

RESOLUTION NO. 2022 - 13

A RESOLUTION APPROVING CERTAIN CONTRACT; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND PERFORM CERTAIN AGREEMENT; AND FOR OTHER PURPOSES

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEARCY, TO-WIT:

WHEREAS, the City of Searcy has been presented a certain agreement associated with the operations of the City of Searcy, for the proposal for engineering, surveying, and geotechnical design services on the proposed improvements for the Cloverdale Ditch Project lying between Mohawk Drive and Cloverdale Boulevard.

namely an agreement with:

A. Miller-Newell Engineers, Inc.

(whether one or more, the "Agreement") copies of which have been submitted to the Searcy City Council; and

WHEREAS, the City of Searcy wishes to approve the execution of, ratify the terms of and perform under the conditions contained in, the Agreement.

NOW THEREFORE, be it resolved by the City Council of the City of Searcy, Arkansas to-wit:

Section 1. That the Searcy City Council approves and ratifies the terms, conditions and obligations of the Agreement.

Section 2. That the Searcy City Council authorizes and directs the Mayor and City Clerk to execute, and perform under the terms of, the Agreement.

Section 3. That the Mayor is authorized to take all actions determined to be necessary, in the sole and exclusive determination of the Mayor, in the performance of all obligations, duties and responsibilities associated with the Agreement.

Section 4. To the extent permitted by law, the requirement of competitive bidding with respect to the services to be provided pursuant to the Agreement is waived, but subject to any budgeting laws of the State of Arkansas applicable to the City.

PASSED AND ADOPTED this 12th day of April, 2022.

/s/ Kyle Osborne

Mayor of Searcy

ATTEST:

/s/ Jerry Morris
City Clerk

AGREEMENT

DRAFT

THIS AGREEMENT made as of the _____ day of _____, 2022, by and between the **CITY OF SEARCY, ARKANSAS** hereinafter called the OWNER, and **MILLER-NEWELL ENGINEERS, INC.**, 510 Third Street, Newport, Arkansas 72112, hereinafter called the ENGINEER;

WITNESSETH, that whereas the Owner intends for **DRAINAGE IMPROVEMENTS TO THE CLOVERDALE SUBDIVISION DITCH, SEARCY, ARKANSAS**, hereinafter called the PROJECT;

NOW, THEREFORE, the Owner and the Engineer for the consideration hereinafter set forth, agree as follows:

1. THE ENGINEER AGREES to perform the following Engineering services for the Project:

A. General: The Engineer shall serve as the Owner's professional representative in the planning and the observation of construction of the Project, and shall give consultation and advice to the Owner during the performance of his services.

(1) Insurance: The Engineer shall secure and maintain such insurance as will protect him from claims under the Worker's Compensation Acts and from claims for bodily injury, death or property damage which may arise from the performance of his services under this Agreement.

B. Basic Services of the Engineer:

(1) Diagrammatics: The Engineer shall prepare all required schematic drawings, layouts, flow diagrams, studies, reports and a statement of probable construction cost based upon the diagrammatics.

(2) Preliminaries: The Engineer shall supervise the making of all required subsurface explorations, shall make the necessary topographical surveys for design purposes and shall prepare preliminary drawings, outline specifications and a statement of probable construction cost based upon the preliminaries.

(3) Contract Documents: From the approved preliminaries, the Engineer shall prepare working drawings, specifications and other Contract Documents completely describing the material and workmanship required and procedures to be followed for the construction of the Project, and he shall adjust the preliminary project probable cost.

(4) Receipt of Proposals: The Engineer shall furnish ten (10) sets of drawings and specifications for the use of Bidders in submitting proposals. He shall assist the Owner in securing proposals from Bidders, in analyzing such proposals and in preparing the agreement for execution by the Contractor.

(5) During Construction: The Engineer shall check the contractor's

work for general compliance with the drawings and specifications and shall endeavor to protect the Owner against defects and deficiencies in the work of the Contractor, but he does not guarantee the Contractor's performance. The Engineer's observation shall include the following services:

- (a) **Additional Instructions:** The Engineer shall issue such additional instructions to the City as may be necessary to interpret the drawings and specifications or to illustrate changes required in the Contractor's work.
- (b) **Contractor's Submittals:** The Engineer shall check shop drawings, samples, equipment, approval data and other data submitted by the Contractor for compliance with the drawings and specifications.
- (c) **Contractor's Requests for Payment:** The Engineer shall act upon the Contractor's requests for payment in accordance with the provisions of the General Conditions of the Contract.
- (d) **Visits to the Site:** The Engineer shall make observations at the site to check the Contractor's work for general compliance with the Contract Documents and to determine the extent of work completed for checking of Contractor's requests for payment.
- (e) **Special Performance Tests:** The Engineer shall witness and fully report the results of all special performance tests required for the Project.
- (f) **Final Acceptance:** The Engineer shall prepare completion lists when 90% completion of the project is claimed by the Contractor, and again when 100% completion is claimed. When the Contractor shall have completed the work in accordance with the terms of the Contract Documents, the Engineer shall confirm his acceptance to the Owner and his approval of the Contractor's final request for payment.
- (g) **Instructions to the Owner:** The Engineer shall arrange for detailed instructions by the Contractor and manufacturer's representatives to the Owner or his delegated representative in the proper operation and maintenance of the equipment furnished and installed for the Project.
- (h) **Services During Contractor's One Year Warranty Service:** The Engineer will be available to furnish engineering services and consultation necessary to correct unforeseen project operation difficulties for a period of one year after the date of substantial completion of the facility. This service will include instruction of the Owner in initial project operation and maintenance, but will not include supervision of normal operation of the project. Such consultation and advice shall be furnished without additional charge except for travel and subsistence costs. The Engineer will assist the Owner in performing a review of the project during the 11th month after

the date of the certificate of substantial completion.

(i) Establishing Baselines: The Engineer will establish baselines for locating the work together with a suitable number of benchmarks adjacent to the work as shown in the contract documents.

(j) Acquisition of necessary Corps-of-Engineer permit. Permit Fees to be paid by Owner.

C. Extra Services of the Engineer Shall Include the Following When Authorized in Writing by the Owner:

(1) During Construction Services: Advising in the replacement of all or such parts of the Project as may be damaged by fire or other cause during construction; assisting the Owner in arranging for continuation of the work should the Contractor default for any reason.

2. THE OWNER AGREES to provide the Engineer with complete information concerning the requirements of the Project and to perform the following services:

A. Access to the Work: The Owner shall guarantee access to and make all provisions for the Engineer to enter upon public and private lands as required for the Engineer to perform such services as surveys and observation in the development of the Project.

B. Consideration of the Engineer's Services: The Owner shall give thorough consideration to all reports, sketches, estimates, drawings, specifications, proposals and other documents presented by the Engineer, and shall inform the Engineer of all decisions within a reasonable time so as not to delay the services provided by the Engineer.

C. Legal Requirements: The Owner shall hold promptly all required special meetings, serve all required public and private notices, receive and act upon all protest and fulfill all requirements necessary in the development of the Project and pay all costs incident thereto.

D. Proposals: The Engineer shall advertise for proposals from Bidders, open the proposals at the appointed time and place. Said advertisement shall be paid by the Owner.

E. Protection of Markers: The Owner shall protect to the best of his ability all stakes and other markers set by the Engineer prior to the assumption of such responsibility of the Contractor. Replacement of markers or stakes which have been damaged, moved or removed shall be paid for by the Owner as extra services of the Engineer.

F. Standards: At the execution of this agreement, the Owner shall furnish the Engineer with a copy of any design and construction standards he shall require the Engineer to follow in the preparation of Contract Documents for the Project.

G. Owner's Representative: The Owner shall designate in writing, a single person to act as Owner's Representative with respect to the services to be performed under this Agreement. The person designated as Owner's Representative shall have complete authority to transmit instructions, receive information, interpret and define Owner's policy and decisions, with respect to the materials, equipment, elements and systems pertinent to the services covered by this Agreement.

3. COMPENSATION FOR BASIC ENGINEERING SERVICES (ARTICLE 1.B):

A. Payments for Basic Services of the Engineer: The Owner shall pay the Engineer for the basic services described in Paragraph 1.B. of this Agreement a total basic lump sum fee of ONE HUNDRED FOURTY THREE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$143,500) with progress payments as provided below. At the completion of each stage of the work, progress payments shall total the following amounts for each phase of the contract:

(1) Preliminaries	41,250.00
(2) Contract Documents	82,500.00
(3) Receipt of Proposals	16,500.00
(4) During Construction	<u>3,250.00</u>
Total	\$ 143,500.00

B. The Engineer will be available to answer questions and assist the City's staff during construction; the Owner agrees to pay the Engineer for such services in accordance with the following paragraphs and attachments.

C. The Owner shall pay the Engineer for assistance with construction observation an hourly rate as set out hereinafter for services as required.

Inspector	\$65.00/hr
Engineer	\$149.50/hr

(1) Compensation for direct costs of transportation, subsistence and lodging:

Mileage	\$.59	per mile
Subsistence	35.00	per day
Lodging	100.00	per day

(2) Cost of supplies, printing materials, telephone, postage and all other out-of-pocket expenses will be reimbursed by the applicant at actual cost.

(3) Compensation for sub-contract costs will be reimbursed by the applicant at actual cost.

(4) Requisitions for payment shall be submitted to the applicant monthly to cover amount earned during preceding month. Requisitions shall include not less than the information listed below:

- (a) Description of services for which compensation is requested.
 - (b) Hours claimed for each classification of personnel providing service and direct labor costs.
 - (c) Itemized list of transportation, subsistence and lodging costs, including a statement on purpose of travel.
 - (d) Itemized listing of actual out-of-pocket or direct expenses claimed.
 - (e) Indirect costs.
 - (f) Portion of fixed fee profit allocated to requisition period.
- D. Corps-of-Engineers permit acquisition. Permit application preparation fee \$5,000.00
- E. Payment shall be made to Miller-Newell Engineers, Inc.
- F. For items compensated on a cost basis, the Engineer will keep such records as to permit audit of the cost accounts when and as necessary.
- G. It is expressly understood and agreed that in no event will the total compensation to be paid hereunder exceed the maximum sum of \$148,500.00 for all of the services, unless agreed to by the Owner in writing. Assistance with construction observation will be paid at the prescribed hourly rate as reimbursable services if requested by the Owner.
- H. General:
- (1) Payments Withheld from Contractor: No deduction shall be made from the Engineer's compensation on account of penalty, liquidated damages or other amounts withheld from payments to contractors.
 - (2) Abandoned or Suspended Services: If any services performed by the Engineer are abandoned or suspended in whole or in part, the Engineer shall be paid for services performed on account of it prior to receipt of written notice from the Owner of such abandonment or suspension, together with any terminal expense resulting therefrom.
 - (3) Progress payments: During each phase, the Owner shall pay the Engineer for professional services performed under Paragraphs 1.B. and 1.C. of this Agreement in proportion to services performed during the period.
4. REIMBURSABLE SERVICES OF THE ENGINEER SHALL INCLUDE THE FOLLOWING ITEMS WHEN AUTHORIZED IN WRITING BY THE OWNER:
- A. Transportation and subsistence of principals and employees on special trips to the project or to other locations.
 - B. Long distance telephone and facsimile calls as required to expedite the work of the contractor.

C. Reproduction of drawings and specifications in addition to those specified in Article 1.B.(4) of this Agreement.

5. ADDITIONAL ENGINEERING SERVICES

A. In addition to the foregoing being performed, the following services may be provided upon prior written authorization of the Owner:

- (1) Site surveys for the site may be required.
- (2) Laboratory tests, well tests, borings, specialized geological, soils, or other studies recommended by the Engineer.
- (3) Property surveys, detailed description of sites, maps, drawings or estimates related thereto; assistance in negotiating for land and easement rights.
- (4) Necessary data and filing maps for water rights, water adjudication and litigation.
- (5) Redesigns and change orders ordered by the Owner after final plans have been accepted by the Owner, except redesigns to reduce the project cost to within the funds available according to the project budget.
- (6) Appearances before courts or boards on matters of litigation or hearings related to the project.
- (7) Preparation of environmental impact assessments or environmental impact statements.
- (8) Performance of detailed staking necessary for construction of the project in excess of the control staking set forth in Article 1.B. (5) (j).

B. Payment for the services specified in Article 5 shall be as agreed in writing prior to the commencement of work. The Engineer will render the Owner an itemized bill for such services, separate from any other billing, once each month, for compensation for services performed hereunder during such period, the same to be due and payable by Owner to the Engineer on or before the 10th day of the following period.

6. INTEREST ON UNPAID SUMS

If Owner fails to make any payment due Engineer within sixty (60) days for services and expenses, the Engineer shall be entitled to interest at the rate of 10 percent per annum from said 60th day, not to exceed an annual rate of 10 percent.

7. OWNER AND ENGINEER FURTHER AGREE TO THE FOLLOWING CONDITIONS:

A. Termination: This Agreement may be terminated by either party by seven (7) days written notice in the event of substantial failure to perform in accordance with the terms hereof by the one party through no fault

of the other party. If terminated due to the fault of others than the Engineer, the Engineer shall be paid for services performed to the date of termination, including reimbursements then due, plus terminal expense.

- B. Arbitration: Arbitration of all questions in dispute under this Agreement shall be at the choice of either party and shall be in accordance with the rules of the American Arbitration Association. This Agreement shall be specifically enforceable under the prevailing arbitration law and judgment upon the award rendered may be entered in the court of the forum, state or federal, having jurisdiction. The decision of the arbitrators shall be a condition precedent to the right of any legal action.
- C. Ownership of Documents: Reproducibles of original documents, such as tracings, plans, specifications and maps prepared or obtained under the terms of the contract shall be delivered to and become the property of the Owner; and basic survey notes and sketches, charts, computations and other data shall be available upon request to the Owner without restrictions or limitations on their use. In the event any of the above documents are reused by the Owner, the name plates will be removed and the consultant will be released and held harmless of subsequent liabilities. In the event the Owner does not have proper storage facilities for the protection of the original drawings, he may request the Engineer to retain the drawings with the provision that they will be made available without restriction upon written request.

After completion of the Project, and prior to final payment, the Engineer shall deliver to the Owner, all original documentation prepared under this Contract, including tracings, or high quality reproducibles, of the "Record Drawing" construction plans, and three (3) prints of the "Record Drawing" construction plans updated to reflect the changes.

8. SUCCESSORS AND ASSIGNS

This Agreement and all covenants hereof shall inure to the benefit of and be binding upon the Owner and the Engineer, respectively, and the partners, successors, assigns, and legal representatives of each. Neither the Owner nor the Engineer shall have the right to assign, transfer or sublet his interest or obligations hereunder without written consent of the other party.

9. SPECIAL PROVISIONS

The Owner and the Engineer mutually agree that this Agreement shall be subject to the following Special Provisions which shall supersede other conflicting provisions of this Agreement:

The period of service of the engineering services contract shall coincide with completion of the construction of the project.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement the day and year first above written.

CITY OF SEARCY, Owner

By: _____
 Kyle Osborne, Mayor

ATTEST:

(SEAL)

 City Clerk

MILLER-NEWELL ENGINEERS, INC., Engineer

(SEAL)

Wayne Menley, President

Robert W. Chatman, Vice-President

SCHEDULE OF RATES AND CHARGES FOR
ADDITIONAL ENGINEERING SERVICES

Schedule of Rates and Charges for Additional Engineering Services as referred to in Section 1.E.(5) of the Agreement for Engineering Services.

<u>PERSONNEL</u>	<u>RATE PER HOUR</u>
Survey:	
Four-man Party	\$218.49
Three-man Party	166.13
Two-man Party	113.77
Engineering & General Supervision:	
Principal or Officer of Firm	\$149.49
Project Engineer	149.49
Field or Design Engineer	80.44
Field or Office Assistant	61.41

Additional engineering cost caused by overrun in construction time may be compensated similar to the schedule as outlined in the above Schedule of Rates and Charges for Additional Engineering Services. This should be considered in establishing the amount of the liquidated damages in the contracts.

OWNER:

CITY OF SEARCY

Kyle Osborne, Mayor

ATTEST:

(Seal)

ENGINEER:

MILLER-NEWELL ENGINEERS, INC.

President

(Seal)

Vice President

Probable Cost Estimate
To
Construct Concrete Ditch Bottom with Precast Block Walls
In The
Cloverdale Subdivision Ditch
Searcy, Arkansas
M-N 21-071
(Revised 4/5/2022)

Description	Quantity	Unit	Unit Price	Item Cost
Clearing & Grubbing	1	LS	\$75,000.00	\$75,000.00
Site Preparation & Grading	1	LS	\$100,000.00	\$100,000.00
Class 7 Blanket Under Concrete	2,000	CY	\$80.00	\$160,000.00
Concrete Floor	1050	CY	\$1,200.00	\$1,260,000.00
Concrete Barriers for Walls	1,900	EA	\$350.00	\$665,000.00
Fill Behind Blocks	4,000	CY	\$25.00	\$100,000.00
Seeding & Mulching	1.5	Ac	\$5,000.00	\$7,500.00
Temporary Access	1	LS	\$20,000.00	\$20,000.00
Utility Relocation	1	LS	\$30,000.00	\$30,000.00
Fencing	1	LS	\$30,000.00	\$30,000.00
Tie into Existing Pipe	1	LS	\$30,000.00	\$30,000.00
Total Construction Cost				\$2,477,500.00
10% Contingency				\$247,750.00
Basic Design				\$143,500.00
Permit Application Preparation				\$5,000.00
Permit Fees				\$5,000.00
Access Acquisition				\$30,000.00
Total Cost				\$2,908,750.00

Probable Cost Estimate
To
Construct Box Culvert, Fill & Grading
In The
Cloverdale Subdivision Ditch
Searcy, Arkansas
M-N 21-071
(Revised 4/5/2022)

Description	Quantity	Unit	Unit Price	Item Cost
8' x 5' Precast Box Culvert	2,560	LF	\$1,000.00	\$2,560,000.00
Clearing & Grubbing	1	LS	\$75,000.00	\$75,000.00
Site Preparation & Grading	1	LS	\$100,000.00	\$100,000.00
Class-7 Base Material	2,000	CY	\$80.00	\$160,000.00
Fill Material	8,000	CY	\$25.00	\$200,000.00
Street Repair	130	SY	\$90.00	\$11,700.00
Seeding & Mulching	2	Ac	\$5,000.00	\$10,000.00
Fencing	1	LS	\$20,000.00	\$20,000.00
Temporary Access	1	LS	\$20,000.00	\$20,000.00
Utility Relocation	1	LS	\$30,000.00	\$30,000.00
Tie-In to Existing Pipes	1	LS	\$30,000.00	\$30,000.00
Total Construction				\$3,216,700.00
10% Contingency				\$321,670.00
Basic Design				\$187,340.00
Permit Application Preparation				\$5,000.00
Permit Fees				\$5,000.00
Access Acquisition				\$30,000.00
Total Cost				\$3,765,710.00

