

RESOLUTION NO. ____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A CONTRACT WITH BLACK & VEATCH, INC. TO PROVIDE PROFESSIONAL SERVICES FOR THE PHASE 1 EVALUATION OF GEOTECHNICAL ISSUES IMPACTING THE DICKEY STEPHENS BALLPARK; AND FOR OTHER PURPOSES.

WHEREAS, as a result of the appearance of sinkholes and other foundation issues caused by the May/June 2019 flooding at the Dickey Stephens Ballpark, the City of North Little Rock has contacted companies to aid in the prevention of future sinkholes and subsurface failures at the Ballpark; and

WHEREAS, Black & Veatch, Inc. is an engineering firm selected by the Architect and Engineering Committee to provide engineering services to the City and has proposed to provide professional engineering services, as set forth below for the Phase 1 Evaluation of Geotechnical Issues Impacting the Dickey Stephens Ballpark (see Black & Veatch, Inc. Scope of Services and Compensation attachments collectively attached hereto as Exhibit A).

Data Gathering and Analysis	\$ 5,000.00
Project Management and Meetings	\$ 20,500.00
Conceptual-Level Groundwater Analysis	\$ 27,500.00
Geotechnical Analysis	\$ 18,000.00
Structural Analysis of Retaining Wall	\$ 10,000.00
<u>Summary Report</u>	<u>\$ 8,000.00</u>
Total Not-To-Exceed Amount	\$ 89,000.00

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Mayor and City Clerk are hereby authorized to enter into a contract with Black & Veatch, Inc. (substantially similar to Exhibit B attached hereto) for professional engineering services for Phase 1 Evaluation of Geotechnical Issues Impacting the Dickey Stephens Ballpark project in the amount of \$89,000.00.

SECTION 2: That the contract amount of \$89,000.00 has been included in the FEMA flood account.

SECTION 3: That all contracts/agreements outlined and approved herein will be reviewed and approved by the City Attorney's Office prior to the execution thereof.

SECTION 4: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

Mayor Joe A. Smith

SPONSOR:

Joe A. Smith
Mayor Joe A. Smith *by At*

ATTEST:

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

Amy Beckman Fields
Amy Beckman Fields, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/cf

FILED	<u>10:40</u>	A.M.	_____	P.M.
By	<u>Amy Fields, CA</u>			
DATE	<u>8-6-19</u>			
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas				
RECEIVED BY	<u><i>[Signature]</i></u>			

Attachment A – Scope of Services

The City of North Little Rock (NLR) is retaining Black & Veatch (B&V) to conduct a preliminary study to develop conceptual level recommendations for improvements to prevent future sinkholes and subsurface failures at the Dickey Stephens Ballpark. This study is referred to as a “Phase 1” assessment with the intention of having a “Phase 2” to follow. Phase 2 will likely be a refinement of the concepts as a design development step that would then lead into a design.

The scope of services outlined below are intended to generally describe the type of work needed to develop basic concepts for improvement alternatives. Since the first phase of the includes the analysis of existing data, it is expected that a more detailed scope will be developed as the analysis of the existing data is conducted, and root causes are identified. As such, initial tasks for this effort are broadly defined and will be clarified further as this effort is completed.

B&V will work on an hourly rate basis and will not exceed the maximum amount in Attachment B without written permission from the owner.

A. Data Gathering and Analysis

- A1. B&V will collect data from the NLR staff; including plans, photos, soil borings, reports and any other data that NLR can provide that might be relevant to developing an understanding of the project conditions.
- A2. B&V will analyze the existing data to understand the root causes of the problem. After completing this analysis, a list of possible improvements will be developed and evaluated.

B. Project Management and Meetings

- B1. B&V will provide a Project Manager (PM) that will be the main point of contact with NLR. The PM will be responsible for communications between NLR and the B&V engineering staff and specialists.
- B2. It is anticipated that there will be 3 meetings between B&V and NLR during the study. Some of the B&V staff will attend these meetings online with one or two B&V staff members attending in person.

C. Conceptual-Level Groundwater Analysis

- C1. A conceptual-level desktop groundwater analysis will be performed using available data. Until more detailed aquifer testing is performed at the site, assumptions will be made by the project team for site characteristics to perform the desktop analysis in an efficient manner. For important parameters with significant uncertainty at this time, conservative assumptions will be made (guided by input from those familiar with local



hydrogeology and the geotechnical analysis of the site described in the next task below).

- C.2 Steady-state groundwater flow modeling will be performed for up to two different river elevations. Two alternatives (including vertical dewatering wells and/or cutoff wall) and two sets of assumptions to bracket the potential aquifer and riverbed characteristics (for a total of 8 conceptual simulations) will be developed. The objective of these simulations is to maintain groundwater heads beneath the field at or below an elevation selected by the evaluation team.
- C3. The simple model will be set up with horizontal layers and extended far enough from the ballpark to the west, north, and east to minimize the effect on the assumed boundary conditions on the results at the site, leaving the river as the dominant boundary condition. These simulations are intended to develop a better understanding of the issues, to give an initial comparison of the potential effectiveness of various strategies to control groundwater at the site during times that the river rises above the elevation of the field, and to identify where data gaps currently exist.
- C4. For any strategies that move forward following this conceptual Phase 1 effort, the analysis should be refined after additional field testing is performed.
- C5. The Phase 1 work does not include aquifer testing, survey, inspection of existing pipe, filter fabric or bedding, a detailed groundwater model and calibration, groundwater modeling of the existing field drainage systems, or hydraulic analysis of the current groundwater and surface water drainage pipes or pumps. Evaluations of the existing field drainage systems, pipes, and pumps in the area will likely be needed during Phase 2 if the selected improvement alternative connects to the existing Corps of Engineers pump station (to determine available capacity in the system between the field and the river).
- C5. For the purpose of Phase 1 assessment, it is assumed that a new independent discharge system to the river for the groundwater is feasible. If not, a more in-depth look at the Corps pump station capacity will be included in Phase 2.

D. Geotechnical Analysis

- D1. One day of site reconnaissance will be conducted by B&V engineers to develop an understanding of the existing site conditions.
- D2. A meeting with USACE Little Rock staff to obtain information on levee design and performance, dewatering facility operations and any USACE review/permitting requirements for remedial efforts will be included.

- D3. Based on available geotechnical data, multiple subsurface profiles will be developed to illustrate ground stratigraphy and groundwater conditions as they relate to the stadium, levee and river.
- D4. Relevant geotechnical parameters (grain size, plasticity, strength, and hydraulic conductivities) will be assigned to each stratum. The subsurface profiles will be used for levee system under-seepage evaluations and numerical groundwater modeling.
- D5. B&V will develop and evaluate preliminary remedial measures.
- D6. B&V will develop an Opinion of Probable cost and construction schedule for up to two of the recommended improvement alternatives.

E. Stormwater Analysis

- E1. No analysis of existing drainage system is included in Phase 1. It is expected that an analysis of the rainfall and runoff from the field into the surface drainage system will be warranted during Phase 2.

F. Structural Analysis of Retaining Wall

- F1. B&V will provide a structural engineer to visit the site and evaluate the existing conditions.
- F2. B&V will complete a preliminary evaluation of retaining wall distress.
- F3. B&V will develop a preliminary evaluation of remedial measures.
- F4. B&V will develop recommendations for remediation (does not include any design).

G. Summary Report

- G1. B&V will develop and submit (for review) a Summary Report of the conceptual groundwater model, geotechnical findings, and provide recommendations. This report is anticipated to be less than ten pages in length and will summarize the findings, the evaluation of alternatives, and will provide a recommendation for alternatives to consider for design. No actual design work is included in this scope as it is understood that design will follow once this assessment and study effort is complete.

Attachment B – Compensation

Compensation will be made utilizing the following phases and fees, based on % complete at the end of each month:

Data Gathering and Analysis	\$ 5,000.00
Project Management and Meetings	\$20,500.00
Conceptual-Level Groundwater Analysis	\$27,500.00
Geotechnical Analysis	\$18,000.00
Structural Analysis of Retaining Wall	\$ 10,000.00
Summary Report	\$ 8,000.00
Total Not-To-Exceed Amount	\$89,000.00

The following Hourly Rates will be used for billing:

Project Manager 2	\$230
Project Manager 1	\$210
Senior Engineer 3	\$220
Senior Engineer 2	\$200
Senior Engineer 1	\$180
Engineer 7	\$170
Engineer 6	\$160
Engineer 5	\$150
Engineer 4	\$135
Engineer 3	\$110
Engineer 2	\$95
Engineer 1	\$85
GIS Specialist 3	\$135
GIS Specialist 2	\$105
GIS Specialist 1	\$85
Admin/Clerical	\$70



CONTRACT

FOR

**PROFESSIONAL SERVICES
PHASE 1 – EVALUATION OF GEOTECHNICAL ISSUES IMPACTING
THE DICKEY STEPHENS BALLPARK**

THIS **CONTRACT** is by and between THE CITY OF NORTH LITTLE ROCK, herein called the “City,” acting herein through its Mayor, Joe A. Smith, and Black & Veatch, Inc., herein called “Engineer,” and is effective on the date signed by the City.

In consideration of the mutual covenants herein, the parties agree as follows:

ARTICLE 1 -- SCOPE OF ENGINEER'S BASIC SERVICES

1.01 The Engineer will provide all professional services as outlined in Attachment A – Scope of Services (“Services”), and incorporated herein, with regard to the Phase 1 Evaluation of Geotechnical Issues Impacting The Dickey Stephens Ballpark project (“Project”).

ARTICLE 2 – CONTRACT DOCUMENTS

2.01 The Contract Documents shall consist of:

- .1 This fully executed Agreement, including all attachments;
- .2 Written Amendments; and
- .3 Work Change Directives, if any.

ARTICLE 3 – ENGINEER'S TEAM MEMBERS

3.01 *Team Members:*

*Bently C. Green, PE – Assoc. Vice President
Bradley J. Davis, PE – Project Manager*

ARTICLE 4 – CITY'S DESIGNATED REPRESENTATIVE

4.01 *The City's Designated Representative is:*



Chris Wilbourn, PE – NLR Chief Engineer

ARTICLE 5 – DELIVERABLES:

5.01 Consultant shall provide to the City the following:

- .1 See Attachment A – Scope of Services

ARTICLE 6 – BASIC AGREEMENT AND PERIOD OF SERVICE

6.01 Engineer shall provide or furnish all professional services necessary for the Phase 1 preliminary study to develop written conceptual level recommendations for improvements to prevent future sinkholes and subsurface failures at the Dickey Stephens Ballpark, which City and Engineer intend will result in the refinement of the concepts as a design development step that would then lead into “Phase 2,” a design, requiring a separate agreement. In addition to other study documentation itemized in Attachment B—Compensation, attached hereto and incorporated herein, Engineer will provide a written Summary Report to the City at the completion of Phase 1. City understands that, in performance of the Services, Engineer may be supplied with certain information and/or data by City and/or others, and that Engineer will rely on such information. It is agreed that the accuracy of such information may not be within Engineer’s control but, if verification is possible, Engineer shall use its best efforts to verify the accuracy of such information before acting on it. It is agreed that if the accuracy of such information cannot be ascertained with reasonable discovery, the Engineer shall not be liable for its accuracy.

6.02 City hereby agrees that Engineer may subcontract portions of the Services to its related or affiliated entities.

6.03 Nothing contained herein shall be construed as limiting or depriving Engineer of its rights to use its basic knowledge and skills to design or carry out other projects or work for itself or others, whether or not such other projects or work are similar to the work to be performed pursuant to this Agreement.

ARTICLE 7 -- PAYMENT PROCEDURES

7.01 Engineer shall prepare invoices in accordance with Attachment B – Compensation, including details of Services rendered, and submit invoices to City on a monthly basis.

Payments due Engineer under this Agreement shall be electronically transferred either by ACH, specifically in CCD+ or CTX format, or wire transfer to the bank account and in accordance with the bank instructions identified in Engineer’s most recent invoice in immediately available funds no later than the payment due date. In the event that such electronic funds transfer methods are not available to City, then payments due Engineer under this Agreement shall be made by check and mailed to the PO Box identified in the remittance instructions on the Engineer’s most recent invoice. The Remittance Advice document shall be mailed with the check to the PO Box.

7.02 As compensation for Engineer providing or furnishing Services and, if applicable, Additional Services, City shall pay Engineer as set forth in Paragraphs 7.01 and 7.04. If City disputes an invoice, either as to amount or entitlement, then City shall promptly advise Engineer in writing or

the specific basis of the dispute, may withhold only that portion so disputed, and must pay the undisputed portion.

7.03 City shall pay Engineer for Services as follows:

.1 An amount equal to the cumulative hours charged to the Project by each class of Engineer's employee's times standard hourly rates for each applicable billing class, plus reimbursement of expenses incurred in connection with providing the Services and Engineer's consultants' charges, if any.

.2 Engineer's standard Hourly Rates are attached as Attachment B.

.3 The maximum total compensation for Services and reimbursable expenses is estimated to be: Eighty-Nine Thousand and 00/100 DOLLARS (\$89,000).

7.04 For Additional Services, City shall pay Engineer an amount equal to the cumulative hours charged in providing any Additional Services by each class of Engineer's employees, times standard hourly rates for each applicable billing class; plus reimbursement of expenses, as defined herein, incurred in connection with providing the Additional Services and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Attachment B. Additional Services will be permitted only if approved in writing by the City and Engineer.

7.05 "Reimbursable expenses" are defined as the following:

- .1 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .2 Printing, reproductions, standard form documents;
- .3 Postage and handling;
- .4 Models, mock-ups, professional photography, and presentation materials requested by the City and prepared in-house by Engineer.

ARTICLE 8 – NON-APPROPRIATION

8.01 Notwithstanding any other provision of this Contract, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Contract at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Contract, including any sub-agreement attachment, schedule, or exhibit thereto, by the Owner. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Contract.

ARTICLE 9 – ENGINEER'S REPRESENTATIONS AND WARRANTIES

9.01 In order to induce City to enter into this Agreement Engineer makes the following warranties and representations:

.1 The Engineer represents and warrants that the Project will be performed with the degree of skill and care that is required by current, good, and sound professional procedures and practices, and in conformance with generally accepted professional procedures and industry standards prevailing at the time the Project is performed, and that all work on the Project shall meet the specifications set forth in the Contract Documents. Engineer further represents and warrants that Engineer and all personnel used to perform the Project, possess the knowledge, skill, and experience necessary to perform the Project. If, during the six month period following the earlier of completion or termination of the Services it is shown there is an error in the Services caused, in whole or in part, by Engineer's failure to meet such standards, and City notified Engineer within 48 hours of discovery of any such error, Engineer shall perform, at Engineer's cost, such corrective engineering services within the original Scope of Services as may be necessary to remedy such error.

.2 The Engineer hereby represents that it (and the individual engineers it employees on this Project) are licensed to practice Engineering as required by law in the State of Arkansas. Nothing in this Agreement shall be construed to authorize performance by the Engineer at a standard of care that is reduced from that which is required by law and which is expected of engineers practicing under similar circumstances and conditions.

.3 The Engineer agrees that its designs, Construction Documents, and Services shall conform to all federal, state, and local statutes and regulations applicable to its Services and the Project.

.4 The Engineer agrees and acknowledges that this duty is non-delegable – and that the Engineer, by signing drawings or preparing Construction Documents to submit for purposes of obtaining building and other governmental permits, shall be deemed to certify that it has taken every reasonable measure to ascertain what codes apply to the Project and as applied them accordingly. Nothing in this Agreement shall be construed to eliminate or diminish the Engineer's responsibility for compliance of its design, its Construction Documents, and its Services provided with local, state, and federal statutes and regulation.

9.02 The Engineer further represents and warrants that:

.1 Engineer has full power and authority to enter into this Agreement and to carry out the Project contemplated by this Agreement.

.2 The Engineer represents and warrants that Engineer's execution, delivery, and performance of this Agreement will not constitute: (i) a violation of any judgment, order, or decree binding on Engineer; (ii) a breach under any contract by which Engineer is bound; or (iii) an event that would, with notice or lapse of time, or both, constitute such a breach.

.3 The Engineer represents and warrants that Engineer has, and shall maintain in effect for the duration of this Agreement, all licenses, permits qualifications, and approvals of whatsoever nature which are legally required for Engineer to complete the Project. If applicable, Engineer shall also take reasonable steps to ensure that all permitted subcontractors are similarly licensed and qualified.

ARTICLE 10 – EXCLUDED ENGINEER SERVICES

10.01 Under this Agreement, 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, unless such responsibilities are specifically assigned to Engineer in Attachment A, Scope of Service. Engineer shall not be responsible for the acts or omissions of any Constructor.

10.02 Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.

10.03 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. However, if any probable construction costs exceeds the any Stated Limitation of Cost of Work authorized by City, Engineer shall make appropriate recommendations to CITY of more cost-effective ways to construct the Project and of any related compromises to quality of construction. If City requires greater assurance as to probable construction cost, then City agrees to obtain an independent cost estimate.

10.04 Engineer shall not be responsible for any decision made regarding any construction contract requirements, or any application, interpretation, clarification, or modification of any construction contract documents other than those made by Engineer or its consultants.

10.05 Engineer's Services do not include any services related to unknown or undisclosed Constituents of Concern, *as defined herein*. If Engineer or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, then Engineer shall inform City within 24 hours of discovery and, may, at its option and without liability for consequential or any other damages, suspend performance of Services on the portion of the Project affected thereby until the City retains appropriate specialist consultants or contractors to identify, abate and/or remove the Constituent of Concern and warrant that the portion of the Project affected is in full compliance with applicable laws and regulations, or terminate this Agreement for cause if it is not practical to continue providing Services.

10.06 Engineer's Services and, if applicable, Additional Services, do not include:

- .1 serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor for registration rules issued by the Securities and Exchange Commission;
- .2 advising City, or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances;
- .3 providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; and
- .4 providing legal advice or representation.

ARTICLE 11 – TERMINATION

11.01 The obligation to continue performance under this Agreement may be terminated, with or without cause, by City upon ten (10) days written notice. In such case, Engineer shall deliver to City the study documentation prepared in accordance with Attachments A and B to the date of termination, and upon receipt of the study documentation and an itemized invoice, City shall pay costs incurred and fees earned for Services rendered to the date of termination and through demobilization, upon providing documentary support to City's satisfaction.

ARTICLE 12 – CHANGE ORDERS

12.01 City and Engineer agree and acknowledge as a part of this Agreement that no Change Order, as defined herein, or other form or order or directive is authorized without written authorization by the Mayor or City's Designated Representative. The change order shall be signed by the Mayor or City's Designated Representative, and the Engineer.

ARTICLE 13 – DISPUTE RESOLUTION

13.01 City and Engineer agree to negotiate each dispute between them in good faith during the thirty (30) days after written notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated by using a mediation service located in Pulaski County, Arkansas, mutually agreed upon by the parties, with the costs being shared equally by the parties. If mediation is unsuccessful, the parties may exercise their rights at law in a court of competent jurisdiction in Pulaski County, Arkansas.

ARTICLE 14 – WAIVER OF "REMOTE" OR "SPECULATIVE" DAMAGES

14.01 City and Engineer agree that neither party will be liable for consequential damages of any kind whether arising in contract, in tort, or by operation of law that the breaching party could not reasonably have foreseen on entry into this Agreement. Specific to the Services rendered under this Agreement, City agrees that Engineer's total aggregate liability to City under this Agreement shall be limited to the total amount of compensation received by Engineer for Phase 1.

ARTICLE 15 – INSURANCE

15.01 Engineer shall maintain for the duration of this Agreement all forms of insurance required by law in the State of Arkansas, where the Project is located, and the state in which the Engineer is located, if different. Engineer shall maintain in force, during the period that Services are performed, workers' compensation insurance in accordance with the laws of the states having jurisdiction over Engineer's employees who are engaged in the Services and employer's liability insurance with a limit of \$100,000 each occurrence. Engineer also shall maintain commercial general liability insurance with a limit of \$1,000,000 per occurrence and in the aggregate;

automobile liability insurance with combined single limit of \$1,000,000; and professional liability insurance with a per occurrence and aggregate limit of \$1,000,000. City shall require all Project contractors under contract with City to include City and Engineer as additional insureds on their general, automobile, excess, pollution and umbrella liability insurance policies. The Engineer shall ensure that any and all Consultants engaged or employed by the Engineer carry and maintain similar insurance covering their respective portions of the Services.

ARTICLE 16 – INDEMNIFICATION

16.01 Engineer shall indemnify City against any and all claims, demands and causes of action for bodily injury to or death of persons or for damage to or destruction of property resulting, in whole or in part, from any and all negligent physical acts of Engineer while at City's facility.

ARTICLE 17 – COPYRIGHT

17.01 The Engineer and the City warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

17.02 The Engineer hereby assigns to the City, without reservation, all copyrights in all Project-related documents, models, photographs, and other expression created by the Engineer. Among those documents are certain "Instruments of Service," including the design drawings and the Construction Documents. The assignment provided for in this Section 17.02 shall result in the City being deemed sole copyright holder in the Instruments of Service and in all other designs and drawings created or prepared for this Project; and no other person or entity shall be deemed co-author or joint copyright holder in the works created or prepared for this Project. The City's obligation to pay the Engineer is expressly conditioned upon the Engineer's obtaining a valid written comprehensive assignment of copyrights from its Consultants in terms identical to those that obligate the Engineer to the City as expressed in this subsection, which copyrights the Engineer, in turn, hereby assigns to the City. The City, in consideration, hereby grants the Engineer and its Consultants a revocable, nonexclusive license to reproduce the documents for purposes relating directly to the Engineer's performance of its obligations under this Agreement, for the Engineer's archival records, and for the Engineer's reproduction of drawings and photographs in the Engineer's marketing materials, provided that the Project-related contents of those materials are approved as requested in Section 17.02 of this Agreement. This nonexclusive license shall terminate automatically upon the occurrence of either a breach of this Agreement by the Engineer or the accused commission by the Engineer of a tort or a crime affecting the City or the Project or upon termination of this Agreement. This nonexclusive license is granted to the Engineer alone and shall not be assigned by the Engineer to any other person or entity, except that the nonexclusive license granted in this Agreement to the Engineer for purposes of the Engineer's performance hereunder may be sub-licensed to the Engineer's Consultants (with the same limitations). Subject to the foregoing, this nonexclusive license shall terminate automatically upon an Engineer's assignment of this nonexclusive license to another or its attempt to do so.

17.03 In the event City uses the Instruments of Service on other projects not specific to this Scope of Work, the City releases the Engineer from all claims and causes of action arising from such uses.

17.04 Except for the licenses granted in this Article 12, no other license or right shall be deemed granted or implied under this Agreement. No other Project-related data, expression, or documents may be reproduced by the Engineer or its Consultants for any other purpose without the express written permission of the Owner.

16.05 If the City subsequently reproduces Project-related documents or creates a derivative work based upon Project-related documents created by the Engineer, the City shall (where permitted or required by law) remove or completely obliterate the original professional's seals, logos, and other indications on the documents of the identity of the Engineer and its Consultants.

17.08 The Engineer shall maintain the confidentiality of all Project documents and information and shall not publish or in any way disseminate or distribute any Project-related document, including, but not limited to, correspondence, estimates, drawings, specifications, photographs, or any other material relating to the Project without the express written authorization of the City.

ARTICLE 18 – DEFINITIONS

18.01 Constituent of Concern – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

18.02 Constructor – any person or entity (not including the Engineer, its employees, agents, representatives, and consultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, City's work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

18.03 Designated City Representative – the individual or entity named as such in the Agreement.

18.04 Reimbursable Expenses – expenses defined in Section 7.05 of this Agreement.

18.05 Remote or Speculative Damages – losses that were not reasonably foreseeable as a consequence of the breach, on the Effective Date, by the Party that breaches this Agreement.

ARTICLE 19 – MISCELLANEOUS

19.01 Choice of Law; Venue – The parties hereto agree that this Contract shall be construed under Arkansas law, excluding its conflict of laws rules. The parties further agree that proper jurisdiction and venue for any cause of action arising from this Contract shall be vested in either the U.S. District Court for the Eastern District of Arkansas or the Circuit Court of Pulaski County, Arkansas.

19.02 Non-Waiver – No delay or failure to exercise any right under this Contract shall impair any such right or be construed to be a waiver thereof. No waiver shall be effective unless in writing signed by the party waiving. A waiver of a right on one occasion shall not be deemed to be waiver of such right on any other occasion. A waiver of a right on one occasion shall not be deemed to be a waiver of any other right on that occasion.

19.03 No Assignment – The Project to be performed pursuant to this Contract is personal in nature, and Contractor may not, voluntarily or by operation of law, assign or transfer any of its rights or obligations under this Contract without the prior written consent of the City.

19.04 Force Majeure – Except for City's obligation to make payments, neither party shall be in default hereunder to the extent such default is caused by an event or circumstance beyond such party's reasonable control.

19.04 Merger – This Contract constitutes the full understanding of the parties, a complete allocation of risks between them and a complete and exclusive statement of the terms and conditions of their agreement, related to the Services provided hereunder. All prior agreements, negotiations, dealings and understandings, whether written or oral, regarding the subject matter hereof, are superseded by and merged into this Contract.

19.05 Data Transmission – City and Engineer may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphic, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

19.06 Modification – No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary the terms or conditions of the Contract shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification shall be effected by the acknowledgment or acceptance of any forms containing terms or conditions or variance with or in addition to those set forth in this Contract.

19.07 Severability – Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

19.08 No Presumption against Drafter – Each of the parties hereto has jointly participated in the negotiation and drafting of this Agreement. In the event an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by each of the parties hereto and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any provisions of this Agreement.

19.09 Counterpart Execution – This Contract may be executed in two or more counterparts, each of which is deemed as original but all constitute one and the same instrument. An original signature transmitted by facsimile or other electronic means shall be deemed to be original.

