

City of Fayetteville Staff Review Form

2022-0551

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 Garver, LLC in an amount not to exceed \$255,000.00 for design services for replacement of a 24-inch waterline from S. School Ave. to M.L.K. Jr. Blvd.

Budget Impact:

5400.720.5600-5314.00	Water and Sewer
Account Number	Fund
12009.1	Water System Rehabilitation/Replacement
Project Number	Project Title
Budgeted Item? <u>Yes</u>	Current Budget \$ 11,032,445.00
	Funds Obligated \$ 9,282,625.72
	Current Balance \$ 1,749,819.28
Does item have a cost? <u>Yes</u>	Item Cost \$ 255,000.00
Budget Adjustment Attached? <u>No</u>	Budget Adjustment \$ -
	Remaining Budget \$ 1,494,819.28

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 Garver, LLC for Design Services for Replacement of 24-inch Waterline**

RECOMMENDATION:

Staff recommends approval of an Engineering Services Agreement with Garver, LLC for Design Services for Replacement of a 24-inch Waterline in an amount not to exceed \$255,000.00.

BACKGROUND:

The City of Fayetteville operates a 24-inch diameter water transmission main that runs approximately 2.3-miles from S. School Avenue near Tyson Mexican Original westerly to Interstate-49, thence northerly to Martin Luther King Jr. Blvd. Portions of this Ductile Iron line were installed in the 1960's through the 1980's and is in a corrosive shale-soil environment. The line has experienced frequent leaks and disrupted service in the area.

DISCUSSION:

Based on the City's current water master plan and water model, the size of this line can be reduced and still meet the existing and future demands of this area. Therefore, this project design will focus on slip-lining a smaller diameter pipe (likely 18-inches) into the existing 24-inch pipe, drastically reducing overall project impacts and cost.

A formal selection committee was held on March 30, 2021 and Garver, LLC was selected to perform these design services (RFQ 21-01, Selection #6). An engineering contract, scope, and fees have been prepared and reviewed by city staff. The design and bidding phases are not to exceed \$255,000.00. At time of bid award, additional construction phase engineering services will be necessary as an amendment.

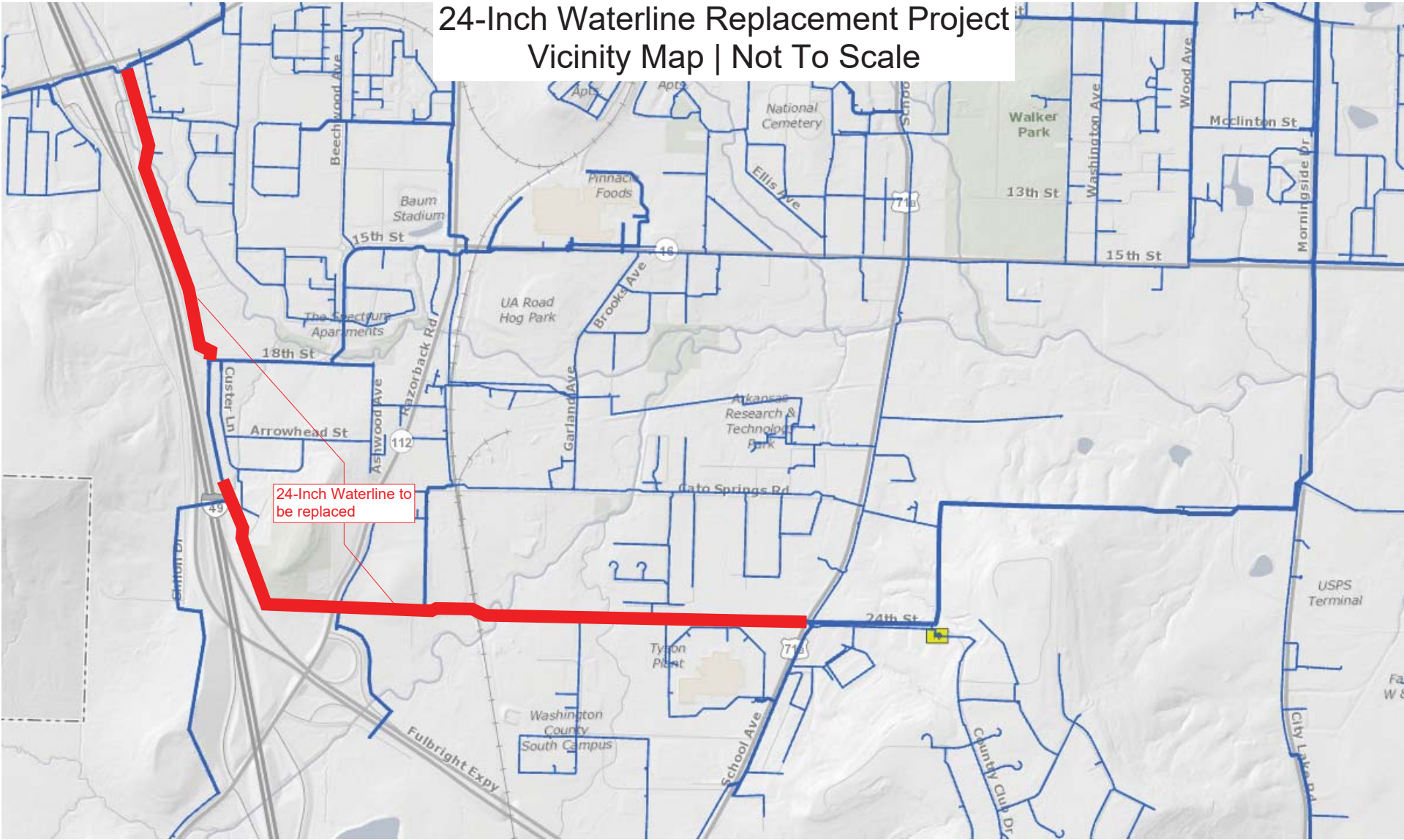
BUDGET/STAFF IMPACT:

Funds are available in the Water System Rehabilitation/Replacement account.

Attachments:

Vicinity Map
Engineering Services Agreement
Appendix A – Scope of Services; Fees

24-Inch Waterline Replacement Project Vicinity Map | Not To Scale



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

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 GARVER, LLC (hereinafter called ENGINEER).

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

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

SECTION 1 - AUTHORIZATION OF SERVICES

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

SECTION 2 - BASIC SERVICES OF ENGINEER

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

SECTION 3 - RESPONSIBILITIES OF CITY OF FAYETTEVILLE

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

- 3.1.1 Provide full information as to CITY OF FAYETTEVILLE's requirements for the Project.
- 3.1.2 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.
- 3.1.3 Assist ENGINEER in obtaining access to property reasonably necessary for ENGINEER to perform his services under this Agreement.
- 3.1.4 Examine all studies, reports, sketches, cost opinions, proposals, and other documents presented by ENGINEER and render in writing decisions pertaining thereto.
- 3.1.5 Provide such professional legal, accounting, financial, and insurance counseling services as may be required for the Project.
- 3.1.6 The 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.
- 3.1.7 CITY OF FAYETTEVILLE and/or its representative will review all documents and provide written comments to ENGINEER in a timely manner.

SECTION 4 - PERIOD OF SERVICE

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

SECTION 5 - PAYMENTS TO ENGINEER

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

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

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

5.3 Payments

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

5.4 Final Payment

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

SECTION 6 - GENERAL CONSIDERATIONS

6.1 Insurance

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

<u>Type of Coverage</u>	<u>Limits of Liability</u>
Workers' Compensation	Statutory
Employers' Liability	\$500,000 Each Accident
Commercial General Liability	
Bodily Injury and 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, and
- 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.
- 6.6 Delays
 - 6.6.1 In the event the services of ENGINEER are suspended or delayed by CITY OF FAYETTEVILLE or by other events beyond ENGINEER's reasonable control, ENGINEER shall be entitled to additional compensation and time for reasonable costs incurred by ENGINEER in temporarily closing down or delaying the Project.
- 6.7 Rights and Benefits
 - 6.7.1 ENGINEER's services will be performed solely for the benefit of CITY OF FAYETTEVILLE and not for the benefit of any other persons or entities.
- 6.8 Dispute Resolution
 - 6.8.1 Scope of Paragraph: The procedures of this Paragraph shall apply to any and all disputes between CITY OF FAYETTEVILLE and ENGINEER which arise from, or in any way

are related to, this Agreement, including, but not limited to the interpretation of this Agreement, the enforcement of its terms, any acts, errors, or omissions of CITY OF FAYETTEVILLE or ENGINEER in the performance of this Agreement, and disputes concerning payment.

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

6.8.3 Notice of Dispute

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

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

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

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

6.10 Publications

6.10.1 Recognizing the importance of professional development on the part of ENGINEER's employees and the importance of ENGINEER's public relations, ENGINEER may prepare publications, such as technical papers, articles for periodicals, and press releases, pertaining to ENGINEER's services for the Project. Such publications will be provided to CITY OF FAYETTEVILLE in draft form for CITY OF FAYETTEVILLE's advance review. CITY OF FAYETTEVILLE shall review such drafts promptly and provide CITY OF FAYETTEVILLE's comments to ENGINEER. CITY OF FAYETTEVILLE may require deletion of proprietary data or confidential information from such publications, but otherwise CITY OF FAYETTEVILLE will not unreasonably withhold approval. The cost of ENGINEER's activities pertaining to any such publication shall be for ENGINEER's account.

6.11 Indemnification

6.11.1 CITY OF FAYETTEVILLE agrees that it will require all construction Contractors to indemnify, defend, and hold harmless CITY OF FAYETTEVILLE and ENGINEER from

and against any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractors, or their employees, agents, Subcontractors, and Suppliers.

6.12 Ownership of Documents

6.12.1 All documents provided by CITY OF FAYETTEVILLE including original drawings, disks of CADD drawings and cross sections, estimates, specification field notes, and data are and remain the property of CITY OF FAYETTEVILLE. ENGINEER may retain reproduced copies of drawings and copies of other documents.

6.12.2 Engineering documents, drawings, and specifications prepared by ENGINEER as part of the Services shall become the property of CITY OF FAYETTEVILLE when ENGINEER has been compensated for all Services rendered, provided, however, that ENGINEER shall have the unrestricted right to their use. ENGINEER shall, however, retain its rights in its standard drawings details, specifications, databases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of ENGINEER.

6.12.3 Any files delivered in electronic medium may not work on systems and software different than those with which they were originally produced. ENGINEER makes no warranty as to the compatibility of these files with any other system or software. Because of the potential degradation of electronic medium over time, in the event of a conflict between the sealed original drawings/hard copies and the electronic files, the sealed drawings/hard copies will govern.

6.13 Notices

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

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

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

6.14 Successor and Assigns

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

- 6.15 Controlling Law
- 6.15.1 This Agreement shall be subject to, interpreted and enforced according to the laws of the State of Arkansas without regard to any conflicts of law provisions.
- 6.16 Entire Agreement
- 6.16.1 This Agreement represents the entire Agreement between ENGINEER and CITY OF FAYETTEVILLE relative to the Scope of Services herein. Since terms contained in purchase orders do not generally apply to professional services, in the event CITY OF FAYETTEVILLE issues to ENGINEER a purchase order, no preprinted terms thereon shall become a part of this Agreement. Said purchase order document, whether or not signed by ENGINEER, shall be considered as a document for CITY OF FAYETTEVILLE's internal management of its operations.

SECTION 7 - SPECIAL CONDITIONS

- 7.1 Additional Responsibilities of ENGINEER
- 7.1.1 CITY OF FAYETTEVILLE's review, approval, or acceptance of design drawings, specifications, reports and other services furnished hereunder shall not in any way relieve ENGINEER of responsibility for the technical adequacy of the work. Neither CITY OF FAYETTEVILLE's review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- 7.1.2 ENGINEER shall be and shall remain liable, in accordance with applicable law, for all damages to CITY OF FAYETTEVILLE caused by ENGINEER's negligent performance of any of the services furnished under this Agreement except for errors, omissions or other deficiencies to the extent attributable to CITY OF FAYETTEVILLE or CITY OF FAYETTEVILLE-furnished data.
- 7.1.3 ENGINEER's obligations under this clause are in addition to ENGINEER's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that CITY OF FAYETTEVILLE may have against ENGINEER for faulty materials, equipment, or work.
- 7.2 Remedies
- 7.2.1 Except as may be otherwise provided in this Agreement, all claims, counter-claims, disputes and other matters in question between CITY OF FAYETTEVILLE and ENGINEER arising out of or relating to this Agreement or the breach thereof will be decided in a court of competent jurisdiction within Arkansas.
- 7.3 Audit: Access to Records
- 7.3.1 ENGINEER shall maintain books, records, documents and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied in effect on the date of execution of this Agreement. ENGINEER shall also maintain the financial information and data used by ENGINEER in the preparation of support of the cost submission required for any negotiated agreement or change order and send to CITY OF

FAYETTEVILLE a copy of the cost summary submitted. CITY OF FAYETTEVILLE, the State or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. ENGINEER will provide proper facilities for such access and inspection. Notwithstanding anything to the contrary herein, ENGINEER's proprietary, financial information is not subject to audit.

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 asserts 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 continent 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 assertion, 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 damages in an amount up to the limits set forth in Section 7.8 below.

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.

7.7 Mutual Waiver


7.7.1 Notwithstanding anything in this Agreement to the contrary, neither party (including its subconsultants, agents, assignees, affiliates and vendors) shall be liable to the other for any special, consequential, indirect, punitive, exemplary or incidental damages of any kind regardless of the cause or action (including negligence of any kind or character including gross negligence).

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

By:  _____
Arkansas Water Team Leader, Jerry T. Martin

ATTEST:
By: _____
City Clerk

By:  _____
Senior Project Manager, Chris Buntin

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES



Appendix A – Scope of Services

1. GENERAL

Generally, the scope of services includes surveying, design, bidding services, and construction support services for improvements to *the* existing 24" cast iron and ductile iron water line starting at Martin Luther King Boulevard, heading south along the east side of Interstate 49 to West Dowell Drive, and heading east to South School Avenue. The improvements will consist primarily of sliplining the existing 24" water line with an 18" water line, removing and replacing the water line at locations that cannot be sliplined, provisions and future conceptual plan to relocate the water line for the 15th Street Overpass at Interstate 49 (ARDOT Job 040846). The work will exclude the existing 24" that was previously sliplined with an 18" between Interstate 49 and West Custer Lane. The anticipated improvements are approximately two miles.

2. PROJECT MANAGEMENT AND ADMINISTRATION

The ENGINEER will develop a project management plan and quality control plan, including project scope, team, deliverable, communication protocol, schedule, and technical reviews. Prior to work, the ENGINEER will conduct a kickoff meeting with the CITY OF FAYETTEVILLE. The ENGINEER will also provide monthly invoicing and project status updates to the CITY OF FAYETTEVILLE.

3. SURVEYS

3.1. Design Surveys

The ENGINEER will provide field survey data for designing the project, and this survey will be tied to the Owner's control network.

The ENGINEER will conduct field surveys, utilizing radial topography methods, at intervals and for distances at and/or along the project site as appropriate for modeling the existing ground, including locations of pertinent features or improvements. The ENGINEER will locate buildings and other structures, streets, drainage features, trees over eight inches in diameter, visible utilities as well as those underground utilities marked by their owners and/or representatives, and any other pertinent topographic features that may be present at and/or along the project site. The ENGINEER will perform a drone aerial along the project site, and the ENGINEER will establish up to 12 control points for use during construction.

3.2. Property Surveys

The ENGINEER will show existing property, right of way, and easement information based upon GIS data provided by the CITY OF FAYETTEVILLE. The information will be labeled as approximate on the drawings, and the Scope of Services assumes the CITY OF FAYETTEVILLE has the right to rehabilitate and replace the existing water line. The ENGINEER will not subcontract abstractor record research, and the ENGINEER will not perform property surveys.

4. ENVIRONMENTAL SERVICES

The ENGINEER will accomplish the following.



4.1. Wetlands

The ENGINEER will perform a wetlands delineation along the project limits, submit a wetland report to the US Army Corps of Engineers (USACE), and request authorization to proceed under a nationwide 404 permit. Preparation of an individual 404 permit is Extra Work.

4.2. Habitat

The ENGINEER will prepare a preliminary habitat assessment and prepare and submit an initial clearance letter to U.S. Fish and Wildlife Services (USFWS). The Scope of Services assumes no threatened and endangered species studies and no further work than the initial clearance letter.

4.3. Stormwater

The ENGINEER will prepare a stormwater pollution prevention plan (SWPPP). The scope of services assumes the surface disturbance will not exceed five acres, and approval of the SWPPP will not be required by the Arkansas Department of Environmental Quality (ADEQ). The ENGINEER will prepare erosion control plans and details.

The ENGINEER will prepare and obtain short term activity authorization(s) (STAA) from ADEQ for up to four stream crossings. The ENGINEER will also pay the ADEQ fees, \$150 per each stream crossing for municipalities.

The ENGINEER will prepare and coordinate approval of the floodplain development permits with the CITY OF FAYETTEVILLE. The Scope of Services assumes three locations and no review fees.

4.4. Cultural Resources

The ENGINEER will coordinate initial clearance with the Arkansas State Historic Preservation Office (SHPO). The Scope of Services assumes no cultural resource surveys (archeological work) and no further work than the initial clearance letter

5. CONCEPTUAL DESIGN

The ENGINEER will accomplish the following.

- A. Prepare conceptual water line plans. The drawings will include a cover sheet, general sheet (legend, notes and survey control), plan and profile key map, and water plan and profiles (1"=20' full size scale). The drawings will include preliminary roadway plans for ARDOT Job 040846. The drawings will exclude traffic control, erosion control, and construction details. The conceptual design will represent approximately 30 percent of final construction contract plans and exclude any specifications and details.
- B. The ENGINEER will prepare an opinion of probable construction cost. The costs will include a contingency range from -30% to +50% for construction completion, and the cost will include an estimated cost for easements.
- C. The ENGINEER will submit the draft conceptual drawings and cost to the CITY OF FAYETTEVILLE for review and comment. The ENGINEER will conduct a workshop with the CITY OF FAYETTEVILLE to review and discuss the conceptual design, and the ENGINEER will incorporate CITY OF FAYETTEVILLE review comments into the final design.
- D. The ENGINEER will furnish plans (electronic pdf) to known utility owners and confirm utility locations on the plans.



- E. The Engineer will provide one hard copy of the conceptual design (including half and full-size drawings) and electronic pdfs.

6. FINAL DESIGN

Upon CITY OF FAYETTEVILLE approval of the Conceptual Design, the ENGINEER will proceed with Final Design and accomplish the following.

- A. The ENGINEER will conduct final designs to prepare construction plans and specifications, for one construction contract, including final construction details and quantities, special provisions, and opinion of probable construction cost with a contingency range from -10 percent to +15 percent for construction completion, and the cost will include an estimated cost for easements. The ENGINEER will use EJCDC standard front-end documents. The final plans will include details and erosion control plans and details. For work within the Highway 16 (South Razorback Road) right of way, the final plans will include a traffic control plan with details.
- B. Conduct a meeting with the CITY OF FAYETTEVILLE to review and discuss the Final Design. ENGINEER will also coordinate and confirm existing utility locations and construction requirements with known utilities electronically. Upon incorporating CITY OF FAYETTEVILLE review comments, the ENGINEER will submit and coordinate approval with the Arkansas Department of Health (ADH). ENGINEER will pay the ADH review fee in the amount of \$200. The ENGINEER will prepare and coordinate approval of the ARDOT Utility Permit. The ENGINEER will also prepare and coordinate approval of the Arkansas and Missouri Railroad. The CITY OF FAYETTEVILLE will pay for any bonds or fees required by ARDOT and the Arkansas and Missouri Railroad.
- C. The Engineer will provide one hard copy of the final design (including half and full-size drawings) and electronic pdfs.

7. PROPERTY ACQUISITION SERVICES – Not Used

8. BIDDING SERVICES

During the bidding phase of the project, ENGINEER will:

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

9. CONSTRUCTION PHASE SERVICES – Not Used (Future Contract Amendment)

10. EXTRA WORK

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



- A. Redesign for the Owner's convenience or due to changed conditions after previous alternate direction and/or approval.
- B. Submittals or deliverables in addition to those listed herein.
- C. Design of any utilities other than water.
- D. Construction materials testing.
- E. Geotechnical services.
- F. Any environmental beyond items under Environmental Services, including but not limited to wetland mitigation, cultural resource surveys, threatened and endangered species surveys, tribal coordination, Clean Water Act Section 401 Water Quality Certifications, work with USFWS beyond initial coordination approval, ADEQ permitting beyond SWPPP and STAA, and all other items that may be requested.
- G. Abstractor record research, property surveys, and property acquisition services.
- H. Services after construction, such as warranty follow-up.
- I. Legal and litigation services.
- J. Permits and approvals in addition to those listed herein.

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

11. SCHEDULE

Garver shall begin work under this Scope of Services within ten (10) days of a Notice to Proceed and shall complete the work in accordance with the schedule below.

Phase Description	Calendar Days
Surveys	60 days from start date
Conceptual Design	60 days from surveys
Final Design	90 days from approval of Conceptual Design
Property Acquisition Documents	60 days from approval of Final Design

12. PAYMENT

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



WORK DESCRIPTION	FEE AMOUNT	FEE TYPE
PROJECT MANAGEMENT AND ADMINISTRATION	\$7,700	HOURLY RATE + EXPENSES
SURVEYS	\$46,500	
ENVIRONMENTAL	\$19,800	
CONCEPTUAL DESIGN	\$54,800	
FINAL DESIGN	\$113,700	
BIDDING SERVICES	\$12,500	
CONSTRUCTION PHASE SERVICES	CONTRACT AMENDMENT REQUIRED	
TOTAL FEE	\$255,000	

The CITY OF FAYETTEVILLE will pay the ENGINEER for Service rendered at the agreed upon rates for each classification of Garver's personnel (may include contract staff classified at Garver's discretion) plus reimbursable expenses including but not limited to printing, courier service, reproduction, and travel. The total amount paid to Garver under this Scope of Services is estimated to be \$255,000. The actual total fee may not exceed this estimate. For informational purposes, a breakdown of Garver's estimated cost is included in this Exhibit B with approximate current hourly rates for each employee classification. The agreed upon rates will be increased annually with the first increase effective on or about July 1, 2023. Underruns in any phase may be used to offset overruns in another phase as long as the overall Agreement amount is not exceeded.

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

1. Direct cost for travel, long distance and wireless communications, outside reproduction and presentation material preparation, and mail/courier expenses.
2. Direct cost-plus for subcontract/subconsultant fees and permit fees.
3. Charges similar to commercial rates for reports, plan sheets, presentation materials, etc.

The CITY OF FAYETTEVILLE will pay ENGINEER on a monthly basis, based upon statements submitted by ENGINEER to the CITY OF FAYETTEVILLE for the scope of services described in this



agreement. Payments not received within 60 days of invoice date will be subject to a one percent monthly simple interest charge.

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



Exhibit B
City of Fayetteville, Arkansas
24" Water Line Rehabilitation
Garver Hourly Rate Schedule: July 2023 - June 2024

Classification	Rates
Engineers / Architects	
E-1.....	\$ 119.00
E-2.....	\$ 138.00
E-3.....	\$ 167.00
E-4.....	\$ 195.00
E-5.....	\$ 238.00
E-6.....	\$ 292.00
E-7.....	\$ 344.00
Planners / Environmental Specialist	
P-1.....	\$ 143.00
P-2.....	\$ 179.00
P-3.....	\$ 218.00
P-4.....	\$ 249.00
P-5.....	\$ 284.00
.....	\$ -
.....	\$ -
Designers	
D-1.....	\$ 111.00
D-2.....	\$ 129.00
D-3.....	\$ 154.00
D-4.....	\$ 179.00
Technicians	
T-1.....	\$ 87.00
T-2.....	\$ 110.00
T-3.....	\$ 134.00
Surveyors	
S-1.....	\$ 54.00
S-2.....	\$ 71.00
S-3.....	\$ 95.00
S-4.....	\$ 136.00
S-5.....	\$ 179.00
S-6.....	\$ 204.00



Exhibit B
City of Fayetteville, Arkansas
24" Water Line Rehabilitation
Garver Hourly Rate Schedule: July 2023 - June 2024

Classification	Rates
2-Man Crew (Survey).....	\$ 217.00
3-Man Crew (Survey).....	\$ 270.00
2-Man Crew (GPS Survey).....	\$ 238.00
3-Man Crew (GPS Survey).....	\$ 291.00
Construction Observation	
C-1.....	\$ 104.00
C-2.....	\$ 135.00
C-3.....	\$ 165.00
C-4.....	\$ 202.00
C-5.....	\$ 242.00
Management/Administration	
.....	\$ -
X-1.....	\$ 68.00
X-2.....	\$ 93.00
X-3.....	\$ 128.00
X-4.....	\$ 164.00
X-5.....	\$ 201.00
X-6.....	\$ 248.00
X-7.....	\$ 299.00
.....	\$ -
.....	\$ -

Agreement for Professional Services
 24" Water Line Rehabilitation

Garver Project No. 21W01161

APPENDIX B
City of Fayetteville, Arkansas
24" Water Line Rehabilitation
All Tasks

WORK TASK DESCRIPTION	SHZ	JRM	JTM	CRB	DCH	VLS	RCM	JCM	PED	JAJ	JRP		DDW	GARVER	GARVER	SUBS	GARVER	SUB-CO	TOTAL	
	E-7	E-6	E-4	E-4	E-2	D-1	P-2	P-1	S-5	S-4	2-Man Crew (Survey)	2-Man Crew (GPS Survey)	X-1	S-3	LABOR	ODC	TOTAL	TOTAL		
	\$344.00	\$292.00	\$195.00	\$195.00	\$138.00	\$111.00	\$179.00	\$143.00	\$179.00	\$136.00	\$217.00	\$238.00	\$68.00	\$95.00						
Basic Services Section																				
1. TASK (1 - General)																				
Subtotal - TASK (1 - General)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	
2. TASK (2 - Project Management and Admin.)																				
Project Management Plan				4	4										\$1,332		\$1,332	\$0	\$1,332	
Kickoff Meeting with City		2		4											\$1,364	\$18	\$1,382	\$0	\$1,382	
Monthly Invoices and Project Status Updates				12											\$2,340		\$2,340	\$0	\$2,340	
Internal Kickoff Meeting		1		4	1		1		1						\$1,568		\$1,568	\$0	\$1,568	
Quality Control Review	2		2												\$1,078		\$1,078	\$0	\$1,078	
Subtotal - TASK (2 - Project Management and Admin.)	2	3	2	24	5	0	1	0	1	0	0	0	0	0	\$7,682	\$18	\$0	\$7,700	\$0	\$7,700
3. TASK (3 - Surveys)																				
3.1 Design Surveys									8	16		80			\$22,648	\$300	\$22,948	\$0	\$22,948	
Utility Locates and Coordination													20		\$1,900	\$2,000	\$3,900	\$0	\$3,900	
Drone Coordination and Aerial												16	4		\$4,188	\$100	\$4,288	\$0	\$4,288	
12 Survey Control Points											8				\$1,736	\$76	\$1,812	\$0	\$1,812	
Data Processing									8	40					\$7,632		\$7,632	\$0	\$7,632	
3.2 Property Surveys															\$0		\$0	\$0	\$0	
GIS Data						8				4					\$1,432		\$1,432	\$0	\$1,432	
Quality Control Review				12					12						\$4,488		\$4,488	\$0	\$4,488	
Subtotal - TASK (3 - Surveys)	0	0	0	12	0	8	0	0	28	60	8	96	0	32	\$44,024	\$2,476	\$0	\$46,500	\$0	\$46,500
4. TASK (4 - Environmental Services)																				
4.1 Wetlands Delineation and Report								4	32						\$5,292	\$50	\$5,342	\$0	\$5,342	
USCE Request and Coordination								1	2						\$465	\$25	\$490	\$0	\$490	
4.2 Habitat Assessment								2	8						\$1,502	\$50	\$1,552	\$0	\$1,552	
USFWS Request and Coordination								1	2						\$465	\$25	\$490	\$0	\$490	
4.3 Stormwater (SWPPP)								2	8						\$1,502		\$1,502	\$0	\$1,502	
Erosion Control Plans and Details						40	2	8							\$5,942		\$5,942	\$0	\$5,942	
STAA's (up to 4 crossings)(\$150 fee each)							1	6							\$1,037		\$1,037	\$0	\$1,037	
ADEQ Requests and Coordination							1	2							\$465	\$34	\$499	\$0	\$499	
Floodplain Development permits (up to 3 locations)				2	4	4									\$1,386		\$1,386	\$0	\$1,386	
Quality Control Review				8											\$1,560		\$1,560	\$0	\$1,560	
Subtotal - TASK (4 - Environmental Services)	0	0	0	10	4	44	14	68	0	0	0	0	0	0	\$19,616	\$184	\$0	\$19,800	\$0	\$19,800
5. TASK (5 - Conceptual Design)																				
A. Conceptual Plans															\$0		\$0	\$0	\$0	
Cover Sheet				1	4										\$639		\$639	\$0	\$639	
General Sheet				1	4										\$639		\$639	\$0	\$639	
Key Map				1	8										\$1,083		\$1,083	\$0	\$1,083	
Plan and Profiles (about 20)				16	40	120									\$21,960		\$21,960	\$0	\$21,960	
ARDOT Coordination and Future Improvements				4	8	16									\$3,660		\$3,660	\$0	\$3,660	
Field Investigation				8											\$1,560	\$65	\$1,625	\$0	\$1,625	

APPENDIX B
City of Fayetteville, Arkansas
24" Water Line Rehabilitation
All Tasks

WORK TASK DESCRIPTION	SHZ	JRM	JTM	CRB	DCH	VLS	RCM	JCM	PED	JAJ	JRP		DDW	GARVER	GARVER	SUBS	GARVER	SUB-CO TOTAL	TOTAL				
	E-7	E-6	E-4	E-4	E-2	D-1	P-2	P-1	S-5	S-4	2-Man Crew (Survey)	2-Man Crew (GPS Survey)	X-1							S-3	LABOR	ODC	TOTAL
	\$344.00	\$292.00	\$195.00	\$195.00	\$138.00	\$111.00	\$179.00	\$143.00	\$179.00	\$136.00	\$217.00	\$238.00	\$68.00							\$95.00	hr.	hr.	0%
B. Cost Estimate				4	12												\$2,436		\$2,436	\$0	\$2,436		
C. City Coordination and Workshop		4		8													\$2,728	\$574	\$3,302	\$0	\$3,302		
Review Comment Responses		4		8	12	24											\$7,048		\$7,048	\$0	\$7,048		
D. Utility Coordination				8		24											\$4,224		\$4,224	\$0	\$4,224		
Quality Control Review		12	12	12													\$8,184		\$8,184	\$0	\$8,184		
Subtotal - TASK (5 - Conceptual Design)	0	20	12	71	72	200	0	0	0	0	0	0	0	\$54,161	\$639	\$0	\$54,800	\$0	\$54,800				
6. TASK (6 - Final Design)																							
A. Final Plans																	\$0		\$0	\$0	\$0		
Cover Sheet				1	4												\$639		\$639	\$0	\$639		
General Sheet (Notes, Legend, and Survey Control)				2	4	8											\$1,830		\$1,830	\$0	\$1,830		
Key Map (Phasing)				2	8	8											\$2,382		\$2,382	\$0	\$2,382		
Plan and Profiles (about 20)				24	80	160											\$33,480		\$33,480	\$0	\$33,480		
Traffic Control and Details (HWY Crossing)				2	4	8											\$1,830		\$1,830	\$0	\$1,830		
Construction Details				4	12	24											\$5,100		\$5,100	\$0	\$5,100		
Easement Considerations				4	8	16											\$3,660		\$3,660	\$0	\$3,660		
Cost Estimate				4	12												\$2,436		\$2,436	\$0	\$2,436		
Specifications				8	16										40		\$13,288		\$13,288	\$0	\$13,288		
B. City Coordination and Workshop		4		8													\$2,728		\$2,728	\$0	\$2,728		
Final Review Comments		4		16	24	80											\$16,480		\$16,480	\$0	\$16,480		
Utility Coordination				8	16												\$3,336		\$3,336	\$0	\$3,336		
ARDOT Coordination and Permit				4	8												\$1,668	\$100	\$1,768	\$0	\$1,768		
A&M Railroad Coordination and Permit				8	8												\$2,448	\$100	\$2,548	\$0	\$2,548		
ADH Coordination and Permit (\$200 fee) (Includes Hydrostatic Testing Permit)				4	4			2									\$1,618	\$353	\$1,971	\$0	\$1,971		
Unforeseen		4		16	24	40											\$12,040		\$12,040	\$0	\$12,040		
Quality Control Review		12	12	12													\$8,184		\$8,184	\$0	\$8,184		
Subtotal - TASK (6 - Final Design)	0	24	12	127	196	380	0	2	0	0	0	40	0	\$113,147	\$553	\$0	\$113,700	\$0	\$113,700				
7. TASK (7 - Property Acquisition Services - Not Used)																							
9. TASK (8 - Bidding Services)																							
City Coordination and Advertisement				4									4				\$1,052		\$1,052	\$0	\$1,052		
Bid Documents				2	4	8							8				\$2,374		\$2,374	\$0	\$2,374		
Addenda		4		4	8	16							8				\$5,372		\$5,372	\$0	\$5,372		
Pre-Bid Meeting				8													\$1,560	\$30	\$1,590	\$0	\$1,590		
Bid Opening				1													\$195	\$33	\$228	\$0	\$228		
Bid Evaluation and Recommendation to Award				4	8												\$1,884		\$1,884	\$0	\$1,884		
Quality Control Review																	\$0		\$0	\$0	\$0		
Subtotal - TASK (8 - Bidding Services)	0	4	0	23	20	24	0	0	0	0	0	0	20	0	\$12,437	\$63	\$0	\$12,500	\$0	\$12,500			
10. TASK (9- Construction Phase Services)																							
Subtotal - TASK (9- Construction Phase Services)	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	\$0				
Subtotal - Basic Services Section	2	51	26	267	297	656	15	70	29	60	8	136	20	32	\$251,067	\$3,933	\$0	\$255,000	\$0	\$255,000			
Hours Check	2	51	26	267	297	656	15	70	29	60	8	136	20	32	251067	3933	0	255000	0	255000			
Project Totals	2	51	26	267	297	656	15	70	29	60	8	136	20	32	\$251,067	\$3,933	\$0	\$255,000	\$0	\$255,000			
Project Totals (Cost)	\$688.00	\$14,892.00	\$5,070.00	\$52,065.00	\$40,986.00	\$72,816.00	\$2,685.00	\$10,010.00	\$5,191.00	\$8,160.00	\$1,736.00	\$32,368.00	\$1,360.00	\$3,040.00									