

**City Council Agenda Items  
and  
Contracts, Leases or Agreements**

11/5/2013

City Council Meeting Date  
Agenda Items Only

Alison Jumper *AJ*  
Submitted By

Park Planning  
Division

Parks and Recreation  
Department

**Action Required:**

Staff recommends a resolution approving the agreement for landscape architectural, architectural and engineering services between the City of Fayetteville and Lose and Associates in an amount not to exceed \$86,735 plus a 10% project contingency of \$8,674 for a total project cost of \$95,409 for the design of the Regional park master plan and preliminary grading and drainage plan.

\$95,409.00	\$ 4,495,391.11	Regional Park
Cost of this request	Category / Project Budget	Program Category / Project Name
2250.9255.5314.00	\$ 705.00	Regional Park
Account Number	Funds Used to Date	Program / Project Category Name
02002.1	\$ 4,494,686.11	Parks Development
Project Number	Remaining Balance	Fund Name

Budgeted Item

Budget Adjustment Attached

*Connie Edmonstone*  
Department Director 10-16-13  
Date

Previous Ordinance or Resolution # \_\_\_\_\_

*Bob Kelly*  
City Attorney 10-18-13  
Date

Original Contract Date: \_\_\_\_\_

Original Contract Number: \_\_\_\_\_

*Paula Behm*  
Finance and Internal Services Director 10-18-2013  
Date

Received in City Clerk's Office 10-13-13 10:05 RCVD  
*[Signature]*

*Ann Man*  
Chief of Staff 10-18-13  
Date

Received in Mayor's Office ENTERED  
10/18/13  
[Signature]

*Frank Jordan*  
Mayor 10/21/13  
Date

Comments:



www.accessfayetteville.org

## CITY COUNCIL AGENDA MEMO

**To:** Mayor Lioneld Jordan and City Council

**Thru:** Don Marr, Chief of Staff  
Connie Edmonston, Parks and Recreation Director *C. E.*

**From:** Alison Jumper, Park Planning Superintendent *AJ*

**Date:** October 10, 2013

**Subject:** Resolution to approve a contract for landscape architectural, architectural and engineering services with Lose and Associates  
Agenda Request for November 5, 2013 City Council meeting

### **PROPOSAL:**

The City of Fayetteville has been planning for a Regional Park since 2002. A site was selected in 2003, and after many years approximately 200 acres were generously donated by Chambers bank for the park.

Request for Statements of Qualification (RFQ) 13-13 for design services for the Regional Park was advertised August 23, 2013. Eleven firms responded to the advertisement. A selection committee was formed per RFQ 13-01 and met on October 4th, 2013. Lose and Associates was selected and has provided the attached scope of services and contract price for the requested landscape architectural, architectural and engineering services. If approved, services will be provided from November 2013 through November 2014. Once a final design is approved, and a scope for phase one construction is determined a contract amendment for may be submitted to the City Council for approval at a later date. Construction of Phase One of the project is expected to begin in November 2014.

### **RECOMMENDATION:**

Staff recommends a resolution approving the agreement for landscape architectural, architectural and engineering services between the City of Fayetteville and Lose and Associates in an amount not to exceed \$86,735 plus a 10% project contingency of \$8,674 for a total project cost of \$95,409 for the design of the Regional Park master plan and preliminary grading and drainage plan.

### **BUDGET IMPACT:**

This project is funded with Parks Development Funds. The cost of \$95,409 is accounted for in project number 02002.1- Regional Park.

### **Attachments:**

Staff Review Form  
Signed Agreement and Proposal  
Purchase Requisition

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION AWARDED RFQ #13-13 AND AUTHORIZING A CONTRACT WITH LOSE & ASSOCIATES, INC. IN AN AMOUNT NOT TO EXCEED \$86,735.00 FOR LANDSCAPE ARCHITECTURAL, ARCHITECTURAL AND ENGINEERING SERVICES FOR THE DESIGN OF A REGIONAL PARK MASTER PLAN AND A PRELIMINARY GRADING AND DRAINAGE PLAN, AND APPROVING A TEN PERCENT (10%) PROJECT CONTINGENCY

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby awards RFQ #13-13 and authorizes a contract with Lose & Associates, Inc. in an amount not to exceed \$86,735.00 for landscape architectural, architectural and engineering services for the design of a regional park master plan and a preliminary grading and drainage plan, and further approves a ten percent (10%) project contingency.

**PASSED and APPROVED** this 5<sup>th</sup> day of November, 2013.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN**, Mayor

By: \_\_\_\_\_  
**SONDRA E. SMITH**, City Clerk/Treasurer

## City Of Fayetteville - Purchase Order (PO) Request

(Not a Purchase Order)

*All purchases under \$2500 shall be used on a P-Card unless medical or 1099 service related. (Call x256 with questions)*

*All PO Request shall be scanned to the Purchasing e-mail: Purchasing@ci.fayetteville.ar.us*

Requisition No.:	Date: <b>3/19/2013</b>
P.O Number:	Expected Delivery Date: <span style="float: right;">Lose &amp; Associates, Inc.</span>
Page 4 of 28	

Vendor #: <b>9349</b>	Vendor Name: <b>Lose and Associates</b>	Mail Yes: _____ No: _____	
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Address: <b>40 Rutledge St.</b>	Fob Point:	Taxable Yes: _____ No: _____	Quotes Attached Yes: _____ No: _____
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City: <b>Nashville</b>	State: <b>TN</b>	Zip Code: <b>37210</b>	Ship to code:	Division Head Approval: <i>[Signature]</i>
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Requester: <b>Alison Jumper</b>	Requester's Employee #: <b>2369</b>	Extension: <b>3469</b>
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Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	Professional Services for Regional Park Per RFQ #13-01	1	Lot	\$86,735.00	\$86,735.00	2250.9255.5314.00	02001.1		
2									
3									
					\$0.00				
					\$0.00				
					\$0.00				
					\$0.00				
					\$0.00				
					\$0.00				
					\$0.00				
					\$0.00				
					\$0.00				
					\$0.00				
					\$0.00				
					\$0.00				
*	Shipping/Handling		Lot		\$0.00				

Special Instructions:	Subtotal: <b>\$86,735.00</b> Tax: _____ Total: <b>\$86,735.00</b>
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Approvals:

Mayor: _____	Department Director: _____	Purchasing Manager: _____
Finance & Internal Services Director: _____	Budget Manager: _____	IT Manager: _____
Dispatch Manager: _____	Utilities Manager: _____	Other: _____

Member

*American Society of  
Landscape Architects*

*American Institute of  
Architects*

*American Society of  
Civil Engineers*

*American Planning  
Institute*

October 14, 2013

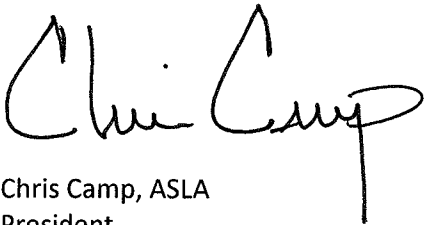
Ms. Alison Jumper, PLA, ASLA  
Park Planning Superintendent  
Fayetteville Parks and Recreation Department  
113 West Mountain  
Fayetteville, AR 72701

Dear Alison:

On behalf of Lose & Associates, Inc., and our design team members, I am pleased to submit a fee proposal and scope for the development of a master plan for the new Fayetteville Regional Park. I have enclosed a scope of services that outlines our work plan for the park master plan and for construction documents that would be added by a future contract amendment. For the master planning effort, I have included fees for geotechnical testing as well as doing a wetland and archeological resource determination. I have also adjusted our proposed project schedule to include the City of Fayetteville Planning Commission submittal process and to start construction by September of 2014. Please review the scope of services and let me know if there are any changes or additions we need to make.

We look forward to working with you and the rest of the city staff on this exciting project.

Sincerely,



Chris Camp, ASLA  
President

## **APPENDIX A.**

### **SCOPE OF SERVICES**

#### **ITEM 1. DEVELOPMENT OF A PARK MASTER PLAN**

##### **PROJECT UNDERSTANDING**

The City of Fayetteville wishes to develop a park master plan and construction documents for a new regional park located on approximately 200 acres. The Master Plan will include:

- 8 baseball fields
- 6 softball fields
- Great lawn with amenities (pavilion, playground, etc.)
- 8 tennis courts
- 4 basketball courts
- Splash pad
- Amphitheatre
- Parking
- On site waste water treatment
- 8 soccer fields
- Maintenance facility
- Parks and Recreation office facility
- Passive and active recreation areas
- Paved and natural surface trails
- Road and utility infrastructure

The master plan should be designed with a strong emphasis on low impact design and include native plant materials, energy efficient buildings, lighting systems and irrigation. The plan should be designed to minimize maintenance, light trespass and traffic impacts on surrounding neighborhoods. The design shall meet all state, federal and local codes and regulations.

##### **MASTER PLAN PROJECT APPROACH**

###### **A. Gather Base Information.**

We will begin gathering base data once we have received a notice to proceed on the master plan. We will collect information (i.e. boundary surveys, GIS topography and other information, existing environmental testing, etc.) that is already available. We will check web sites for known wetland and soils information. We will review past planning studies on the site and local planning regulations and codes to become familiar with local requirements. We will also develop a list of additional information about the site that will be needed to complete the master plan.

###### **B. Kickoff Meeting**

To initiate the planning process, Lose & Associates team members will meet with designated representatives of the City who will serve as the client committee. At this meeting, we will discuss project goals, programs and any specific issues or known concerns. We will discuss past planning efforts on the site and other planning efforts of the city that could impact the park. We will confirm the items that are to be included in the master plan program. We will also go over a list of the base information that we have assembled and what additional information will be required. We will also go over proposed geotechnical testing locations on the site. See recommended geotechnical testing scope at the end of this scope of services.

The team will record the comments from the meeting and prepare a meeting summary for distribution to the client committee and design team.

### **C. Site Analysis and Review Meeting**

Immediately following the kickoff, we will begin the site analysis and inventory. Lose & Associates team members will visit the site to identify and analyze built and natural site features on the base map. Team environmental staff will also review the site's drainage features and low lying areas for potential wetlands or floodplains that may impact the design. Team members will also perform a historic and cultural resource records review to determine if any significant elements are located on the property that could impact the overall site development. (See detailed description of wetland and archeological services at end of this scope of service) Geotechnical testing will be initiated in order to determine depth of bedrock and site soil conditions.

Team civil engineers will work with representatives of local water, sewer and electrical utilities as well as the local DOT to determine the extent that existing utilities and roadways will impact or serve potential development of the park. We will meet with other community planning staff to coordinate plan concepts with larger community planning efforts. We will also identify other opportunities and constraints presented by the physical characteristics of the site and analyze adjacent land uses. Concurrently, we will consult with requisite agencies regarding regulatory issues that may impact the plan and eventual construction. Lose & Associates will prepare a site analysis evaluating the site's natural and cultural features such as topography, geology, hydrology, wetlands, infrastructure, etc. and an opportunities and constraints graphic.

After performing the analysis of the park's opportunities and constraints, Lose & Associates will meet with the Client to refine the desired program, keeping in mind the need to provide the desired amenities and limit impacts on the site's sensitive natural features.

### **D. Concept Plan Development**

After determining the refined program, three alternative master plans will be developed to a bubble-diagram/spatial relationship level. Each plan will dedicate enough space to sufficiently allow grading, drainage, and other improvements to occur. When considering the layout for the park elements, and studying the three alternative conceptual plans, we will discuss which program elements are more likely to be built as a

first phase. When a project has many program features, even the smallest of improvements can have large costs if large utility services are needed for future phases along with the initial phases. We will use our experience in the phasing of large multi-million dollar park developments all over the southeast to discuss costs related to the three plans for review. We will make sure that those reviewing the concepts understand that in some cases, infrastructure improvements must consider the entire build-out of portions of the site, not just the smaller improvements of a single phase. We will present the three alternatives to the client team for discussion and review.

**E. Preliminary Master Plan, Grading Study and Opinions of Cost**

Using feedback from this meeting, we will prepare a preliminary master plan for development. Along with the master plan, a grading and drainage study will be developed. Earthwork requirements for the entire site will be considered as part of this exercise. Cut and fill volumes will be developed to determine if this site can be balanced or if soil necessary to complete the park will have to be imported to the site. We will also produce a preliminary opinion of probable cost for the design that presents potential phasing opportunities.

Lose & Associates will present the preliminary plan to the client committee and desired city officials. At this meeting, the draft master plan will be compared along with its probable costs, and further phasing options will be discussed. Possible methods of incorporating sustainable design concepts will also be discussed. Lose & Associates will also present the preliminary plan to the public in an open house public input meeting, where comments will be gathered in an informal setting if there are significant changes from the current conceptual plan. Comments gathered in these meetings will be used to refine the plan into a final master plan for development.

**F. Final Master Plan & Summary Report**

Using information gathered in the preliminary master plan presentations, Lose & Associates will prepare a final master plan for development as well as updated grading study and opinion of probable cost. We will also prepare a brief summary report of the project design process and final decisions.

Lose & Associates will present the finalized master plan and opinion of probable cost to the client committee and desired city officials. We will also present the final plan to the public again in an informal open house setting. Minor modifications to the final master plan may be incorporated after these meetings for incorporation into the final report.

After all meetings are complete and the final plan is approved, we will prepare a summary report that includes all previous graphics, outlines review decisions, discusses the opinion of probable cost for the improvements, recommends phasing strategies, and discusses sustainable design strategies for site and building features, etc. All master plan renderings, power point presentations and the summary report will be provided to the city in PDF format.



For the master planning effort we will use topographic mapping provided by the city. If after the master plan is complete, it is determined field run topographic mapping is needed, it will be developed as part of the construction document process.

### **Geotechnical Testing**

In order to gauge soil conditions and to accurately develop opinions of probable cost associated with earthwork activities, we have included geotechnical testing as part of the master planning phase. Engineering team member Grubbs, Hoskyn, Barton & Wyatt, Inc., (GHBW), have provided the following recommended service for the project.

For the project, we propose to do the following study as you suggested:

- a) Drill a total of twenty-five (25) sample borings to approximately 20-ft depth or auger refusal, whichever is less, across the site, obtaining undisturbed soil samples or Standard Penetration Values at 2- to 5-ft intervals or at a change in soil stratum; The boring locations will be decided by GHBW in consultation with Lose & Associates and the client committee based on the conceptual master plan.
- b) Perform an adequate laboratory testing program planned after the borings are completed to determine the physical characteristics and engineering properties of the foundation and subgrade soils; and
- c) Prepare an engineering report with recommendations for foundation and pavement design, site grading and construction criteria. Potential for rock excavation will also be addressed.

### **Environmental Jurisdictional Determination & Archeological Records Search**

Team members from Gaver will perform a field jurisdictional determination for the presence of wetlands. This work will include a GPS level mapping of hydrology features and the development of a determination report with exhibits. They will coordinate with the US Army Corps of Engineering, USACE, and conduct a site visit with the USACE for a field verification of the findings. Their findings will be shared with all team members and the client committee.

Concurrent with the wetlands determination, Garver team members will conduct research review of the Arkansas Archeological Survey to determine if known cultural resources exist at the site. They will prepare a letter report of their findings for the project file. If significant resources are found, the client committee will be notified and discussion on the potential impacts on development of the property will be outlined.

## **ITEM 2. CONSTRUCTION DOCUMENT AND CONSTRUCTION ADMINISTRATION APPROACH**

- A. Initiation:** After the master planning effort is complete, we will meet with the client committee to define the project scope that will move forward as part of Phase 1 of construction. Following this meeting, any additional field work will begin along with the production of construction documents
- B. Schematic Design:** The preliminary design phase will evaluate the scope of work to be accomplished in relation to the budget. Areas requiring additional topographic surveys or base data will be identified. Areas requiring environmental remediation will also be identified. Schematic plans will then be developed to a 50% level and plan submittals made for buildings, grading, layout, utilities, details, etc. During this process, we will continue to coordinate with city permitting staff in an effort to expedite the permitting of the construction documents. Along with the preliminary plans, we will develop a preliminary 50% opinion of probable cost. We will also prepare a preliminary list of project drawings and specification sections anticipated for the final package. For facilities in sensitive areas, we will show preliminary layouts that meet master plan design intent for discussion and in-field review. As the plans are completed, we will hold a review meeting with the client committee.
- C. Planning Commission Submittals:** As part of the construction document process, plans will be submitted for LSD review. The team will respond to any comments and submit revises for Subdivision Committee Review. Once plans have been approved by the committee, plans will then be submitted to the Planning Commission for review and approval.
- D. Design Development:** Following the input from the schematic design meeting, team civil engineers and landscape architects will continue site work, including utility, grading and stormwater designs and coordination with permitting and regulatory officials. Team architects will continue on building designs and begin to employ the services of our mechanical, plumbing, electrical and structural engineering partners as needed. As this phase of design draws to a close, a 75% complete design development documents review meeting will be held, and the design team will present the plans and revised supporting opinions of probable cost. The new cost numbers will be compared to the overall project budget to determine if any modification to the project program is needed. If opinions of probable cost exceed budget funding, client committee will be asked to identify elements for later phasing consideration. Team members will also conduct a meeting with permit officials at this level of completion to confirm code interpretations.

- E. Preparation of Final 100% Construction Plans:** Using the comments provided by the client committee and management, the design team will complete the construction plans for the project. Drawings, along with a bid specification manual, will be prepared for the project. The plans will be developed to a 100% level and submitted to the client committee, local permit offices, and state and federal permit officials (if needed) for review and approval. Comments received from permit officials will be forwarded to client committee along with the recommended remedial action proposed by the design team. Plans will then be modified to reflect codes comments and client committee comments and will be resubmitted to the codes officials for approval. Upon receipt of approved plans from codes officials, the project will ready for bidding.
- F. Bidding Services:** Bid drawings, along with a bid specification manual, will be prepared for the project. During the bid process, we will distribute bid documents and attend and facilitate a pre-bid meeting for the prospective contractors. We will respond to contractor questions and issue clarifications and addenda as necessary. We will assist the client in analyzing contractor bids and in the contract award.
- G. Construction Administration Services:** During construction we will meet with the client and the contractor on site to discuss construction progress and to observe site conditions and clarify matters for the contractor. Twice each month, team members will attend a progress meeting and will prepare minutes of the meeting's discussions and findings. At key periods of construction, various team members responsible for specific portions of the project design will attend meetings or be on site for required reviews as necessary to their trade. As part of the base construction administration services, full time onsite or daily administration services are not included.

Each month, we will review and approve the contractor's applications for payment. As they are submitted, we will review shop drawings, material submittals, requests for information, change order requests (both from owner and contractor), etc. As the project draws to a close, we will perform construction closeout review and coordinate with the contractor to collect contractor's occupancy certificates, warranties, as-built information, O&M manuals, lien releases, etc.

**Project Fees**

Fees for the project are outlined below. Fees are broken down by activity for the master plan. Surveying fees are provided on a per acre basis for open meadows and wooded areas. We have also provided an alternate fee for a higher level of onsite construction administration services.

**Item 1. Master Plan Fees**

Planning and Design	\$40,210.00 hourly not exceed
Geotechnical Testing (25 borings)	\$23,500.00 hourly not exceed
Wetland Determination and Archeological Review (entire site)	\$16,125.00 hourly not exceed
Travel, Mileage, Administrative Cost	\$6,900.00 not to exceed

**Total Fee** **\$86,735.00**

**See attached hourly breakdown for fees by task**

In addition to the lump sum fees stated above standard reimbursable expenses will be billed as outlined on the attached hourly rate schedule.

**Item 2. Construction Documents and Construction Administration**

Fees for Item 2 will be provided after funding level for Phase 1 of construction has been established.

*ATTACHMENT A – Hourly Rates*

*LOSE & ASSOCIATES, INC.*

***HOURLY RATE SCHEDULE (for use with all hourly agreements and for Additional Services)***

**Professional Services Hourly Rate**

Senior Principal/President	\$225.00
Principal I/Vice President/E5	\$183.00
Principal II/Vice President/E4	\$150.00
Sr. Environmental Biologist/E3	\$129.00
Division Director, President Emeritus/P2.....	\$137.00
Senior Landscape Architect, Architect, and Engineer/P1 .....	\$108.00
Certified Park & Recreation Specialist.....	\$100.00
Engineer Specialist/Project Coordinator.....	\$ 90.00
Landscape Architect I, Architect I, Engineer I, Project Manager I .....	\$ 90.00
Landscape Architect II, Architect II, Engineer II, Project Manager II.....	\$ 80.00
Land Planner I, Intern Architect I, Engineer in Training I	
GIS Specialist I, Assistant Graphic Designer I.....	\$ 75.00
Land Planner II, Intern Architect II, Engineer in Training II	
GIS Specialist II, Assistant Graphic Designer II .....	\$ 70.00
Technician.....	\$ 65.00
Corporate Controller .....	\$ 65.00
Marketing Director.....	\$ 60.00
Assistant Accounts Manager, Administrative Assistant I.....	\$ 45.00
Administrative Assistant II .....	\$ 35.00

*Reimbursable Expenses*

Prints	cost + 15%
Postage and Shipping	cost + 15%
Copies	cost + 15%

NOTE: All the above-stated fees and expenses are to be billed monthly, and the invoices are due and payable upon receipt.

# COST ESTIMATE - GEOTECHNICAL INVESTIGATION

ITEM	COST/UNIT	UNITS	COST/ITEM
<b>1. Drilling and Sampling</b>			
1.1 Mobilization/demobilization, mile	\$3.00	40	\$120.00
1.2 Set-up charges, hole	\$50.00	25	\$1,250.00
1.3a Drilling and sampling (truck), ft	\$13.75	500	\$6,875.00
1.3b Rotary Wash, ft	\$21.50		
1.3c Rock Coring	\$38.00		
1.3d Access/Difficult Drilling, hr	\$185.00	12	\$2,220.00
1.4 Principal, hr	\$125.00	8	\$1,000.00
1.5 Project Engineer, hr	\$95.00	8	\$760.00
1.6 Staff Engineer, hr	\$75.00	8	\$600.00
1.5 Mileage, hr	\$0.50	60	\$30.00
1.6 In-yard Mob, each	\$125.00	1	\$125.00
		subtotal	\$12,980.00
<b>2. Laboratory Testing</b>			
2.1 Moisture content, each	\$5.00	175	\$875.00
2.2 Liquid and plastic limits, each	\$40.00	20	\$800.00
2.3 Sieve analysis w/ #200 sieve, each	\$50.00		
2.4 Percent passing a single sieve, each	\$30.00	20	\$600.00
2.5 CBR	\$450.00		
2.6 Unconfined compression, each	\$40.00		
2.7 pH, each	\$30.00		
2.8 Soil Resistivity, each	\$60.00		
2.9 Sulfate, each	\$100.00		
		subtotal	\$2,275.00
<b>3. Engineering Analysis and Reporting</b>			
3.1 Staff Eng, hour	\$75.00		
3.2 Project Engineer, hour	\$95.00	20	\$1,900.00
3.3 Principal, hour	\$125.00	20	\$2,500.00
3.4 Draftsperson, hour	\$40.00	10	\$400.00
3.5 Word processor, hour	\$30.00		
		subtotal	\$4,800.00
	<b>ESTIMATED COST:</b>		<b>\$20,055.00</b>
	Unit Price, \$/ft:		\$40.11
If rock is encountered, obtain representative / rock cores & test it:			\$1,500.00
Access (Dozer): 2 Days @ \$1,000.00:			\$2,000.00
	<b>TOTAL:</b>		<b>\$23,500.00</b>

<b>Fayetteville Regional Park Master Plan Fee Schedule</b>		<b>Principal LA</b>	<b>Principal Civil</b>	<b>Project Manager</b>	<b>Senior Licensed LA</b>	<b>Production Landscape</b>
		\$185.00	\$137.00	\$100.00	\$108.00	\$80.00
<b>Kick-off Meeting</b>						
Meet with designated representatives for kick-off meeting		8		8		
Obtain base data, permit requirements and survey information		0		5		16
Conduct site inventory and analysis		8		8		24
<b>Develop Preliminary Master Plan</b>						
Refine desired program for the park/ meeting with client		8		8		
Develop three alternative master plan concepts		6		8	8	32
Present concepts to designated City representatives		8		8		
Develop preliminary master plan based on comments		6		8		
Develop preliminary opinion of probable cost		0	2	2	8	8
Present preliminary master plan to designated City representatives and the public		8		8		
<b>Develop Final Master Plan</b>						
Incorporate comments into final master plan		2		3		6
Update opinion of probable cost		0	2	1	4	2
Prepare summary report for the final master plan design process		6		16	8	8
Present final master plan to designated City representatives and the public		8		8		
<b>LOSE &amp; ASSOCIATES TEAM HOURS</b>		<b>68</b>	<b>4</b>	<b>91</b>	<b>28</b>	<b>96</b>
<b>LOSE &amp; ASSOCIATES TEAM FEE</b>		\$12,580.00	\$548.00	\$9,100.00	\$3,024.00	\$7,600.00
<b>Environmental - Jurisdictional Determination</b>						
Filed Jurisdictional Determination						
GPS Mapping of Hydrology Features						
Jurisdictional Determination Report & Exhibits						
QA/QC of Report						
Jurisdictional Determination Coord. With USACE						
USACE JD Field Verification Site Visit						
Coordination with City and LOSE						
<b>ENVIRONMENTAL TEAM HOURS</b>		<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>ENVIRONMENTAL TEAM FEE</b>		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Environmental - Archeological Records Search</b>						
Archeological Research at Arkansas Archeological Survey						
Letter Report of Archeological Findings						
<b>ENVIRONMENTAL TEAM HOURS</b>		<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>ENVIRONMENTAL TEAM FEE</b>		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Sub-Total</b>						
<b>Geotechnical Testing</b>		<i>* See Attachment B-2 or detailed breakdown.</i>				
<b>Travel, Mileage &amp; Administrative Cost</b>						
<b>TOTAL FEE</b>						

<b>Project Schedule</b> <b>Design Services - Fayetteville Regional Park</b>		November		December	
<b>Kick-off Meeting</b>					
Meet with designated representatives for kick-off meeting					
Obtain base data, permit requirements and survey information					
Conduct site inventory and analysis					
<b>Develop Preliminary Master Plan</b>					
Refine desired program for the park					
Develop three alternative master plan concepts					
Present concepts to designated City representatives					
Develop preliminary master plan based on comments					
Develop preliminary opinion of probable cost					
Present preliminary master plan to designated City representatives and the public					
<b>Develop Final Master Plan</b>					
Incorporate comments into final master plan					
Update opinion of probable cost					
Prepare summary report for the final master plan design process					
Present final master plan to designated City representatives and the public					
<b>Schematic Design</b>					
Determine full scope of work and areas requiring additional survey and environmental remediation					
Develop schematic plans to a 50% design level for buildings, grading, layout, utilities and details					
Develop an opinion of probable cost to accompany 50% schematic design drawings					
Conduct review meeting with client team					
<b>City of Fayetteville Large Scale Development Review</b>					
Submit for LSD review Tech Plat					
Submit revisions for Subdivision Committee Review					
Submit Revisions for Planning Commission Review					
<b>Design Development</b>					
Advance plans to a 75% design review set					
Revise opinion of probable cost					
Conduct review meeting with client team					
<b>Preparation of Final 100% Construction Plans</b>					
Complete final construction documents					
Complete final bid specification manual					
Submit plans to client team and permit officials for full engineering review					
Modify plans to reflect comments received from permit officials					
<b>Bidding and Construction Support</b>					
Assist in the advertisement for bid and provide electronic files to purchasing					
Attend pre-bid conference					
Respond to requests for information					
Review bid responses					
City Council approves contract					
Construction begins					

**NOTE: Schedule may be extended due to City review times.**



AGREEMENT  
For  
PROFESSIONAL LANDSCAPE ARCHITECTURAL, ARCHITECTURAL AND  
ENGINEERING SERVICES  
Between  
CITY OF FAYETTEVILLE, ARKANSAS  
And  
LOSE AND ASSOCIATES

THIS AGREEMENT is made as of \_\_\_\_\_, 2013, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and Lose and Associates (hereinafter called ENGINEER).

CITY OF FAYETTEVILLE from time to time requires professional and 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 landscape architectural / architectural and 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 landscape architect, architect or 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.
- 3.1.6 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 **\$ 86,735.00**. The CITY OF FAYETTEVILLE shall compensate ENGINEER based on a Unit Price or not to exceed basis as described in Appendix A.
- 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:  
Street  
City, State Zip Code

### 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: Clm Ctp

ATTEST:

By: \_\_\_\_\_  
City Clerk

Title: President

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

