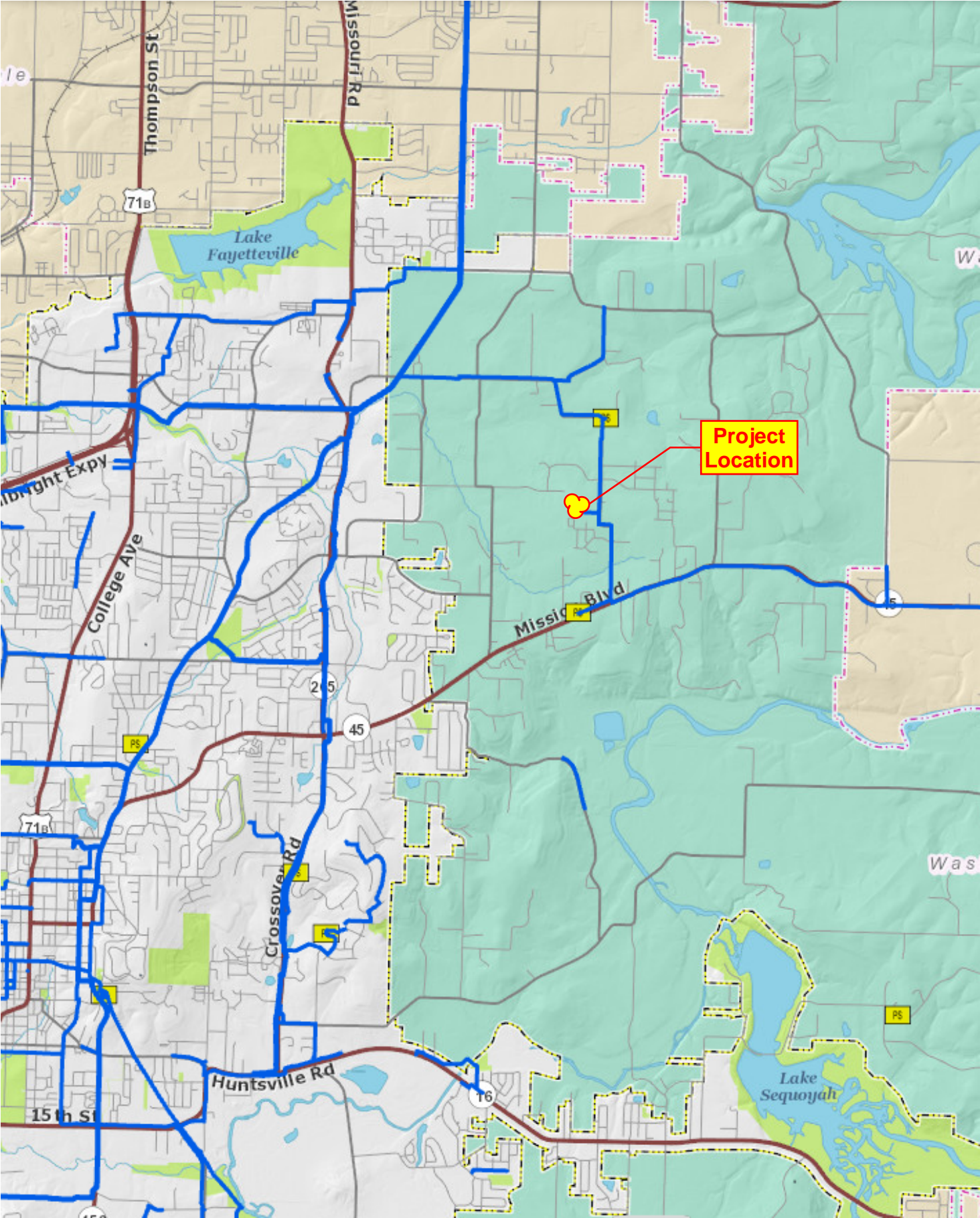
BUDGET/STAFF IMPACT:

The proposed contract is hourly in the maximum not-to-exceed amount of \$131,900.00. Budgeted funds are available in the Water Tank Improvements Account.

Attachments:

Engineering Services Agreement
Scope/Fee Matrix
Vicinity Map

Gulley Road Water Tank
Vicinity Map | NTS



AGREEMENT
For
PROFESSIONAL ENGINEERING SERVICES
Between
CITY OF FAYETTEVILLE, ARKANSAS
And
FREESE AND NICHOLS, INC.

THIS AGREEMENT is made as of _____, 2022, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and FREESE AND NICHOLS, 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 as Appendix A.

SECTION 5 - PAYMENTS TO ENGINEER

- 5.1 The maximum not-to-exceed amount authorized for this Agreement is **\$131,900.00**. 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:
5001 W Founders Way, Suite 100
Rogers, Arkansas 72758

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 FREESE AND NICHOLS, INC., by its authorized officer have made and executed this Agreement as of the day and year first above written.

CITY OF FAYETTEVILLE, ARKANSAS

FREESE AND NICHOLS, INC.

By : _____
Mayor, Lioneld Jordan

By:  _____
Tricia Hatley, PE

ATTEST:

By: _____
City Clerk

Title: Executive Vice President _____

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

APPENDIX A

GULLEY ROAD ELEVATED STORAGE TANK REHABILITATION SCOPE OF SERVICES – FREESE AND NICHOLS, INC.

The ENGINEER shall perform the following Scope of Services in accordance with the terms and conditions of the Agreement.

Design Components:

The Gulley Road Elevated Storage Tank (EST) Rehabilitation Project consists of the rehabilitation and recoating of the existing 0.75-million-gallon (MG) hydropillar style EST, along with electrical and instrumentation improvements at the site. The ENGINEER will assist CITY OF FAYETTEVILLE by providing design, bid and construction phase services for the project.

Project Location:

Gulley Road Elevated Storage Tank
3265 N Gulley Rd.
Fayetteville, Arkansas 72703

Design Components:

The basis of the improvements are as indicated in the *Gulley Road, Township Road, and Mt. Kessler South and North Tanks Water Tank Inspections Preliminary Report*, prepared by Garver on October 25, 2016, and per discussions with staff during a site visit on April 15, 2022, and as indicated below.

- Rehabilitation of the 0.75 MG EST, including:
 - Recoating interior and exterior (water storage tank bowl) and exterior (pedestal); no coating work is anticipated within the pedestal
 - Replacing existing vent screen
 - Installation of cable-style safety climb device on interior ladders
 - Replacement of roof hatches per OSHA standards; standard details will be provided to the contractor
 - Corrosion repairs will be handled through extra work items in the bid form, and will not be detailed out in the plans
 - Installation of an active mixing system (Medora Corporation - GridBee)
 - CITY OF FAYETTEVILLE will handle coordination for the removal and replacement of cellular antennas on the tank as required to facilitate rehabilitation
- Electrical and Instrumentation
 - Replacement of instrumentation rack at the EST, including installation of control panel, pressure transmitter, GridBee control cabinet, etc. on the rack
 - The electrical SOW includes the design for a circuit breaker for the mixing system to be added to an existing panelboard, connection of the pressure transmitter and associated signals from the mixing system to the SCADA system. No other improvements are included in this proposal. Upgrading or improvements to the electrical service or panelboard are not included and these are considered additional services. Additionally, FNI is assuming that the existing RTU cabinet has sufficient spare analog and digital input and outputs for connecting the pressure transmitter and signals from the mixing system to the SCADA system. Upgrading or improvements to the

SCADA RTU cabinet for the addition of analog and digital input and outputs is considered additional services.

- Exclusions from Preliminary Engineering Report Comments
 - No environmental evaluations are anticipated related to heavy metals or hazardous material disposal

Contract Services (Phases):

- 60% Design Phase Services
- 100% Design and Bid Phase Services
- Construction Phase Services

BASIC SERVICES: After written authorization and notice to proceed from CITY OF FAYETTEVILLE, the ENGINEER shall proceed with the Basic Services as described below:

A. PROJECT MANAGEMENT, INITIATION, SCHEDULING, and QUALITY MANAGEMENT

ENGINEER shall coordinate internally and with CITY OF FAYETTEVILLE for successful initiation, planning, execution, monitoring/controlling, and closeout. ENGINEER shall manage integration, scope, schedule, cost, quality, staff resources, communications, risk, and procurements, as necessary. This includes:

1. Consult with CITY OF FAYETTEVILLE to verify specific design requirements for the Project and collect and review available data.
2. Direction and coordination of ENGINEER's project team and staff for completion of required tasks and deliverables.
3. Direction and coordination of sub-consultants, including monitoring, scheduling, reporting, invoicing, quality reviews, for completion of required tasks and deliverables.
4. Provide monthly progress reports and invoices to CITY OF FAYETTEVILLE.
5. Track all action items and decisions made by CITY OF FAYETTEVILLE and the ENGINEER and include with monthly invoice package.
6. Develop a baseline project design schedule and update schedule as necessary as changes occur and submit to CITY OF FAYETTEVILLE Engineer.
7. Perform internal quality management including control and assurance prior to submitting work products and design deliverables to CITY OF FAYETTEVILLE. Maintain these documents as part of the project records.
8. Deliverables:
 - a. Monthly progress reports, invoices, and action items list
 - b. Baseline schedule and schedule updates as necessary

B. 60% DESIGN PHASE: After CITY OF FAYETTEVILLE has issued written authorization to proceed with the 60% DESIGN PHASE, the ENGINEER shall provide professional services in this phase as follows:

1. MEETINGS: Prepare meeting agenda, sign-in sheet and minutes for all meetings and workshops listed below:
 - a. Monthly project status meetings with CITY OF FAYETTEVILLE, via phone call during the 60% design phase.

- b. One (1) workshop to review CITY OF FAYETTEVILLE's comments on the 60% Design deliverables. Prepare for and conduct a 60% Design Phase review workshop to elicit feedback from the various CITY OF FAYETTEVILLE departments and make the necessary decisions to proceed with the design.
 2. Conduct site visits as needed to review field conditions, validate survey information, and meet with landowners and/or local representatives as required to ensure feasibility and constructability of the project.
 3. Prepare 60% design plans and specifications.
 4. Prepare 60% Engineer's OPCC. Cost estimate shall be a Class 1 Estimate as described in AACE Recommended Practice No. 17R-97 and 56R-08.
 5. DELIVERABLES: Provide copies of plans and other data to CITY OF FAYETTEVILLE as required. Furnish hard copies and electronic copies in searchable PDF format as shown for the following deliverables for the 60% DESIGN PHASE:
 - a. Meeting Agenda and Minutes for all meetings– one (1) electronic copy
 - b. 60% Design Plans – one (1) electronic copy and one (1) set of standard 22"x34" "full-size" bound plans.
 - c. 60% Specifications – one (1) electronic copy
 - d. 60% OPCC – one (1) electronic copy
 - e. Comment Response Log – one (1) electronic copy
- C. 100% DESIGN PHASE: After CITY OF FAYETTEVILLE has accepted and approved the information provided in 60% DESIGN PHASE and has issued written authorization to proceed with the 100% DESIGN AND BID PHASE, the ENGINEER shall provide professional services in this phase as follows:
 1. FINAL 100% DESIGN: Prepare final 100% signed and sealed Contract Documents (plans and specifications) for project advertisement. Latest front-end documents (if changed) will be provided by CITY OF FAYETTEVILLE.
 2. Prepare 100% Engineer's OPCC. The final cost estimate shall be a Class 1 Estimate as described in AACE Recommended Practice No. 17R-97 and 56R-08. ENGINEER shall work with CITY OF FAYETTEVILLE and internal cost estimator to verify and address comments related to estimate, as applicable.
 3. Coordinate with CITY OF FAYETTEVILLE Utilities Department and Contract Administration staff in preparation of project advertisement. ENGINEER shall obtain the latest version of the front-end documents prior to compiling the draft set of Contract Documents. ENGINEER shall thoroughly review the draft set of Contract Documents prior to submission to CITY OF FAYETTEVILLE. The project will be procured via traditional design-bid-build methods.
 4. ENGINEER will submit the project to the Arkansas Department of Health for the plan review process, including the \$500.00 cost associated with the review.
 5. BID PHASE:
 - a. Contract Document Production and Distribution method will be via the online portal on the CITY OF FAYETTEVILLE's website. ENGINEER will produce and upload 100% complete Contract Document sets to IonWave for bidding purposes.
 - b. Assist the CITY OF FAYETTEVILLE in conducting a pre-bid conference for the construction projects and coordinate responses with CITY OF FAYETTEVILLE. Response to the pre-bid

- conference will be in the form of addenda issued after the conference. Attend the tour of the project site after the pre-bid conference.
- c. Assist CITY OF FAYETTEVILLE by responding to questions and interpreting bid documents. Prepare and issue addenda to the bid documents to plan holders if necessary.
 - d. ENGINEER will assist CITY OF FAYETTEVILLE in the opening, tabulating, and analyzing the bids received. Review the qualification information provided by the apparent low bidder to determine if, based on the information available, they appear to be qualified to construct the project. Recommend award of contracts or other actions as appropriate to be taken by CITY OF FAYETTEVILLE. Pre-qualification of all prospective bidders and issuing a list of eligible bidders prior to the bid opening is an additional service.
 - e. Assist CITY OF FAYETTEVILLE in the preparation of Construction Contract Documents for construction contracts. Provide ten (10) sets of Construction Contract Documents which include information from the apparent low bidders bid documents, legal documents, and addenda bound in the documents for execution by the Client and construction contractor. Distribute five (5) copies of these documents to the contractor with a notice of award that includes directions for the execution of these documents by the construction contractor. Provide Client with the remaining five (5) copies of these documents for use during construction. Additional sets of documents can be provided as an Additional Service.
 - f. Furnish contractor copies of the drawings and specifications for construction pursuant to the General Conditions of the Construction Contract.
6. DELIVERABLES: Provide copies of plans and other data to CITY OF FAYETTEVILLE as required. Furnish hard copies and electronic copies in searchable PDF format as shown for the following deliverables for the FINAL DESIGN and BID PHASE:
- a. Meeting Agenda and Minutes for all meetings – one (1) electronic copy
 - b. Final 100% Design Plans – one (1) electronic copy and one (1) set of standard 22”x34” “full-size” bound plans; hard-copy sets as required by Arkansas Department of Health
 - c. Final 100% Specifications – one (1) electronic copy
 - d. Final 100% OPCC – one (1) electronic copy
 - e. Addenda to Contract Documents – one (1) electronic copy
- D. CONSTRUCTION PHASE: Upon completion of the bid or negotiation phase services, ENGINEER will proceed with the performance of CONSTRUCTION PHASE services as described below:

In performing these services, it is understood that ENGINEER does not guarantee the CONTRACTOR's performance, nor is ENGINEER responsible for the supervision of the CONTRACTOR's operation and employees. ENGINEER shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the CONTRACTOR, or any safety precautions and programs relating in any way to the condition of the premises, the work of the CONTRACTOR or any SUBCONTRACTOR. ENGINEER shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

The ENGINEER will provide general construction representation services and coordinate all work with CITY OF FAYETTEVILLE. Construction Phase Services that extend beyond seven (7) months (210 calendar days) will be an additional service. The ENGINEER shall provide professional services in this phase as follows:

1. MEETINGS AND SITE VISITS: Prepare meeting agenda and minutes for all meetings listed below:
 - a. Meetings
 - 1) Assist CITY OF FAYETTEVILLE in conducting pre-construction conference with the Contractor, and review construction schedules prepared by the Contractor pursuant to the requirements of the construction contract
 - 2) Six (6) monthly progress meetings at the construction site. Prepare agendas with all applicable logs (Request for Proposal [RFP], Request for Information [RFI], Change Order [CO], etc.), progress schedule, discuss construction issues, coordination with Owner, updated construction schedule and meeting summaries for construction progress meetings.
 - b. Site Visits

In addition to the monthly progress meetings, the ENGINEER will conduct up to six (6) site visits to the construction site to evaluate the sequencing, coordination, field verification and coordination of construction layouts, coordination with governing authorities public or stakeholders, conflict resolution, change order negotiations, etc. as needed.

ENGINEER will document site visits by documenting observations and submitting a brief report of each site visit to CITY OF FAYETTEVILLE. Site visit reports shall be uploaded to CPMS.

ENGINEER shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. ENGINEER shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work.
2. CONFORMED CONSTRUCTION CONTRACT DOCUMENTS: Incorporate design and contract changes made via addenda into project contract documents and prepare for execution by the CITY OF FAYETTEVILLE and the CONTRACTOR.
3. REVIEW CONTRACTOR PAYMENT REQUESTS: Review Contractor's monthly payment applications including construction estimates, project schedule, and redlines. Make recommendations for payment. The payment applications will include quantities, invoices, materials on hand, an updated project schedule, and redlines for the work completed to date. Review changes or alterations to the design, provide recommendations and support preparation of change orders associated with these changes.
4. REVIEW CONTRACTOR SUBMITTALS: Review all CONTRACTOR submittals in a timely manner for compliance with the design concepts to provide recommendations and approvals to CITY OF FAYETTEVILLE. Submittal reviews assume one (1) initial review, and one (1) re-submittal review for each submittal. Excessive Contractor re-submittals will be an Additional Service:
 - a. Review shop drawings
 - b. Review equipment and material record data
 - c. Review operation and maintenance (O&M) manuals for the project construction
 - d. Review Contractor Requests for Information (RFI)
 - e. Review laboratory, shop, and mill test reports on materials and equipment

5. PREPARE CHANGE ORDER DOCUMENTS AND REQUEST FOR PROPOSALS (RFP's): Documents requested by CITY OF FAYETTEVILLE outside of the approved project design or for differing site conditions outside of the ENGINEER'S control will be an Additional Service:
 - a. Prepare change orders and/or RFP's for alterations to the design. Respond to CITY OF FAYETTEVILLE on issues with change orders designated as errors and omissions. Prepare the Final Change Order (over and unders) recapitulation of the Project in conjunction with the final payment application request.
 - b. Support development of requests for proposals (RFPs) and support change order negotiation process including preparation of independent cost estimates (ICEs) using RS Means.
6. SUBSTANTIAL COMPLETION: Attend one full day site visit to perform substantial completion inspection. Activities will include:
 - a. Perform substantial completion inspection for the EST. Substantial Completion Report and Punchlist to be prepared after inspection.
 - b. Perform substantial completion inspection for the yard piping and site improvements. Substantial Completion Report and Punchlist to be prepared after inspection.
7. FINAL INSPECTION: Make a site visit to perform final inspection and develop a final punchlist for the CONTRACTOR. Final Inspection Report and Letter of General Conformance to be prepared after inspection.
8. Upon completion of construction, issue the Final Notification letter to approval agencies indicating that the work was completed in accordance to the plans and the specifications.
9. RECORD DRAWINGS: Prepare the Record Drawings based on the revised redline Construction Drawings and information furnished by the construction CONTRACTOR reflecting changes in the Project made during construction. Submit Record Drawings to CITY OF FAYETTEVILLE digitally in PDF format.
10. DELIVERABLES: Provide the following deliverables for the CONSTRUCTION PHASE. Furnish hard copies and electronic copies in searchable PDF format as shown for the following deliverables.
 - a. Conformed Construction Plans – one (1) electronic copy and five (5) sets of standard 11"x17" "half-size" bound plans and five (5) sets of standard 22"x34" "full-size" bound plans
 - b. Conformed Specifications – one (1) electronic copy and ten (10) hard copies
 - c. Substantial Completion Report and Punchlist – one (1) electronic copy.
 - d. Final Inspection Report and Letter of General Conformance – one (1) electronic copy.
 - e. Record Drawings – one (1) electronic copy in PDF format.

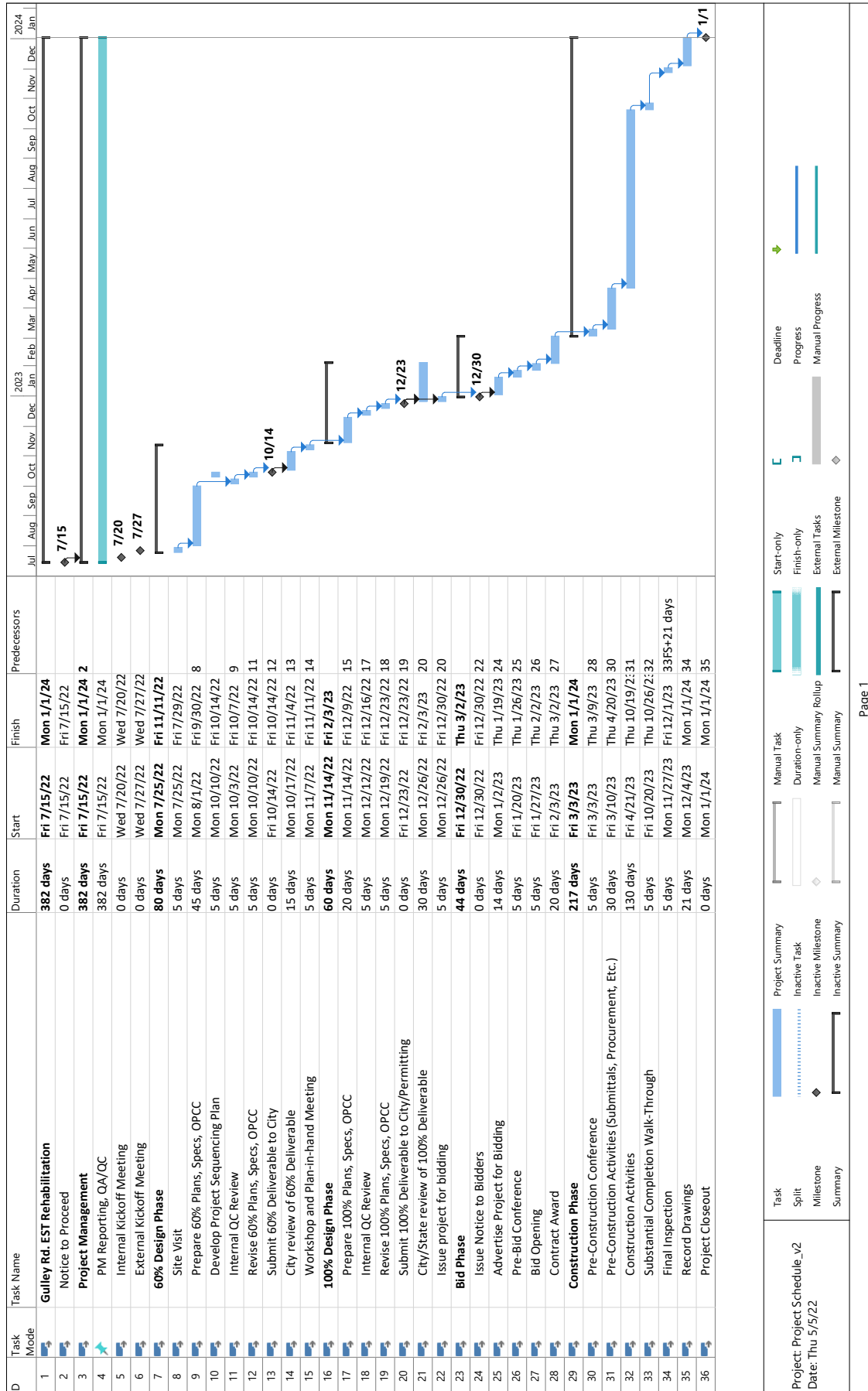
SUPPLEMENTAL SERVICES: Additional Services to be performed by the ENGINEER, if authorized by CITY OF FAYETTEVILLE through the issuance of a work order, which are not included in the above described BASIC SERVICES, are described as follows:

A. SPECIAL INSPECTIONS

1. CRITICAL PHASE COATING INSPECTION SERVICES: ENGINEER will provide Critical Phase Surface Preparation and Coating Inspection Services during the interior and exterior coating processes for the tank, which is anticipated to take up to six (6) months, with up to twenty (20) site visits included in the scope of work.

- a. Services include:
 - 1) Inspection of painting activities.
 - 2) Photographic documentation of painting activities.
 - 3) Equipment and material checks.
 - 4) Inspection of surface preparation.
 - 5) Inspection of each coat of paint applied.
 - 6) Final inspection and documentation of surface preparation and painting.
 - 7) Holiday detection of interior water bearing surfaces.
 - 8) Digital inspection reports to be provided. (Hard copies available upon request)
 - 9) Additional visits required to monitor the work shall be considered an additional service.
- b. ENGINEER will provide additional contract administration services in conjunction with the resident inspection services as follows:
 - 1) Review Inspector construction reports.
 - 2) Coordinate submittal review and communicate periodically as needed with Coating Inspector regarding construction progress.

PROJECT SCHEDULE:



COMPENSATION:

Total compensation for the services shall not exceed \$131,900.00, as further described below:

Basic Services (Lump Sum)

A. Project Management & Quality Control	\$ 19,150.00
B. 60% Design Phase	\$ 19,700.00
C. 100% Design and Bid Phase	\$ 20,750.00
D. Construction Phase (General Rep.)	\$ 36,000.00

Phase Total	<u>\$ 95,600.00</u>
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Special Services (Cost-Plus)

A. Critical Coating Inspection Services	\$ 36,300.00
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Phase Total	<u>\$ 36,300.00</u>
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If ENGINEER's services are delayed or suspended by CITY OF FAYETTEVILLE, or if ENGINEER's services are extended for more than 60 days through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by ENGINEER in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

City of Fayetteville, AR Guiley Rd. EST Rehabilitation 6/20/2022 Detailed Cost Breakdown				Project Fee Summary	
Basic Services				\$	95,078
Special Services				\$	36,300
Total Project				\$	131,878

Phase Task			Tasks																Subconsultants				Total		
Basic or Special	Activity	Task Description	Alan Hudson	Clay Herndon	Jason Coddin	Brogan Tyler	Matthew Harzoff	Charles Kuchelka	Kenn Johnson	Stephanie Krosztein	Wade Ziemicki	Jeff Hersey	Electrical Engineer	Jared Franz	Matt Catwright	Clay Herndon	Brogan Tyler	Total Hours	Total Labor Effort	Total Expense	Total Sub Effort	Total Effort			
A		Project Management Internal kickoff meeting External kickoff meeting Basic Basic Basic Basic One Page Reports / Periodic client communications Corporate Support (Operations Analyst, Accounting Specialist, Contract Administrator) Quality Management Develop quality management plan Senior Advisor Basic Basic Basic Basic Quality Control reviews Quality Assurance reviews Constructability reviews	1	1	2	3	1	1				1	1		1			12	\$ -	\$ -	\$ -	\$ -	\$ -		
					2	2													3	\$ 2,450	\$ 94	\$ -	\$ 2,549		
				2		2													8	\$ 3,675	\$ 474	\$ -	\$ 4,149		
																				3	\$ 467	\$ 17	\$ -	\$ 484	
				12																12	\$ 2,805	\$ 102	\$ -	\$ 2,907	
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																					\$ 467	\$ 17	\$ -	\$ -	\$ 484
																				20	\$ 4,937	\$ 102	\$ -	\$ 5,039	
																				34	\$ 1,597	\$ 153	\$ -	\$ 1,750	
												2								5	\$ 1,391	\$ 43	\$ -	\$ 1,433	
B		80% Design Phase Meetings Monthly phone calls Basic Basic Design Workshop Site Visit Basic Prepare 60% Deliverable Basic Plans Basic Basic Basic Specifications Basic Front-ends Basic Civil Basic Electrical Prepare OPOC																	\$ -	\$ -	\$ -	\$ -	\$ -		
																				\$ -	\$ -	\$ -	\$ -	\$ -	
				4	2	4														10	\$ 1,941	\$ 85	\$ -	\$ 2,026	
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C		100% Design Phase Prepare 100% Deliverable Plans Basic Basic Civil Basic Electrical Specifications Basic Front-ends Basic Civil Basic Electrical Prepare OPOC																	\$ -	\$ -	\$ -	\$ -	\$ -		
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				2		4	8							2	8	8				14	\$ 2,115	\$ 119	\$ -	\$ 2,234	
																				18	\$ 2,749	\$ 153	\$ -	\$ 2,902	
				2		4									1					7	\$ 1,076	\$ 60	\$ -	\$ 1,135	
				2		8								2	8				10	\$ 1,394	\$ 85	\$ -	\$ 1,479		
																			10	\$ 1,609	\$ 85	\$ -	\$ 1,694		
																			8	\$ 1,344	\$ 68	\$ -	\$ 1,412		
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D		Bid Phase Electronic Plan Distribution Pre-Bid Conference Respond to questions, Issue Addenda Bid Opening, Tabulation and Recommendation of Award Basic Execute Contract Documents Construction Phase Meetings Pre-Construction conference (1) Monthly Progress Meetings (6) Site Visits (6) Basic Conform Contract Documents Review Pay Requests Review Submittals Basic Prepare Change Proposals/Change Orders Basic Substantial Completion Final Inspection Record Drawings																	\$ -	\$ -	\$ -	\$ -	\$ -		
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				2															15	\$ 2,243	\$ 128	\$ -	\$ 2,371		
				2															6	\$ 956	\$ 51	\$ -	\$ 1,007		
				1	2															9	\$ 1,454	\$ 77	\$ -	\$ 1,531	
																				\$ -	\$ -	\$ -	\$ -	\$ -	
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			SS-A		Special Hold-Point Coating Inspection Services																	\$ -	\$ -	\$ -	\$ -
																			\$ -	\$ -	\$ -	\$ -	\$ -		
			1	69	51	149	37	17	2	1	4	11	47	24	15	56	15	499	\$ 88,016	\$ 7,562	\$ 33,000	\$ 36,300	\$ 131,878		
			Total Hours / Quantity																\$ 33,000	\$ 36,300	\$ 36,300	\$ 36,300	\$ 131,878		
			Total Effort																\$ 33,000	\$ 36,300	\$ 36,300	\$ 36,300	\$ 131,878		



Mr. Matt Cartwright
Freese and Nichols
801 Cherry St.
Fort Worth, Texas 76102

Dear Mr. Cartwright,

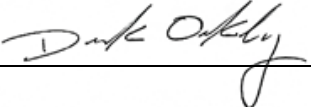
Critical Phase Inspection of a 750,000 - Gallon Fluted Column Tank: Gulley EST Fayetteville, AR

This proposal is in response to your request for critical phase inspection during field painting activities of the subject tank. Our inspection service and costs are as follows:

INSPECTION OF PAINTING ACTIVITIES IN PROGRESS (20 Inspection Days) \$33,000.00

1. Inspection of painting activities.
2. Photographic documentation of painting activities.
3. Equipment and material checks.
4. Inspection of surface preparation.
5. Inspection of each coat of paint applied.
6. Final inspection and documentation of surface preparation and painting.
7. Holiday detection of interior water bearing surfaces.
8. Digital inspection reports to be provided. (Hard copies available upon request)

If additional inspections are required, they will be \$1,650.00/day and shall be authorized by you as an amendment to this agreement.

Submitted by:	<u>Derek Oakley</u>	Accepted by:	_____
Signature:	<u></u>	Signature:	_____
Date:	<u>May 26, 2022</u>	Date:	_____

