City of Fayetteville Staff Review Form

2021-0388

Legistar File ID

6/1/2021

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

Tim Nyander	5/12/2021	WATER SEWER (720)
Submitted By	**Submitted Date**	**Division / Department**

Action Recommendation:

Staff recommends approval of an engineering services agreement with McClelland Consulting Engineers, Inc. in an amount not to exceed $273,388.00 for professional services associated with ArDOT Project 040785 Utility Relocations along Highway 16 from Stone Bridge Rd. to E. Roberts Rd.

Budget Impact:

5400.720.5600-5314.00/5400.720.5700-5314.00	Water and Sewer
Account Number	Fund
11011.2102	Water/Sewer Relocations - Bond Projects
Project Number	Project Title

Budgeted Item?	Yes	Current Budget	$	9,404,332.00
		Funds Obligated	$	6,137,279.71
		Current Balance	**$**	**3,267,052.29**
Does item have a cost?	Yes	Item Cost	$	273,388.00
Budget Adjustment Attached?	No	Budget Adjustment	$	-
		Remaining Budget	**$**	**2,993,664.29**

V20180321

Purchase Order Number: _____ **Previous Ordinance or Resolution #** _____

Change Order Number: _____ **Approval Date:** _____

Original Contract Number: _____

Comments: RFQ 21-01, Selection #5

CITY OF
FAYETTEVILLE
ARKANSAS

CITY COUNCIL MEMO

MEETING OF JUNE 1, 2021

TO: Mayor and City Council

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

FROM: Corey Granderson, Utilities Engineer

DATE: May 12, 2021

SUBJECT: **Engineering Services Agreement with McClelland Consulting Engineers, Inc. for Utility Relocations Required by ArDOT Project 040785 (Hwy 16 from Stone Bridge Rd. to E. Roberts Rd.)**

RECOMMENDATION:
Staff recommends approval of an engineering services agreement with McClelland Consulting Engineers, Inc. in an amount not to exceed $273,388.00 for professional services associated with ArDOT Project 040785 Utility Relocations along Highway 16 from Stone Bridge Rd. to E. Roberts Rd.

BACKGROUND
ArDOT has notified the City of Fayetteville to relocate water and sewer infrastructure along Highway 16 where they will be widening the roadway to 4-lanes. After receiving this notification, a formal selection committee was held on March 30, 2021 at which McClelland was selected for contract negotiations (RFQ 21-01, Selection #5).

DISCUSSION:
Affected utilities include approximately 4,100 linear feet of 8-inch diameter cast iron waterline that will need to be replaced and upgraded to 12-inch diameter PVC pipe. Additionally, there is approximately 1,700 linear feet of small diameter sanitary sewer relocation necessary. Parts of this project appear to be reimbursible to the City by ArDOT, however preliminary engineering must be completed first to determine exact qualifications. Afterwards, a formal relocaton agreement will be presented to the City Council outlining the terms of reimbursement. This engineering services agreement will include survey, engineering design, permitting, and bidding services.

BUDGET/STAFF IMPACT:
Funds are available in the Water & Sewer Relocations – Bond Projects account.

Attachments:
Engineering Services Agreement
Scope/Fee Matrix
ArDOT Relocation Notification Letter

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

THIS AGREEMENT is made as of _____, 2021, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and McClelland Consulting Engineers, Inc. (hereinafter called ENGINEER).

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

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

SECTION 1 - AUTHORIZATION OF SERVICES

1.1 Services on any assignment shall be undertaken only upon written Authorization of CITY OF FAYETTEVILLE and agreement of ENGINEER.

1.2 Assignments may include services described hereafter as Basic Services or as Additional Services of ENGINEER.

1.3 Changes, modifications or amendments in scope, price or fees to this contract shall **not** be allowed without a formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, costs, fees, or delivery schedule.

SECTION 2 - BASIC SERVICES OF ENGINEER

2.1 Perform professional services in connection with the Project as hereinafter stated.

2.1.1 The Scope of Services to be furnished by ENGINEER during the Project is included in **Appendix A** attached hereto and made part of this Agreement.

2.2 ENGINEER shall coordinate their activities and services with the CITY OF FAYETTEVILLE. ENGINEER and CITY OF FAYETTEVILLE agree that ENGINEER has full responsibility for the engineering services.

SECTION 3 - RESPONSIBILITIES OF CITY OF FAYETTEVILLE

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

3.1.1 Provide full information as to CITY OF FAYETTEVILLE's requirements for the Project.

3.1.2 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.

3.1.3 Assist ENGINEER in obtaining access to property reasonably necessary for ENGINEER to perform its services under this Agreement.

3.1.4 Examine all studies, reports, sketches, cost opinions, proposals, and other documents presented by ENGINEER and render in writing decisions pertaining thereto.

3.1.5 The Utilities Director is the CITY OF FAYETTEVILLE's project representative with respect to the services to be performed under this Agreement. The Utilities Director shall have complete authority to transmit instructions, receive information, interpret and define CITY OF FAYETTEVILLE's policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.

3.1.6 CITY OF FAYETTEVILLE and/or its representative will review all documents and provide written comments to ENGINEER in a timely manner.

SECTION 4 - PERIOD OF SERVICE

4.1 This Agreement will become effective upon the first written notice by CITY OF FAYETTEVILLE authorizing services hereunder.

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

SECTION 5 - PAYMENTS TO ENGINEER

5.1 The maximum not-to-exceed amount authorized for this Agreement is **$273,388.00**. The CITY OF FAYETTEVILLE shall compensate ENGINEER based on an hourly not-to-exceed 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 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:

Type of Coverage	Limits of Liability
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,

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

6.5.3 If termination for default is effected by CITY OF FAYETTEVILLE, an equitable adjustment in the price provided for in this Agreement shall be made, but

6.5.3.1 No amount shall be allowed for anticipated profit on unperformed services or other work,

6.5.3.2 Any payment due to ENGINEER at the time of termination may be adjusted to cover any additional costs to CITY OF FAYETTEVILLE because of ENGINEER's default.

6.5.4 If termination for default is effected by ENGINEER, or if termination for convenience is effected by CITY OF FAYETTEVILLE, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by ENGINEER relating to commitments which had become firm prior to the termination.

6.5.5 Upon receipt of a termination action under Paragraphs 6.5.1 or 6.5.2 above, ENGINEER shall:

6.5.5.1 Promptly discontinue all affected work (unless the notice directs otherwise),

6.5.5.2 Deliver or otherwise make available to CITY OF FAYETTEVILLE all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by ENGINEER in performing this Agreement, whether completed or in process.

6.5.6 Upon termination under Paragraphs 6.5.1 or 6.5.2 above CITY OF FAYETTEVILLE may take over the work and may award another party an agreement to complete the work under this Agreement.

6.5.7 If, after termination for failure of ENGINEER to fulfill contractual obligations, it is determined that ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of CITY OF FAYETTEVILLE. In such event, adjustments of the agreement price shall be made as provided in Paragraph 6.5.4 of this clause.

6.6 Delays

6.6.1 In the event the services of ENGINEER are suspended or delayed by CITY OF FAYETTEVILLE or by other events beyond ENGINEER's reasonable control, ENGINEER shall be entitled to additional compensation and time for reasonable costs incurred by ENGINEER in temporarily closing down or delaying the Project.

6.7 Rights and Benefits

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

6.8 Dispute Resolution

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

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

6.8.3 Notice of Dispute

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

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

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

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

6.10 Publications

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

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

6.11 Indemnification

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

6.12 Ownership of Documents

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

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

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

6.13 Notices

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

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

MCCLELLAND CONSULTING ENGINEER's address:
1580 East Stearns Street
Fayetteville, Arkansas 72703

6.14 Successor and Assigns

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

6.15 Controlling Law

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

6.16 Entire Agreement

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

SECTION 7 - SPECIAL CONDITIONS

7.1 Additional Responsibilities of ENGINEER

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

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

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

7.2 Remedies

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

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

7.3 Audit: Access to Records

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

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

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

7.3.3.1 Negotiated prime agreements:

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

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

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

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

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

7.4 Covenant Against Contingent Fees

7.4.1 ENGINEER warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage or 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 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 :_____	By:
Mayor, Lioneld Jordan	Nicholas R. Batker, P.E.
ATTEST:	
By:_____	Title: Senior Associate
City Clerk	

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

APPENDIX A - SCOPE OF SERVICES

1.1 General

Generally, the scope of services includes design surveys along the Highway 16 corridor from the vicinity of Stone Bridge Drive to the vicinity of East Roberts Road, as defined by ARDOT's Job No. 040785 for widening this segment of Highway 16. Surveys will be limited to those areas where existing and new water and sewer facilities must be coordinated with the ARDOT highway improvement plans.

Preliminary and Final Design services related to water and sewer improvements within the limits outlined above shall be completed. The design work shall cover approximately 4,100 linear feet of 8-inch water main relocation (to be upsized to 12-inch) and approximately 1,700 linear feet of 6-inch and 8-inch sanitary sewer main relocations. Design services shall also include necessary water and sewer interconnections and replacements, water meter relocations, manhole rim adjustments, and related work as necessary to accommodate the ARDOT Job No. 040785 widening plans. It is assumed that the existing 36-inch and 42-inch sewer mains will be allowed by ARDOT to remain within the proposed right-of-way as-is. If ARDOT requires relocation or adjustment of the 36-inch or 42-inch sewer mains, it will be considered Additional Services.

The scope of services also includes boundary surveys, preparation of easement exhibits/descriptions, and appraisal and acquisition services (if requested by the City of Fayetteville) for new easements associated with water and sewer relocations.

Appendices B-1 and B-2 contain the fee proposals for design and easement services, respectively. Appendix C contains the preliminary assessment of water and sewer relocations required to accommodate the ARDOT Job No. 040785 widening plans.

1.2 Design Surveys, Preliminary and Final Design, SWPPP/Environmental and Bidding Phase Services

1.2.1 Design Surveys

MCE will complete design surveys as necessary to locate existing water and sewer facilities and to locate other existing utilities that are marked by One-Call services in areas required to accommodate the ARDOT widening plans along Hwy 16 from Stone Bridge Rd to E Roberts Rd. Areas where there are no water and sewer conflicts or no new water and sewer facilities will not be surveyed. MCE shall rely on the Fayetteville water and sewer GIS information for general utility locations and on Fayetteville's personnel marking water and sewer facilities during the one call process for design survey locations.

1.2.2 Preliminary Design

Preliminary plans shall be prepared and submitted to the City of Fayetteville for the purpose of confirming the final design scope of work, including the extent of new water and sewer mains, the location of interconnections, coordination issues with the highway plans, preliminary easement requirements, anticipated right of way conflicts, and a preliminary estimate of construction costs. The preliminary plans will include the proposed ARDOT right-of-way and limits of construction, with minimal profile information.

1.2.3 Final Design

Based on review comments from Preliminary Design, the Final Design and Project Specifications shall be completed, including plans, profiles, details, ARDOT coordination issues, final estimated construction cost, and related documents as necessary to obtain approvals by the City of Fayetteville, the Arkansas Department of Health and ARDOT. In addition, up to 4 rock soundings shall be performed at critical locations along the project corridor. Final Design deliverables shall include:

- City of Fayetteville – one full size set and one half size set of plans, one set of project specifications, and one copy of the cost estimate. Digital (PDF) copies of the above referenced deliverables shall also be provided.
- Arkansas Department of Health and ARDOT – digital submittals (PDF)
- Rock sounding summary report and logs, which shall be included in the Project Specifications.

1.2.4 Regulatory Compliance

MCE shall assist the City of Fayetteville with obtaining applicable local, state and Federal permits required for the project, which shall include:

- Floodplain Development Permit – required by City of Fayetteville
- Stormwater Pollution Prevention Plan – includes erosion control plans/details. If greater than 5 acres will be disturbed, MCE shall submit the SWPPP to ADEQ and prepare the Notice of Intent for the City of Fayetteville.
- Short Term Activity Authorization – one stream crossing assumed (unnamed tributary of West Fork White River) near western end of project limits.
- 404 Permit – assumed coverage under Nationwide Permit 58. MCE shall coordinate with USACE for project notification as required utilizing existing environmental constraint data obtained from ARDOT. Should USACE require additional data or coverage under an Individual Permit, it shall be considered Additional Services.

1.2.5 Bidding Phase

MCE shall assist the City of Fayetteville with an Advertisement for Bids, assist in addressing bidders' questions, issue Addenda as authorized by the City of Fayetteville, conduct a Prebid Conference, attend the bid opening and prepare Bid Tabulation with an award recommendation. In addition, MCE shall prepare a summary of the project costs and the estimated ARDOT reimbursement value based on the actual bid prices.

1.3 Property Surveys, Easement Preparation, Appraisal and Acquisition Services

1.3.1 Property Surveys

MCE shall rely on the ARDOT Highway 16 right-of-way plans, the ARDOT ownership map and Fayetteville easement information for the initial evaluation of easement requirements. Based on those sources of information, an initial map of easement needs will be submitted to the City of Fayetteville. Upon City of Fayetteville's concurrence, property surveys as necessary to confirm property lines needed for the easement preparation process will be completed. The property survey process shall include verification of current property ownership/current property legal descriptions based on courthouse records.

The ARDOT property maps shall be updated/modified based on any changes determined during the property survey process and property ownership verification process.

1.3.2 Easement Preparation

The easement maps obtained from Fayetteville atlas sheets shall be updated as needed to reflect more current existing easement records, as provided by City of Fayetteville personnel, in areas where the exact location of existing easements has an impact on the project. New easements shall be added to this easement map and to the project plans, as necessary to illustrate to the bidders and construction contractor the limits of their authorized work areas.

For those areas identified and subsequently approved by the City of Fayetteville, individual easement legal descriptions and tract maps will be prepared in accordance with criteria established by the City of Fayetteville, generally in accordance with documents prepared on previous projects. It is anticipated that as many as 20 new easement documents may be required and as many as 5 of these documents may require revisions based on design changes by ARDOT or the City of Fayetteville.

1.3.3 Easement Appraisal Services

If requested in writing by the City of Fayetteville, MCE shall obtain appraisals through subcontract with Reed & Associates on up to 20 parcels. It is assumed that no major

improvements (residential structure, outbuilding, etc.) will be damaged by the proposed easement acquisitions.

1.3.4 Easement Acquisition Services

If requested in writing by the City of Fayetteville, MCE shall provide acquisition and negotiation services for up to 20 parcels. MCE will subcontract with Visionary Milestones, LLC to assist in providing these services. MCE shall also attend meetings with property owners as required during negotiation and acquisition of easements.

1.4 Construction Phase Services

The scope of Construction Phase Services will be added with a future amendment to this agreement.

1.5 Extra Work

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

- Redesign for the City's convenience or due to changed conditions after prior approval or conflicting direction from the City or from ARDOT.
- Submittals or deliverables in addition to those listed in paragraph 1.2.3.
- Environmental Assessment.
- Work related to environmentally or historically (culturally) significant items.
- Approved Jurisdictional Determination.

Extra Work will be as directed by the City of Fayetteville in writing for an additional fee as agreed upon by the City of Fayetteville and MCE.

1.6 Schedule

MCE will begin work under this Agreement upon Notice to Proceed and will work continuously to completion in accordance with the proposed schedule below:

Task Item	Task Duration (Calendar Days)	Cumulative Duration (Calendar Days)
Notice to Proceed	0	0
Design Surveys	60	60
Preliminary Design	60	120
City Review of Preliminary Design	10	130
Final Design	90	220
Regulatory Compliance[1]	120	Concurrent
Easement Preparation/Acquisition[2]	150	Concurrent
City Review of Final Design	20	240
ADH Review	30	270
Bid Advertisement/Opening/Contractor Award	90	360
Construction[3]	240	540

1 Start during Final Design; assumed Nationwide Permit 58 coverage; all permits obtained prior to start of construction.

2 Assumed use of ARDOT appraisals and City staff for acquisition. All parcels must be acquired prior to start of construction.

3 Assumed duration based on current knowledge of scope of work; to be updated at completion of Final Design

Appendix B-1 Fee Proposal

Appendix B-1
Design Surveys, Preliminary Design, Final Design,
Regulatory Compliance and Bidding Phase Services in Conjunction with the
Highway 16 Water and Sewer Relocations (Stone Bridge Rd to E Roberts Rd)
ARDOT Job No. 040785
Fayetteville, Arkansas

Personnel Hours

Labor Classification	Hours	Labor Rate	Extended
Sr. Project Manager	84.00	$65.00	$5,460.00
Project Manager	394.00	$48.00	$18,912.00
Project Designer	672.00	$35.00	$23,520.00
Reg. Land Surveyor	30.00	$40.00	$1,200.00
Survey Technician	80.00	$25.00	$2,000.00
Field Survey Crew	140.00	$25.00	$3,500.00
Office Admin	50.00	$20.00	$1,000.00
	Direct Labor Subtotal		$55,592.00
	Overhead	149.31%	$83,004.00
	Subtotal		$138,596.00
	Fixed Fee	12%	$16,632.00
	Subtotal Labor Costs		**$155,228.00**

EXPENSES

Item	Amount
Mileage ($0.42/mile)	$200.00
Rock Soundings - 4 soundings at $1,250/ea	$5,000.00
Utility Locates (ArkUps)	$500.00
Total Estimated Reimbursable Expenses	**$5,700.00**

Total Costs - Design Surveys, Preliminary Design, Final Design, Regulatory Compliance and Bidding Phase Services (Task Item 1.2) **$160,928.00**

Appendix B-2 Fee Proposal

Appendix B-2
Property Surveys, Easement Preparation,
Appraisal and Acquisition Services in Conjunction with the
Highway 16 Water and Sewer Relocations (Stone Bridge Rd to E Roberts Rd)
ARDOT Job No. 040785
Fayetteville, Arkansas

Personnel Hours

Labor Classification	Hours	Labor Rate	Extended
Sr. Project Manager	0.00	$65.00	$0.00
Project Manager	88.00	$48.00	$4,224.00
Project Designer	0.00	$35.00	$0.00
Reg. Land Surveyor	88.00	$40.00	$3,520.00
Survey Technician	184.00	$25.00	$4,600.00
Field Survey Crew	40.00	$25.00	$1,000.00
Office Admin	0.00	$20.00	$0.00
	Direct Labor Subtotal		$13,344.00
	Overhead	149.31%	$19,924.00
	Subtotal		$33,268.00
	Fixed Fee	12%	$3,992.00
	Subtotal Labor Costs		**$37,260.00**

EXPENSES

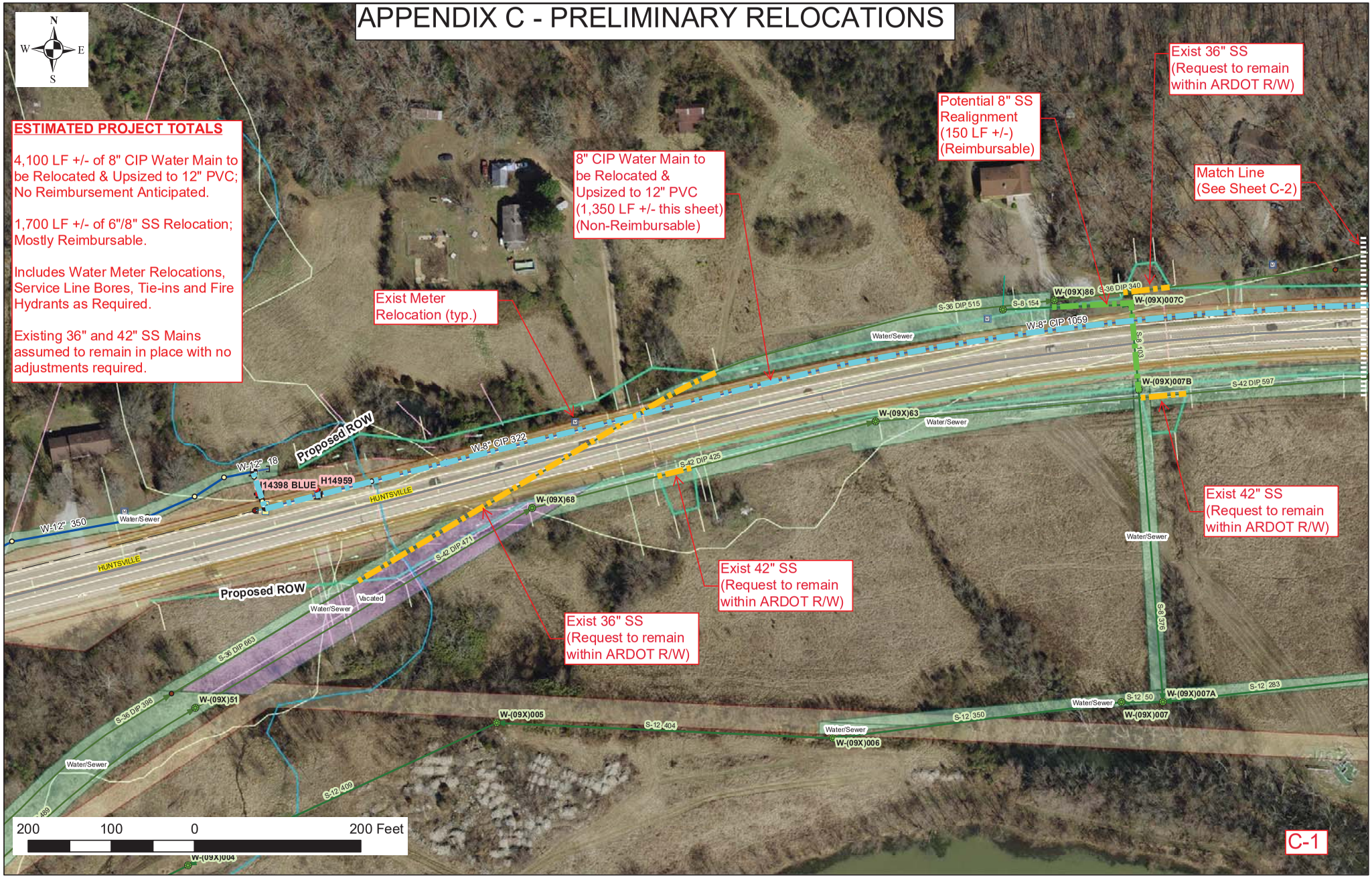
Item	Amount
Mileage ($0.42/mile)	$200.00
Title Search - $150 per parcel - 20 parcels assumed	$3,000.00
Total Estimated Reimbursable Expenses	**$3,200.00**

SUBCONSULTANTS

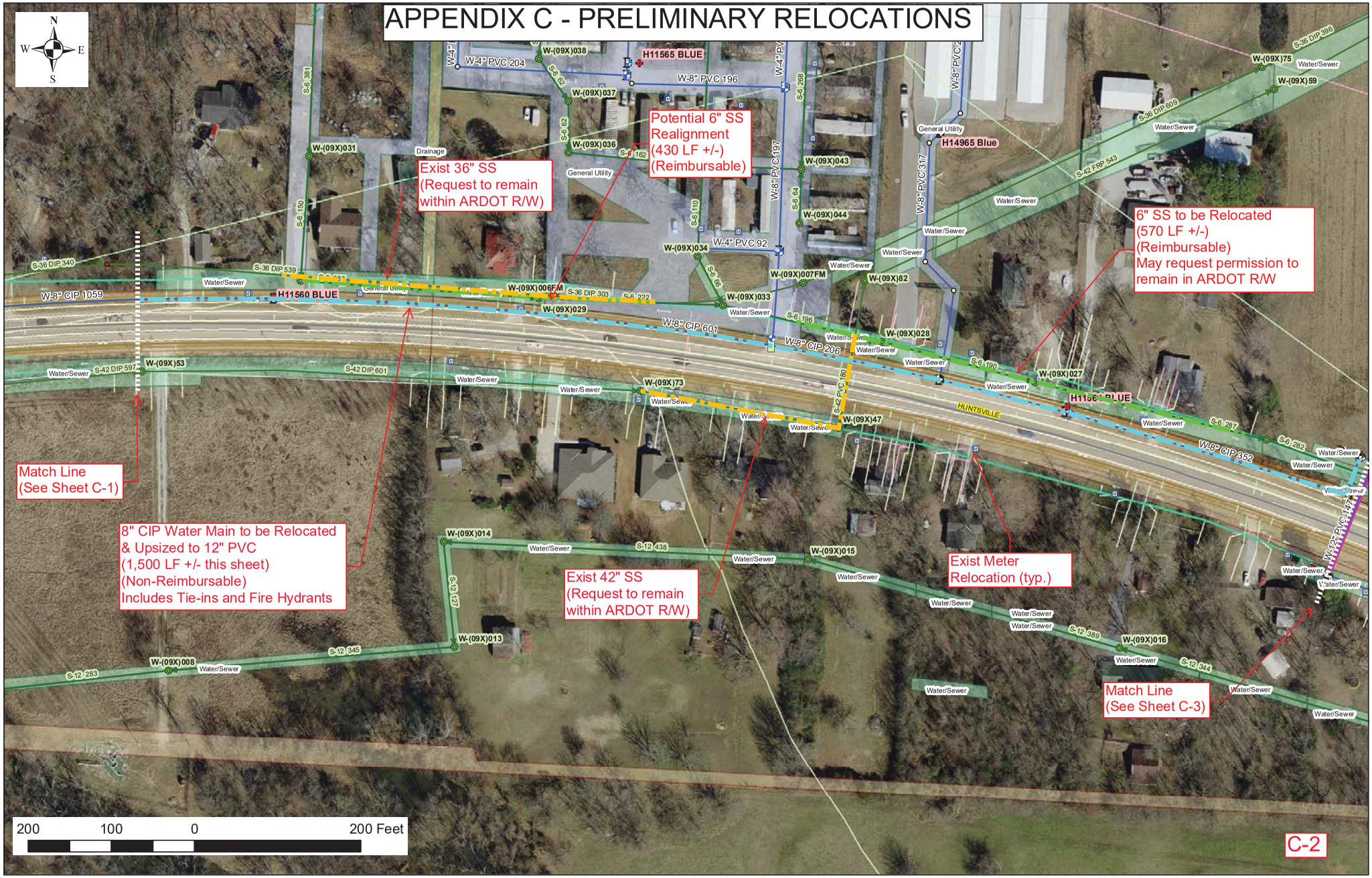
Item	Amount
Reed & Associates - Appraisal Services ($2,500/parcel, 20 parcels)	$50,000.00
Visionary Milestones - Acquisition Services ($1,100/parcel, 20 parcels)	$22,000.00
Total Estimated Subconsultant Cost	**$72,000.00**

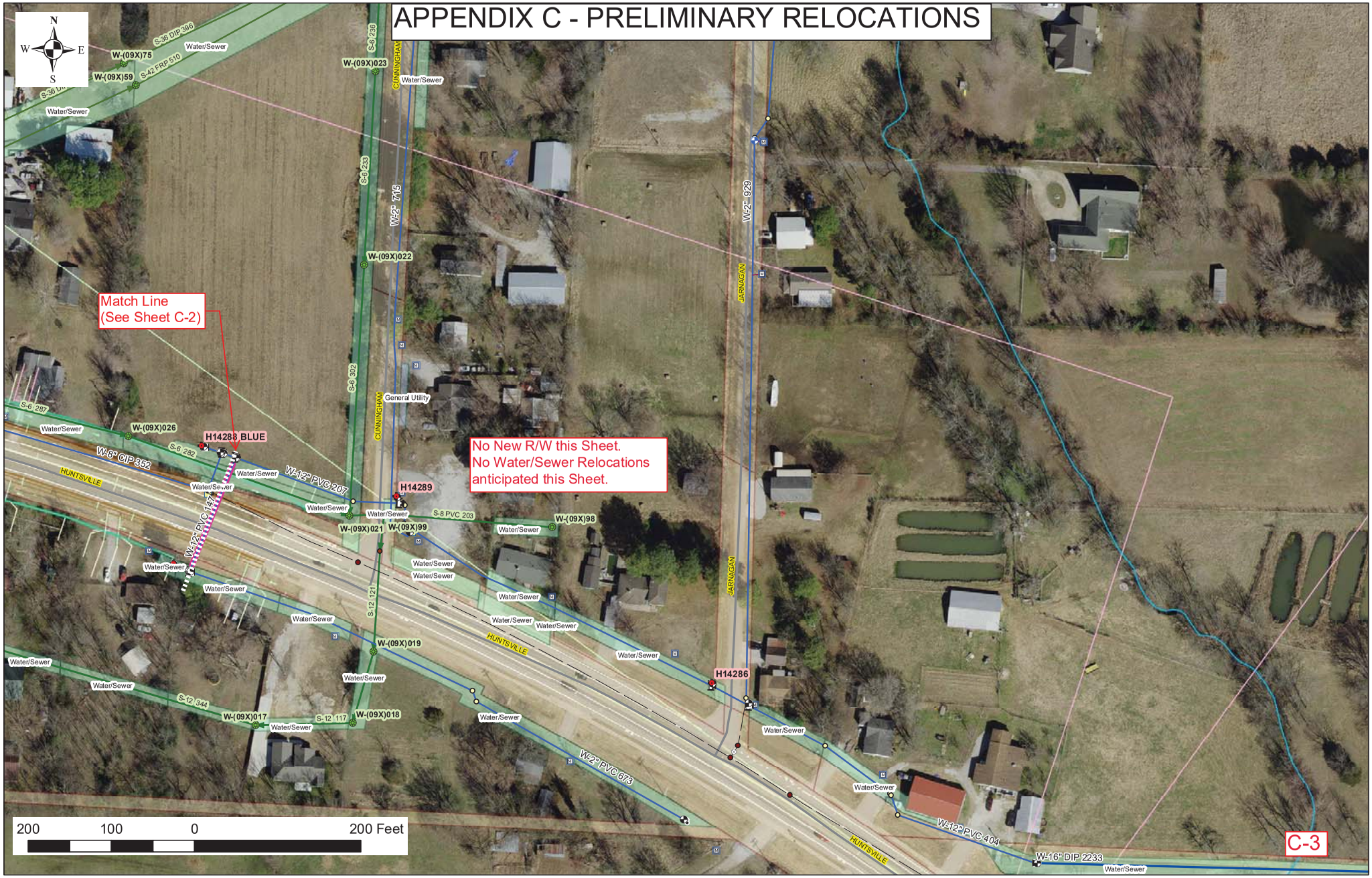
Total Costs - Property Surveys, Easement Preparation, Appraisal and Acquisition Services (Task Item 1.3) **$112,460.00**

APPENDIX C - PRELIMINARY RELOCATIONS

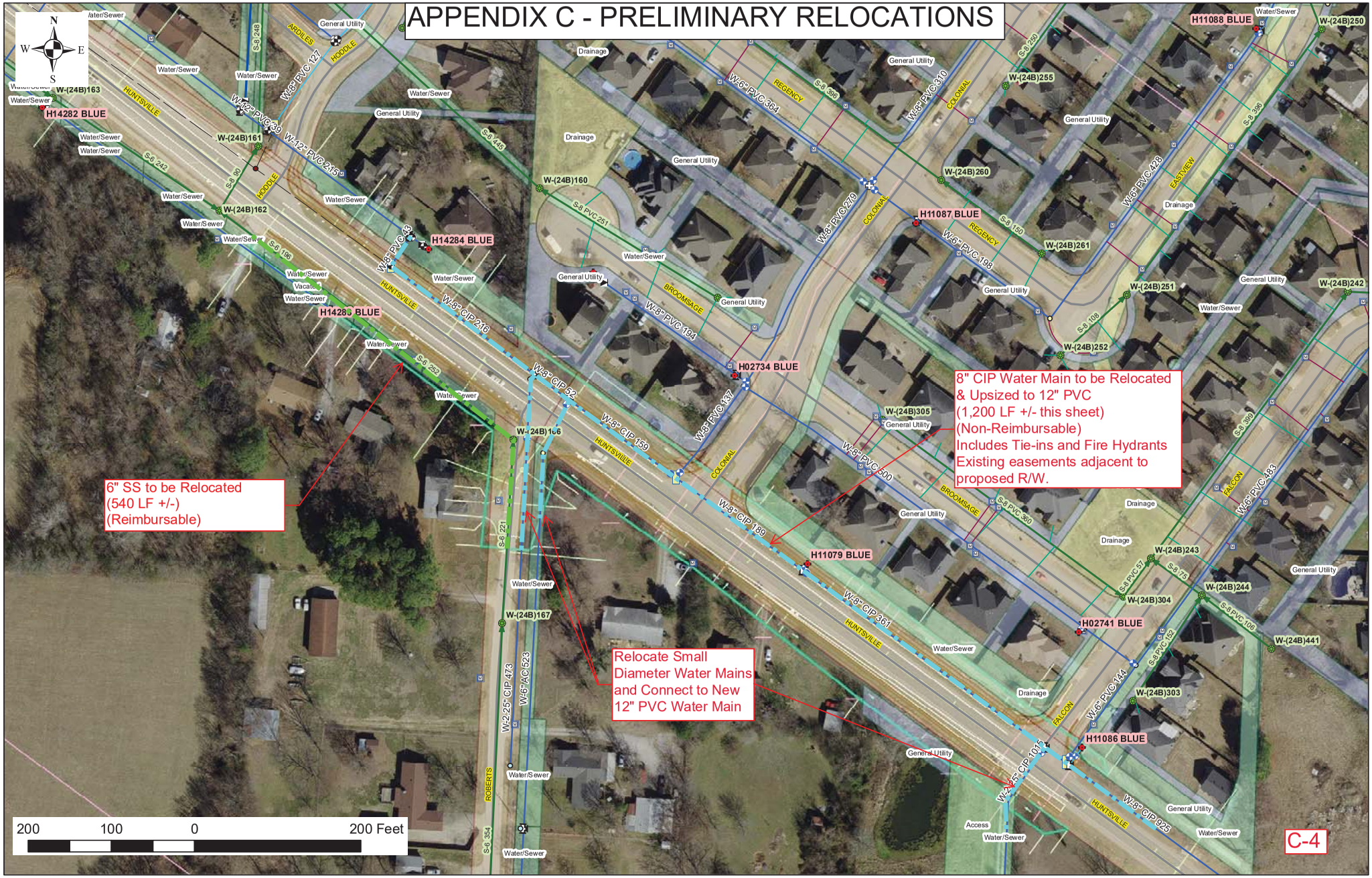


APPENDIX C - PRELIMINARY RELOCATIONS




APPENDIX C - PRELIMINARY RELOCATIONS
N
W
E
S
Match Line
(See Sheet C-2)
No New R/W this Sheet.
No Water/Sewer Relocations
anticipated this Sheet.
W-(09X)75
W-(09X)59
S-36 DIP 396
S-42 FRP 510
W-(09X)023
S-6 236
S-6 233
S-6 302
W-2" 715
CUNNINGHAM
W-(09X)022
W-2" 929
JARNAGAN
General Utility
W-(09X)026
H14288 BLUE
S-6 287
S-6 282
W-8" CIP 352
W-12" PVC 207
W-12" PVC 147
HUNTSVILLE
H14289
S-8 PVC 203
W-(09X)021
W-(09X)99
W-(09X)98
S-12 121
W-(09X)019
W-(09X)017
W-(09X)018
S-12 344
S-12 117
W-2" PVC 673
H14286
W-12" PVC 404
W-16" DIP 2233
Water/Sewer
200 100 0 200 Feet
C-3

APPENDIX C - PRELIMINARY RELOCATIONS



City of Fayetteville - Hwy 16 Water/Sewer Relocations (Stone Bridge Rd to E Roberts Rd)
Personnel Hour Fee Estimate
5/3/2021

McCLELLAND CONSULTING ENGINEERS, INC.
DESIGNED TO SERVE

Task Description	Sr. Project Manager	Project Manager	Project Designer	Reg. Land Surveyor	Survey Technician	Field Survey Crew	Office Admin
TASK 1.2 - DESIGN SURVEYS, PRELIMINARY AND FINAL DESIGN, REGULATORY COMPLIANCE AND BIDDING SERVICES							
1.2.1 Design Surveys							
Review ARDOT preliminary roadway plans				4.00		4.00	
Process ARDOT survey data for use in project design				2.00	12.00		
Establish vertical and horizontal control				2.00		12.00	
Coordinate with Arkups				2.00		8.00	
Complete mapping of surface features						100.00	
Complete mapping of potholed utilities						16.00	
Drafting					60.00		
Project Management / QA/QC		8.00		20.00	8.00		
Subtotal 1.2.1 Design Surveys	**0.00**	**8.00**	**0.00**	**30.00**	**80.00**	**140.00**	**0.00**
1.2.2 Preliminary Design							
Review ARDOT preliminary roadway plans	2.00	8.00	16.00				
Conduct field evaluation		16.00	16.00				
Identify affected utilities	2.00	12.00	20.00				
Prepare preliminary horizontal plans	12.00	72.00	140.00				
Prepare list of techincal specifications	2.00	4.00					
Develop preliminary opinion of probable construction cost	4.00	8.00	16.00				
Project Management / QA/QC	8.00	20.00					
Subtotal 1.2.2 Preliminary Design	**30.00**	**140.00**	**208.00**	**0.00**	**0.00**	**0.00**	**0.00**
1.2.3 Final Design							
Review final R/W and construction plans from ARDOT		4.00	8.00				
Coordinate easement requirements	2.00	8.00	16.00				
Prepare final drawing set	12.00	68.00	224.00				
Prepare Bid Project Manual	4.00	20.00	48.00				40.00
Owner submittal/response to comments		4.00	8.00				4.00
Prepare final opinion of probable construction cost	2.00	6.00	12.00				
ADH submittal/response to comments	4.00	16.00	20.00				2.00
ARDOT coordination	4.00	16.00	4.00				
Utility coordination	4.00	8.00	4.00				
Meetings with Owner	8.00	16.00	16.00				
Project Management / QA/QC	8.00	24.00					
Subtotal 1.2.3 Final Design	**48.00**	**190.00**	**360.00**	**0.00**	**0.00**	**0.00**	**46.00**
1.2.4 Regulatory Compliance							
Floodplain Development Permit		4.00	8.00				
SWPPP (incl. Erosion Control Plans) and NOI		16.00	40.00				4.00
STAA permit		2.00	8.00				
404 permit coordination	4.00	8.00	24.00				
Subtotal 1.2.4 Regulatory Compliance	**4.00**	**30.00**	**80.00**	**0.00**	**0.00**	**0.00**	**4.00**

City of Fayetteville - Hwy 16 Water/Sewer Relocations (Stone Bridge Rd to E Roberts Rd)
Personnel Hour Fee Estimate
5/3/2021

McCLELLAND CONSULTING ENGINEERS, INC.
DESIGNED TO SERVE

Task Description	Sr. Project Manager	Project Manager	Project Designer	Reg. Land Surveyor	Survey Technician	Field Survey Crew	Office Admin
1.2.5 Bidding Phase							
Respond to questions during bidding		8.00	8.00				
Prepare/issue addenda		8.00	8.00				
Pre-bid meeting		6.00	4.00				
Bid opening		2.00	2.00				
Bid tabulation and recommendation of award	2.00	2.00	2.00				
Subtotal 1.2.5 Bidding Phase	**2.00**	**26.00**	**24.00**	**0.00**	**0.00**	**0.00**	**0.00**
Total Task 1.2 Personnel Hours (See Appendix B-1)	**84.00**	**394.00**	**672.00**	**30.00**	**80.00**	**140.00**	**50.00**
TASK 1.3 - PROPERTY SURVEYS , EASEMENT PREPARATION, APPRAISAL AND ACQUISITION SERVICES							
1.3.1 Property Surveys							
Assemble survey plats, subdivision plats, deeds, etc.				16.00			
Tie property pins / field crew time						40.00	
Drafting / data processing					20.00		
Boundary resolution				16.00			
Subtotal 1.3.1 Property Surveys	**0.00**	**0.00**	**0.00**	**32.00**	**20.00**	**40.00**	**0.00**
1.3.2 Easement Preparation							
Update easement maps from Fayettevile atlas sheets with proposal easements				8.00	16.00		
Drafting / data processing					20.00		
Exhibit A map preparation (estimate of 20)				20.00	80.00		
Prepare easement description (estimate of 20)				20.00	40.00		
Project Management / QA/QC		8.00		8.00	8.00		
Subtotal 1.3.2 Easement Preparation	**0.00**	**8.00**	**0.00**	**56.00**	**164.00**	**0.00**	**0.00**
1.3.3 & 1.3.4 Easement Appraisal & Acquisition Services							
Coordination with Reed & Associates on appraisals		20.00					
Coordination with Visionary Milestones on acquisitions		20.00					
Property owner meetings during acquisition		40.00					
Subtotal 1.3.3 & 1.3.4 Easement Appraisal & Acquisition	**0.00**	**80.00**	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**
Total Task 1.3 Personnel Hours (See Appendix B-2)	**0.00**	**88.00**	**0.00**	**88.00**	**184.00**	**40.00**	**0.00**

ARKANSAS DEPARTMENT OF TRANSPORTATION
ArDOT.gov | IDriveArkansas.com | Lorie H. Tudor, P.E., Director
10324 Interstate 30 | P.O. Box 2261 | Little Rock, AR 72203-2261
Phone: 501.569.2000 | Voice/TTY 711 | Fax: 501.569.2400

April 6, 2021

Mr. Corey Granderson
City of Fayetteville
113 W. Mountain St.
Fayetteville, AR 72701

Job 040785 (Utilities)
Stone Bridge Rd. - East Roberts Rd. (Fayetteville)(S)
Route 16 Section 1
Washington County

Dear Mr. Granderson:

Your request of April 6, 2021, to have McClelland Engineers perform the preliminary engineering for your utility facilities on the referenced project is approved.

This approval is your authorization to have the consultant proceed with the sketch and preliminary engineering fee breakdown, as well as the contract for preliminary engineering services with your utility. This information should be submitted to this office for review and approval.

Upon approval of the fee, a Preliminary Engineering Agreement will be prepared by this office and sent to you for signature.

The cost of this service will be reimbursable only to the extent your existing utility facilities required to be adjusted are determined to be eligible.

In order to receive any eligible reimbursement of consultant engineering costs, the preliminary engineering work must not be started until work authorization is given by the Department.

In accordance with requirements for Federal Aid Projects, we are forwarding a “Certification of Consultant” form to your consultant to execute and return to this office.

If further information or assistance from this office is needed, please advise.

Sincerely,

Keith Mashburn
Utility Coordinator
Utilities Section
Right of Way Division

Enclosures
C: McClelland Engineers W/Attachments
“C” Files

ARKANSAS DEPARTMENT of TRANSPORTATION

Utility: _____ Job _____(Utilities)

Consultant _____ _____

_____

Route _____ Section _____

County _____

CERTIFICATION OF CONSULTANT

I hereby certify that I am the _____ and duly authorized representative of the firm of _____ whose address is _____, and that, except as expressly stated and described herein, neither I nor the firm of _____ _____ has, in connection with its contract for preliminary engineering services with _____ entered into pursuant to provisions of an agreement between the aforementioned utility owner and the Arkansas Department of Transportation as a part of Federal Aid Project _____.

(a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm, company, or person, other than a bonafide employee working solely for me or the aforementioned consulting firm to solicit or secure the contract, or
(b) agreed, as an expressed or implied condition for obtaining the award of the contract, to employ or retain the services of any firm, company, or person in connection with the carrying out of the contract, or
(c) paid, or agreed to pay, to any firm, company, organization, or person, other than a bonafide employee working solely for me or the aforementioned consulting firm, any fee, contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the contract.

(Statement and explanation of exception, if any:)

I acknowledge that this certificate is to be furnished to the Arkansas Department of Transportation and the Federal Highway Administration, in connection with the aforementioned project involving participation of Federal-Aid Highway Funds, and is subject to applicable State and Federal Laws, both criminal and civil.

_____ (Date)

(Signature)

_____