

City of Fayetteville Staff Review Form

2020-0449

Legistar File ID

6/16/2020

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

Chris Brown

5/28/2020

ENGINEERING (621)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of a professional services agreement with FTN Associates Ltd, pursuant to RFQ 20-01 Selection #7, in the total amount of \$78,500.00 for analysis of Hamestring Creek (HSC), Hamestring Creek Tributary 3 (HS3) and the South Fork Hamestring Creek (SFHSC) for potential improvements to help alleviate flooding in the area.

Budget Impact:

4470.621.8810-5314.00

Sales Tax Capital Improvement

Account Number

Fund

02108.2002

Other Drainage Improvements; Clabber Creek
Flood Study

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 82,000.00

Funds Obligated \$ -

Current Balance **\$ 82,000.00**

Does item have a cost? Yes

Item Cost \$ 78,500.00

Budget Adjustment Attached? No

Budget Adjustment \$ -

Remaining Budget **\$ 3,500.00**

V20180321

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF JUNE 16, 2020

TO: Mayor and City Council

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

FROM: Alan Pugh, Staff Engineer

DATE: May 27, 2020

SUBJECT: Approval of a professional services agreement with FTN Associates Ltd, pursuant to RFQ 20-01 Selection #7, in the total amount of \$78,500.00 for analysis of Hamestring Creek (HSC), Hamestring Creek Tributary 3 (HS3) and the South Fork Hamestring Creek (SFHSC) for potential improvements to help alleviate flooding in the area.

RECOMMENDATION:

Staff recommends approval of a professional services agreement with FTN Associates Ltd, pursuant to RFQ 20-01 Selection #7, in the total amount of \$78,500.00 for analysis of Hamestring Creek (HSC), Hamestring Creek Tributary 3 (HS3) and the South Fork Hamestring Creek (SFHSC) for potential improvements to help alleviate flooding in the area.

BACKGROUND:

There is a history of flooding within the Hamestring Creek watershed, most of which is upstream of I-49. In particular the areas include the West End Apartments, homes along W Valley Drive, W Hatfield St, W Holley Street and W Lawson Street. These areas have multiple homes that have flooded on several occasions including the 2011 and 2017 flood events. The potential redevelopment of Lewis Fields also lies within the headwaters of HS3.

DISCUSSION:

As stated, growth in this area continues with many homes already being impacted negatively by flooding. Given the history of flooding within multiple areas, staff felt it important to look at the overall system to determine how the stream segments interact with one another. For this reason, multiple streams segments are included within the proposed study as well as several areas of potential detention to determine if peak flows can be substantially reduced. As solutions for the existing flooding and future modifications are determined, funding can then begin to be identified for the necessary improvements.

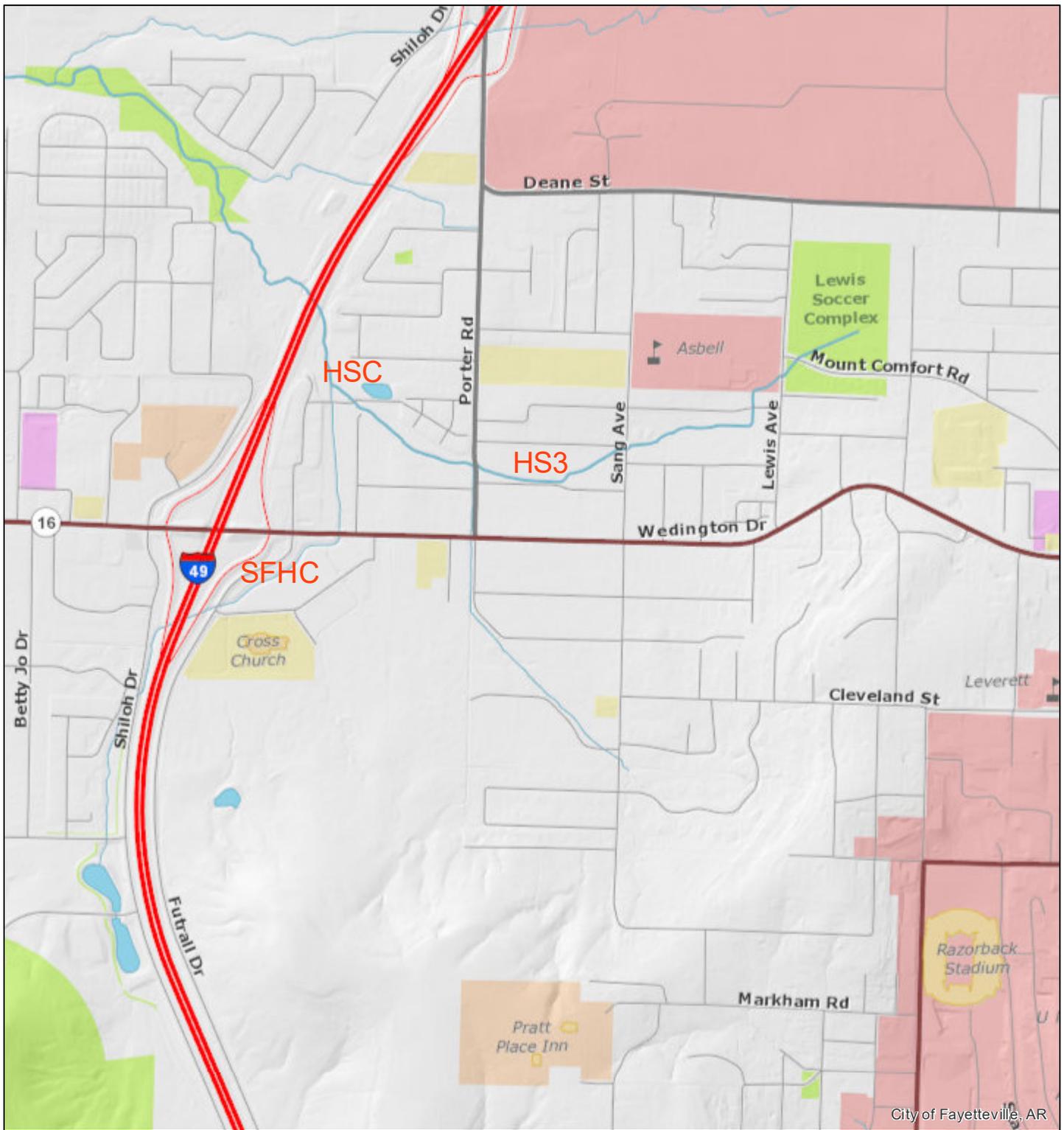
BUDGET/STAFF IMPACT:

The proposed cost of the flood analysis is proposed to be taken from 02108.1, other drainage Improvements.

Attachments:

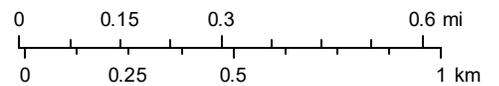
Contract for services
Vicinity Map

Hamestring Creek Flood Mitigation Study



5/27/2020, 1:11:48 PM

1:18,056



The data contained herein was compiled from various sources for the sole use and benefit of the City of Fayetteville Geographic Information System and the public agencies it serves. Any use of the data by anyone other than the City of Fayetteville is at the sole risk of the user; and by acceptance of this data, the user does hereby agree to indemnify the City of Fayetteville and hold the City of Fayetteville harmless from and without liability for any claims, actions, cost for damages of any nature, including the city's cost of defense, asserted by user or by another arising from the use of this data. The City of Fayetteville makes no express or implied warranties with reference to the data. No word, phrase, or clause found herein shall be construed to waive that tort immunity set forth under Arkansas law.



water resources / environmental consultants

124 W Sunbridge Drive, Suite 3 • Fayetteville, AR 72703 • (479) 571-3334 • FAX (479) 571-3338

May 26, 2020
apugh@fayetteville-ar.gov

Mr. Alan Pugh, PE, CFM
City of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701

RE: Proposal for Hamestring Watershed Analysis and Mitigation Alternatives along
Hamestring Creek, Hamestring Creek Tributary 3, and South Fork Hamestring Creek
FTN No. P04370-2365-001

Dear Mr. Pugh:

In response to your request, FTN Associates, Ltd. (FTN) appreciates the opportunity to submit the following proposal to provide professional engineering services related to the development of hydrologic and hydraulic analyses and flood mitigation alternatives in the upper Hamestring Creek watershed, specifically along Hamestring Creek (HSC) from the downstream side of Interstate 49 up to the current effective FEMA Flood Insurance Rate Map Limit of Study, Hamestring Creek Tributary 3 (HS-3) from its confluence with HSC upstream to Lewis Park, and South Fork Hamestring Creek (SFHC) from its confluence with HSC upstream to Wedington Drive, located in the City of Fayetteville, Washington County, Arkansas (the Project).

Our Basic Services will generally consist of acquiring and processing field survey data and existing topographic data, acquiring and reviewing existing hydrologic, hydraulic, and storm sewer inventory data, performing hydrologic and hydraulic modeling, and evaluating results of conceptual-level alternatives to reduce flood extents and elevations for the Project area, all as set forth in the printed Scope of Work for Basic Services included as Appendix A to the terms of the Agreement for Professional Engineering Services Between City of Fayetteville, Arkansas, and FTN Associates, Ltd. (the Agreement). We will also furnish such Additional Services as you may request. Subsequent phases of the Project will be addressed in the future once the results of the analysis and alternatives are known.

We expect to start our services promptly after receipt of your acceptance of this proposal and written authorization to proceed. We anticipate these Basic Services will require approximately 8 months to complete following the approval of authorization to proceed. Additional information regarding the project schedule and deliverables is provided as Appendix B to the Agreement.

Mr. Alan Pugh, PE, CFM
May 26, 2020
Page 2

This proposal, which includes the Agreement and associated appendices, represents the entire understanding between you and us with respect to the Project and may only be modified in writing signed by both of us. This proposal will be open for acceptance until July 3, 2020, unless changed by us in writing.

We appreciate the opportunity to work with you on this Project. Please do not hesitate to call me or Lee Beshoner, PE, CFM at (479) 571-3334 if you have any questions relating to this proposal or additional services offered by FTN.

Respectfully submitted,
FTN ASSOCIATES, LTD.



Mr. Travis B. Scott, PE, PG, CFM
Project Manager

TBS/kae

Attachments



S:\PROPOSALS\04370-2365-001\FINAL\REVISED\2020-05-26 FTN PROP COF-H & H ANALYSIS.DOCX



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

THIS AGREEMENT is made as of June 2, 2020, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and FTN Associates, Ltd. (hereinafter called ENGINEER).

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

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

SECTION 1 - AUTHORIZATION OF SERVICES

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

SECTION 2 - BASIC SERVICES OF ENGINEER

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

SECTION 3 - RESPONSIBILITIES OF CITY OF FAYETTEVILLE

- 3.1 CITY OF FAYETTEVILLE shall, within a reasonable time, so as not to delay the services of ENGINEER.
- 3.1.1 Provide full information as to CITY OF FAYETTEVILLE's requirements for the Project.
- 3.1.2 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.
- 3.1.3 Assist ENGINEER in obtaining access to property reasonably necessary for ENGINEER to perform its services under this Agreement.
- 3.1.4 Examine all studies, reports, sketches, cost opinions, proposals, and other documents presented by ENGINEER and render in writing decisions pertaining thereto.
- 3.1.5 The City Engineer is the CITY OF FAYETTEVILLE's project representative with respect to the services to be performed under this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define CITY OF FAYETTEVILLE's policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.
- 3.1.6 CITY OF FAYETTEVILLE and/or its representative will review all documents and provide written comments to ENGINEER in a timely manner.

SECTION 4 - PERIOD OF SERVICE

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

SECTION 5 - PAYMENTS TO ENGINEER

- 5.1 The maximum not-to-exceed amount authorized for this Agreement is **\$78,500**. The CITY OF FAYETTEVILLE shall compensate ENGINEER based on an hourly NTE basis described in Appendix C.
- 5.2 Statements
 - 5.2.1 Monthly statements for each calendar month shall be submitted to CITY OF FAYETTEVILLE or such parties as CITY OF FAYETTEVILLE may designate for professional services consistent with ENGINEER's normal billing schedule. Once established, the billing schedule shall be maintained throughout the duration of the Project. Applications for payment shall be made in accordance with a format to be developed by ENGINEER and approved by CITY OF FAYETTEVILLE. Applications for payment shall

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

5.3 Payments

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

5.4 Final Payment

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

SECTION 6 - GENERAL CONSIDERATIONS

6.1 Insurance

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

<u>Type of Coverage</u>	<u>Limits of Liability</u>
Workers' Compensation Employers' Liability	Statutory \$500,000 Each Accident
Commercial General Liability Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Automobile Liability: Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Professional Liability Insurance	\$1,000,000 Each Claim

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

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

6.2 Professional Responsibility

6.2.1 ENGINEER will exercise reasonable skill, care, and diligence in the performance of ENGINEER's services and will carry out its responsibilities in accordance with customarily accepted professional engineering practices. CITY OF FAYETTEVILLE will promptly report to ENGINEER any defects or suspected defects in ENGINEER's services of which CITY OF FAYETTEVILLE becomes aware, so that ENGINEER can take measures to minimize the consequences of such a defect. CITY OF FAYETTEVILLE retains all remedies to recover for its damages caused by any negligence of ENGINEER.

6.3 Cost Opinions and Projections

6.3.1 Cost opinions and projections prepared by ENGINEER relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on ENGINEER's experience, qualifications, and judgment as a design professional. Since ENGINEER has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction Contractors' procedures and methods, unavoidable delays, construction Contractors' methods of determining prices, economic conditions, competitive bidding or market conditions, and other factors affecting such cost opinions or projections, ENGINEER does not guarantee that actual rates, costs, performance, schedules, and related items will not vary from cost opinions and projections prepared by ENGINEER.

6.4 Changes

6.4.1 CITY OF FAYETTEVILLE shall have the right to make changes within the general scope of ENGINEER's services, with an appropriate change in compensation and schedule only after Fayetteville City Council approval of such proposed changes and, upon execution of a mutually acceptable amendment or change order signed by the Mayor of the CITY OF FAYETTEVILLE and the duly authorized officer of ENGINEER.

6.5 Termination

6.5.1 This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given:

6.5.1.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,

6.5.1.2 An opportunity for consultation with the terminating party prior to termination.

- 6.5.2 This Agreement may be terminated in whole or in part in writing by CITY OF FAYETTEVILLE for its convenience, provided that ENGINEER is given:
- 6.5.2.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,
- 6.5.2.2 An opportunity for consultation with the terminating party prior to termination.
- 6.5.3 If termination for default is effected by CITY OF FAYETTEVILLE, an equitable adjustment in the price provided for in this Agreement shall be made, but
- 6.5.3.1 No amount shall be allowed for anticipated profit on unperformed services or other work,
- 6.5.3.2 Any payment due to ENGINEER at the time of termination may be adjusted to cover any additional costs to CITY OF FAYETTEVILLE because of ENGINEER's default.
- 6.5.4 If termination for default is effected by ENGINEER, or if termination for convenience is effected by CITY OF FAYETTEVILLE, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by ENGINEER relating to commitments which had become firm prior to the termination.
- 6.5.5 Upon receipt of a termination action under Paragraphs 6.5.1 or 6.5.2 above, ENGINEER shall:
- 6.5.5.1 Promptly discontinue all affected work (unless the notice directs otherwise),
- 6.5.5.2 Deliver or otherwise make available to CITY OF FAYETTEVILLE all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by ENGINEER in performing this Agreement, whether completed or in process.
- 6.5.6 Upon termination under Paragraphs 6.5.1 or 6.5.2 above CITY OF FAYETTEVILLE may take over the work and may award another party an agreement to complete the work under this Agreement.
- 6.5.7 If, after termination for failure of ENGINEER to fulfill contractual obligations, it is determined that ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of CITY OF FAYETTEVILLE. In such event, adjustments of the agreement price shall be made as provided in Paragraph 6.5.4 of this clause.
- 6.6 Delays
- 6.6.1 In the event the services of ENGINEER are suspended or delayed by CITY OF FAYETTEVILLE or by other events beyond ENGINEER's reasonable control, ENGINEER shall be entitled to additional compensation and time for reasonable costs incurred by ENGINEER in temporarily closing down or delaying the Project.

6.7 Rights and Benefits

6.7.1 ENGINEER's services will be performed solely for the benefit of CITY OF FAYETTEVILLE and not for the benefit of any other persons or entities.

6.8 Dispute Resolution

6.8.1 Scope of Paragraph: The procedures of this Paragraph shall apply to any and all disputes between CITY OF FAYETTEVILLE and ENGINEER which arise from, or in any way are related to, this Agreement, including, but not limited to the interpretation of this Agreement, the enforcement of its terms, any acts, errors, or omissions of CITY OF FAYETTEVILLE or ENGINEER in the performance of this Agreement, and disputes concerning payment.

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

6.8.3 Notice of Dispute

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

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

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

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

6.10 Publications

6.10.1 Recognizing the importance of professional development on the part of ENGINEER's employees and the importance of ENGINEER's public relations, ENGINEER may prepare publications, such as technical papers, articles for periodicals, and press releases, pertaining to ENGINEER's services for the Project. Such publications will be provided to CITY OF FAYETTEVILLE in draft form for CITY OF FAYETTEVILLE's advance review. CITY OF FAYETTEVILLE shall review such drafts promptly and provide CITY OF FAYETTEVILLE's comments to ENGINEER. CITY OF FAYETTEVILLE may require

deletion of proprietary data or confidential information from such publications, but otherwise CITY OF FAYETTEVILLE will not unreasonably withhold approval. The cost of ENGINEER's activities pertaining to any such publication shall be for ENGINEER's account.

6.11 Indemnification

6.11.1 CITY OF FAYETTEVILLE agrees that it will require all construction Contractors to indemnify, defend, and hold harmless CITY OF FAYETTEVILLE and ENGINEER from and against any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractors, or their employees, agents, Subcontractors, and Suppliers.

6.12 Ownership of Documents

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

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

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

6.13 Notices

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

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

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

6.14 Successor and Assigns

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

6.15 Controlling Law

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

6.16 Entire Agreement

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

SECTION 7 - SPECIAL CONDITIONS

7.1 Additional Responsibilities of ENGINEER

7.1.1 CITY OF FAYETTEVILLE's review, approval, or acceptance of design drawings, specifications, reports and other services furnished hereunder shall not in any way relieve ENGINEER of responsibility for the technical adequacy of the work. Neither CITY OF FAYETTEVILLE's review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

7.1.2 ENGINEER shall be and shall remain liable, in accordance with applicable law, for all damages to CITY OF FAYETTEVILLE caused by ENGINEER's negligent performance of any of the services furnished under this Agreement except for errors, omissions or other deficiencies to the extent attributable to CITY OF FAYETTEVILLE or CITY OF FAYETTEVILLE-furnished data.

7.1.3 ENGINEER's obligations under this clause are in addition to ENGINEER's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that CITY OF FAYETTEVILLE may have against ENGINEER for faulty materials, equipment, or work.

7.2 Remedies

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

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

7.3 Audit: Access to Records

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

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

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

7.3.3.1 Negotiated prime agreements:

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

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

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

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

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

7.4 Covenant Against Contingent Fees

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

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

7.5 Gratuities

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

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

7.6 Arkansas Freedom of Information Act

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

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

CITY OF FAYETTEVILLE, ARKANSAS

ENGINEER

By : _____
Mayor, Lioneld Jordan

By: Travis B Scott

ATTEST:

By: _____
City Clerk

Title: Project Manager

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

APPENDIX A

Scope of Work for Basic Services Hamestring Watershed Analysis and Mitigation Alternatives along Hamestring Creek, Hamestring Creek Tributary 3, and South Fork Hamestring Creek Fayetteville, Washington County, Arkansas

Attached to and made part of the Agreement for Professional Engineering Services dated May 26, 2020 between FTN Associates, Ltd. (ENGINEER) and the City of Fayetteville (CITY OF FAYETTEVILLE) with respect to the project described therein. The specific tasks and assumptions are provided below.

PROJECT DESCRIPTION

ENGINEER will acquire and process field survey data and existing topographic data, and review existing hydrologic and hydraulic data for Hamestring Creek (HSC), Hamestring Creek Tributary 3 (HS-3), and South Fork Hamestring Creek (SFHC). ENGINEER will develop updated hydrologic and hydraulic modeling for the upper Hamestring basin upstream of Interstate 49 to the upstream watershed extent, generally near Garland Avenue. Specifically, hydraulic modeling will extend along HSC from I-49 to the current effective FEMA Flood Insurance Rate Map Limit of Study, HS-3 from its confluence with HSC upstream to Lewis Park, and SFHC from its confluence with HSC upstream to Wedington Drive, located in the City of Fayetteville, Washington County, Arkansas (the Project). Additionally, initial conceptual-level alternatives will be evaluated for the updated model segments of Hamestring Creek, Hamestring Creek Tributary 3, and South Fork Hamestring Creek in an attempt to reduce flood extents and elevations.

If the CITY OF FAYETTEVILLE chooses to proceed with design of one or more alternatives, additional tasks may be performed as Additional Services under this agreement. Such services could also include preparation of an application for Conditional Letter of Map Revision (CLOMR) for the proposed improvements as the potential improved area(s) are in existing regulatory FEMA floodplain. It should be noted that the overall timeframe for issuance of a CLOMR by FEMA can extend 12 months or more from the initial date of submittal of the application.

TASK 1 — DATA GATHERING AND PROCESSING

ENGINEER will perform field reconnaissance activities, as needed, to verify select storm sewer inventory; obtain field survey data (using a survey subconsultant) and available topographic data, and process the data for use in subsequent tasks.

ENGINEER will obtain, review and categorize relevant historical and effective hydrologic and hydraulic models available for the Project area, if available.

We will initiate this task upon receipt of notification to proceed including the signed contract and expect to complete it within 60 days, although delays in field survey collection could result in a longer time to completion if adverse weather conditions occur.

TASK 2 — HYDROLOGIC MODELING

ENGINEER will develop an updated hydrologic model for the Project area using information gathered from Task 1 as appropriate. Hydrologic modeling of peak discharges along HSC may be extended downstream to Ruppel Road in order to allow an assessment of potential downstream impacts should peak discharges increase as a result of upstream modifications to be considered in Task 4. Peak discharge information for the 10%-, 2%-, 1%-, and 0.2%-annual-chance, (10-, 50-, 100-, 500-year), 24-hour flood events will be developed for use in subsequent tasks. This task is expected to be completed within 60 days after receipt of notification to proceed.

TASK 3 — HYDRAULIC MODELING

Using the information gathered in Task 1 and discharges determined in Task 2, ENGINEER will perform updated hydraulic modeling for the following stream segments:

HSC: From a point downstream of I-49 upstream to the current effective FEMA Flood Insurance Rate Map (FIRM) Limit of Study.

HS-3: From the confluence with HSC upstream to Lewis Park (the current effective FEMA FIRM Limit of Study).

SFHC: From the confluence with HSC upstream to the downstream side of Wedington Drive.

Any existing, certified as-built data available within the Project area is to be provided by the CITY OF FAYETTEVILLE, in both PDF format and in Civil 3D or other appropriate CAD format, in the coordinate system consistent with the CITY OF FAYETTEVILLE requirements.

Hydraulic modeling for the 10%-, 2%-, 1%-, and 0.2%-annual-chance, 24-hour storm events and the encroached 1%-annual-chance (Floodway) event for HSC, HS-3, and SFHC will be developed. The updated modeling will be used to prepare profiles representing expected flood elevations for the Project area based upon existing conditions.

We expect to complete this task within 60 days after completion of Task 2 and receipt of necessary survey data (Task 1).

If additional field survey collection or model development is required to address other altered conditions not reflected in the effective hydraulic models, these tasks will be performed as Additional Services.

TASK 4 — CONCEPTUAL - LEVEL EVALUATION OF ALTERNATIVES

ENGINEER will evaluate conceptual-level alternatives relating to the potential for reduction of Base Flood Elevations, flood risk and floodplain mapping extents in the upper Hamestring Watershed. Currently, it is estimated that there are approximately 30 single family residences potentially impacted along HSC, approximately 75 single-family residences potentially impacted along HS-3, and approximately 15 multi-family residences potentially impacted along SFHC.

Various scenarios will be considered including structure improvements, detention and channel enlargement along HSC, structure improvements, detention and channel modifications along HS-3, and structure modifications or removal and channel improvements along SFHC.

This scope includes preparation of a conceptual-level report of study results, evaluated alternatives and potential improvements to reduce flood elevations and extents for the Project area. If the CITY OF FAYETTEVILLE chooses to incorporate additional alternatives, this scope of services may be modified to address more tasks as Additional Services.

We expect to provide our conceptual-level report of results to the CITY OF FAYETTEVILLE within 45 days after the completion of Task 3. Any comments received from the CITY OF FAYETTEVILLE will be addressed within two (2) weeks after receipt. This Project scope includes attending one meeting with staff to discuss the results of the evaluation and one separate neighborhood meeting, if desired, (to be arranged by the CITY OF FAYETTEVILLE) to explain the alternatives and to present the findings.

If comments are provided by the CITY OF FAYETTEVILLE due to changes in regulations or to address other items outside the Project scope, Additional Services may be required to address such comments.

TASK 5 — COORDINATION

Perform general project coordination including progress reports and invoicing, project emails and telephone calls with the CITY OF FAYETTEVILLE.

APPENDIX B
Schedule and Deliverables
Hamestring Watershed Analysis and Mitigation Alternatives
Fayetteville, Arkansas

SCHEDULE

TASK	START*	END*
PROJECT AUTHORIZATION	6/23/2020	
DATA GATHERING AND PROCESSING	6/23/2020	8/21/2020
HYDROLOGIC MODELING	6/23/2020	8/21/2020
HYDRAULIC MODELING	8/21/2020	10/20/2020
CONCEPTUAL – LEVEL EVALUATION OF ALTERNATIVES	10/20/2020	12/4/2020
COORDINATION	6/23/2020	12/31/2020

* Schedule dates are based upon assumed start date of June 23, 2020.

DELIVERABLES

Conceptual-level report of study results describing evaluated alternatives and potential improvements to reduce flood elevations and extents for the Project area.

APPENDIX C

2020 Fee Schedule¹ FTN Associates, Ltd.

<u>Labor Category</u>	<u>Hourly Rate</u>
Professional 7	\$ 207.00
Professional 6	185.00
Professional 5	164.00
Professional 4	146.00
Professional 3	129.00
Professional 2	111.00
Professional 1	99.00
Technician 4	101.00
Technician 3	90.00
Technician 2	79.00
Technician 1	67.00
Executive Assistant	74.00
Word Processing	64.00

Direct Expenses

All direct project expenses will be invoiced at cost plus 10 percent. Direct project expenses include such items as travel, meals, lodging, shipping, supplies, consultants, subcontractors, etc. Vehicle mileage will be charged at standard IRS rates.

A charge of 2 percent is applied to the total labor amount to cover communication charges and computer expenses associated with computer applications, data storage and backup.

Should back-up data be requested for reimbursable expenses, it will be provided for an administrative fee.

Payment Terms

Unless other arrangements are made in writing, invoicing will be monthly for services completed and will be sent via email to the Client. Payment is due in full within 30 days of invoice and are preferred to be paid electronically through Automated Clearing House (ACH) system; however, other methods are acceptable. A service charge of 1.5 percent per month will be charged on all balances over 30 days.

¹Effective January 1, 2020 – December 31, 2020

Hamestring Watershed Study and Preliminary Valley Drive Floodplain Mitigation Analysis

Meetings		2 Project Review Meeting, Public Meeting														Survey Subconsultant	FTN Fee	Total Cost		
		Principal / Sr Eng		Project Manager / Eng / GIS				GIS / Jr. Engr.				T4	T3	T2	T1				74	WP
		P7	P6	P5	P4	P3	P2	P1												
2020 rates		\$ 207	\$ 185	\$ 164	\$ 146	\$ 129	\$ 111	\$ 99	\$ 101	\$ 90	\$ 79	\$ 67	\$ 71	\$ 64						
1	Data Gathering and Processing																\$ 15,652			
	Obtain, review, categorize existing modeling			4				2										\$ 854		
	Integrate existing terrain and storm system data			4				6										\$ 1,250		
	Survey			6				4										\$ 1,380		
	Field reconnaissance			4				8		8								\$ 2,168		
	FTN Survey																\$ 9,000	\$ 1,000		
2	Hydrologic Analyses																\$ 9,840			
	Delineation and downstream impact			4				12										\$ 1,844		
	Incorporate storm basins			4				4		4								\$ 1,412		
	Develop peak			8				32										\$ 4,480		
	QA review/documentation			8				8										\$ 2,104		
3	Hydraulic Analyses																\$ 24,058			
	HS-3 Entire Hydraulic Model			16				60										\$ 8,564		
	Hamestring Creek Hydraulic Model update			4				24										\$ 3,032		
	South Fork Hamestring Hydraulic Model update			4				16										\$ 2,240		
	QA Reviews/Revisions			6				10										\$ 1,974		
	Finalization			6				16										\$ 2,568		
	Prepare Report			8				16							4			\$ 3,152		
	Meet with City Staff, Meet with Public			8				8		4					1			\$ 2,528		
4	Conceptual - Level Evaluation of Alternatives																\$ 22,094			
	Valley Drive			8				24		8								\$ 4,408		
	Lewis Park Detention			4				8		8								\$ 2,168		
	HS-3 Structure Improvements			4				12		8								\$ 2,564		
	West End Modifications			6				12		8								\$ 2,892		
	Road Crossing Improvements			8				20		8								\$ 4,012		
	HSC upstream detention			2				10		8								\$ 2,038		
	Evaluate Optimal Improvements			8				20		8								\$ 4,012		
5	Coordination																\$ 6,840			
	Project Management			12											6			\$ 2,352		
	Coordination			12											12			\$ 2,736		
	Reporting			6											12			\$ 1,752		
FTN Fee Total																	\$ 78,484			