

RESOLUTION No. 2023 -04

A RESOLUTION OF THE CITY OF SEARCY, ARKANSAS, AUTHORIZING
THE MAYOR AND CITY CLERK TO MAKE AND ENTER INTO AND
PERFORM UNDER THE TERMS OF A PROFESSIONAL SERVICES
AGREEMENT

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

WHEREAS, the City Council of the City of Searcy has determined the need to retain professional engineering services in connection with the proposed half-street improvements on and around June Drive in the City of Searcy; and

WHEREAS, the City of Searcy has been presented a certain agreement from Davidson Engineering associated with the operations of the City of Searcy, for the purpose of the engineering, surveying, architectural, and geotechnical design services on the proposed half-street improvements on and around June Drive in the City of Searcy; 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 and 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 3. This resolution, and the execution of the Agreement with the professional identified herein is made pursuant to Ark. Code Ann. § 19-11-801, et seq.

Section 4. This resolution shall take effect immediately.

PASSED AND ADOPTED this 10th day of JANUARY, 2023.

/s/ Mat Faulkner
Mayor of Searcy

ATTEST:

/s/ Jerry Morris
City Clerk

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between **CITY OF SEARCY** (“Owner”) and **Davidson Engineering, PLLC** (“Engineer”).

Owner’s Project, of which Engineer’s services under this Agreement are a part, is generally identified as follows:

City of Searcy – June Drive and Joann Drive Improvements

Engineer’s services under this Agreement are generally identified as follows (“Services”):

Schedule I Services – Boundary and Topographic Surveying, Right of Way and Easement Acquisition

- Boundary Surveying
- Preparation of Right of Way and Easement Documents

Schedule II Services – Geotechnical Services

- Geotechnical Investigation and Production of a Geotechnical Report for the project

Schedule III Services – Topographic Surveying Support and Civil Engineering Design Services

- Civil Engineering Design Services and Production of Roadway and Drainage Plans
- Utility Relocation Coordination
- Coordination with City of Searcy and City Engineer’s Office
- Bidding Services

Schedule IV Services – Limited Construction Inspection and Administration Services (If Required)

- Limited Weekly Construction Inspection (5-10 Hours, weekly)
- Construction Administration (RFI Responses, Monthly Pay Requests, Revisions, Change Order Processing, etc.)
- Holding Weekly Project Meetings with Contractor and City of Searcy Personnel

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide or furnish the Services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above (“Additional Services”).
- B. Engineer shall complete its Services within the following specific time period: If no specific time period is indicated, Engineer shall complete its Services within a reasonable period of time.
- C. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer’s Services is impaired, or Engineer’s Services are delayed or suspended, then the time for completion of Engineer’s Services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.

2.01 *Payment Procedures*

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.
- B. *Payment:* As compensation for Engineer providing or furnishing Services and Additional Services, Owner shall pay Engineer as set forth in Paragraphs 2.01, 2.02 (Services), and 2.03 (Additional Services). If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.

2.02 **Basis of Payment—Lump Sum**

- A. Owner shall pay Engineer for **Services** as follows:
 - 1. A sum of Surveyor’s hourly rates plus reimbursable expenses for **Schedule I Services**.
 - a. An amount equal to the cumulative hours charged to the Project by each Land Surveyor’s employees times standard hourly rates for each applicable billing class, plus reimbursement of expenses incurred in connection with providing the Services.
 - 2. A lump sum amount of **\$3,500.00** for **Schedule II Services**.
 - 3. A lump sum amount equal to **7.25%** of the final construction cost for **Schedule III Services**.
 - 4. A lump sum amount equal to **2.50%** of the final construction cost for **Schedule IV Services**.
 - 5. A sum of hourly rates plus reimbursable expenses for any additional services.
 - a. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times standard hourly rates for each applicable billing class, plus reimbursement of expenses incurred in connection with providing the Services.

- b. Engineer's Standard Hourly Rates are attached as Appendix 1.

3.01 Termination

- A. The obligation to continue performance under this Agreement may be terminated:

- 1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.

- b. By Engineer:

- 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
- 2) upon seven days written notice if the Engineer's Services are delayed for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 5.01.I.

- c. Engineer shall have no liability to Owner on account of a termination for cause by Engineer.

- d. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

- 2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all Services and Additional Services performed or furnished in accordance with this Agreement, plus reimbursement of expenses incurred through the effective date of termination in connection with providing the Services and Additional Services, and Engineer's consultants' charges, if any.

4.01 General Considerations

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by

others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

- B. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to such Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- C. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.
- D. Engineer's opinions (if any) of probable construction cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Engineer. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.
- E. Engineer shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents other than those made by Engineer or its consultants.
- F. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

5.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:

By: _____
Print name: _____
Title: _____
Date Signed: _____

Engineer: Davidson Engineering, PLLC

By: BD
Print name: Bear Davidson, PE
Title: President
Date Signed: 12.29.2022

Engineer License or Firm's Certificate No. (if required):

State of: Arkansas (19096)

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

210 West Arch Avenue, Suite D
Searcy, AR 72143

This is **Appendix 1, Engineer's Standard Hourly Rates**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated [] .

Engineer's Standard Hourly Rates

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 1 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Paragraphs 2.01, 2.02, and 2.03, and are subject to annual review and adjustment.

B. *Schedule of Hourly Rates:*

Billing Class	Rate
Professional Engineer	\$ [130]/hour
Engineering Tech.	\$ [68]/hour
Admin. Asst.	\$ [40]/hour
Prof. Surveyor (Office)	\$ [135]/hour
Survey. Tech. (Office)	\$ [68]/hour
Survey Field Work – One-Man Crew	\$ [112]/hour
Survey Field Work – Two-Man Crew	\$ [150]/hour
Travel Time	\$ [70]/hour
Overnight Travel (per night)	\$ 120

Appendix 1, Standard Hourly Rates Schedule.

EJCDC® E-520, Short Form of Agreement Between Owner and Engineer for Professional Services.
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