

**City of Fayetteville Staff Review Form**

**2019-0532**

**Legistar File ID**

**9/17/2019**

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

Ted Jack

8/22/2019

PARKS & RECREATION (520)

**Submitted By**

**Submitted Date**

**Division / Department**

**Action Recommendation:**

Resolution to approve a contract between the City of Fayetteville, AR and DEMX Architecture of Fayetteville, AR to provide design and construction administration services associated with renovations (5) and replacements (2) of existing restrooms in multiple parks including Finger Neighborhood Park, Wilson, Gulley, and Walker Community Parks, and Lake Fayetteville Regional Park, for a total cost not to exceed \$52,000, plus a \$10,000 expense contingency, per RFQ #19-01, Selection #21.

**Budget Impact:**

2250.520.9255-5806.00	Parks Development																								
Account Number	Fund																								
13001.1902	Park Restroom Improvements																								
Project Number	Project Title																								
<table border="0" style="width: 100%;"> <tr> <td style="width: 30%;"><b>Budgeted Item?</b></td> <td style="width: 10%; text-align: center;">Yes</td> <td style="width: 30%; border-bottom: 1px solid black;">Current Budget</td> <td style="width: 10%; text-align: right;">\$</td> <td style="width: 10%; text-align: right;">700,000.00</td> </tr> <tr> <td></td> <td></td> <td style="border-bottom: 1px solid black;">Funds Obligated</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">3,200.00</td> </tr> <tr> <td></td> <td></td> <td style="border-bottom: 1px solid black;">Current Balance</td> <td style="text-align: right;"><b>\$</b></td> <td style="text-align: right;"><b>696,800.00</b></td> </tr> </table>	<b>Budgeted Item?</b>	Yes	Current Budget	\$	700,000.00			Funds Obligated	\$	3,200.00			Current Balance	<b>\$</b>	<b>696,800.00</b>	<table border="0" style="width: 100%;"> <tr> <td style="width: 30%; border-bottom: 1px solid black;">Item Cost</td> <td style="width: 10%; text-align: center;">\$</td> <td style="width: 10%; text-align: right;">62,000.00</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Budget Adjustment</td> <td></td> <td></td> </tr> <tr> <td style="border-bottom: 1px solid black;">Remaining Budget</td> <td style="text-align: right;"><b>\$</b></td> <td style="text-align: right;"><b>634,800.00</b></td> </tr> </table>	Item Cost	\$	62,000.00	Budget Adjustment			Remaining Budget	<b>\$</b>	<b>634,800.00</b>
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V20180321

**Purchase Order Number:** \_\_\_\_\_

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

**Change Order Number:** \_\_\_\_\_

**Approval Date:** \_\_\_\_\_

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

**Comments:** RFQ 19-01, Selection #21



**MEETING OF SEPTEMBER 17, 2019**

**TO:** Mayor and City Council

**THRU:** Don Marr, Chief of Staff  
Connie Edmonston, Parks and Recreation Director

**FROM:** Ted Jack, Park Planning Superintendent

**DATE:** August 27, 2019

**SUBJECT:** Resolution to approve a contract between the City of Fayetteville, AR and DEMX Architecture of Fayetteville, AR to provide design and construction administration services associated with renovations (5) and replacements (2) of existing restrooms in multiple parks including Finger Neighborhood Park, Wilson, Gulley, and Walker Community Parks, and Lake Fayetteville Regional Park, for a total cost not to exceed \$52,000, plus a \$10,000 expense contingency, per RFQ #19-01, Selection #21.

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**RECOMMENDATION:**

Staff recommends approval of a contract between the City of Fayetteville, AR and DEMX Architecture of Fayetteville, AR to provide design and construction administration services associated with renovation and/or replacement of existing restrooms in multiple parks including Finger Neighborhood Park, Wilson, Gulley, and Walker Community Parks, and Lake Fayetteville Regional Park for a total cost not to exceed \$52,000, plus a \$10,000 expense contingency, per RFQ #19-01, Selection #21.

**BACKGROUND:**

The city has several old restroom buildings of similar design built during the same general period (1960's - 1990's) that need renovation or replacement. Restrooms to be renovated include Gulley, Lake Fayetteville Softball, Veterans Park, Finger Park, and one restroom at Walker Park. Two restrooms are proposed for full demolition and reconstruction including Wilson and Walker Park adjacent to the basketball court.

**DISCUSSION:**

The City of Fayetteville from time to time requires professional engineering, design, and/or construction management services related to capital improvement projects. In this instance, DEMX Architecture was selected through an RFQ selection process (RFQ 19-01) to serve as the professional architectural consultant for plan preparation and construction administration for the renovation and/or replacement of seven restrooms located in five separate parks throughout the city.

**BUDGET/STAFF IMPACT:**

Funding for this project has been budgeted and is available in project #13001.1902 – Park Restroom Improvements.

**Attachments:**

SRF – Wilson Restroom DEMX Architecture  
DEMX Architecture Draft Contract

AGREEMENT  
For  
PROFESSIONAL ARCHITECTURAL SERVICES  
Between  
CITY OF FAYETTEVILLE, ARKANSAS  
And  
DEM X ARCHITECTURE

THIS AGREEMENT is made as of \_\_\_\_\_, 2019, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and DEM X ARCHITECTURE, INC (hereinafter called DEM X).

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

DEM X shall serve as CITY OF FAYETTEVILLE's professional architectural consultant in those assignments to which this Agreement applies, and shall give consultation and advice to CITY OF FAYETTEVILLE during the performance of DEM X's services. All services shall be performed under the direction of a professional architect/engineer/landscape architect 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 DEM X.
- 1.2 Assignments may include services described hereafter as Basic Services or as Additional Services of DEM X.
- 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 DEM X**

- 2.1 Perform professional services in connection with the Project, Restroom Renovations, which includes the renovation of five restrooms, and reconstruction of two restrooms, in multiple parks and as described in Attachment A, and as hereinafter stated.
  - 2.1.1 The Scope of Services to be furnished by DEM X during the Project is included in the August 22, 2019 Proposal from DEM X, attached hereto as Attachment A, and made part of this Agreement.
- 2.2 DEM X shall coordinate their activities and services with the CITY OF FAYETTEVILLE. DEM X and CITY OF FAYETTEVILLE agree that DEM X has full responsibility for the architectural services.

- 2.3 DEMX shall coordinate their activities and services with other Phase 1 improvements, primarily consisting of trail and cyclocross work.

### **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 DEMX.
- 3.1.1 Provide full information as to CITY OF FAYETTEVILLE's requirements for the Project.
- 3.1.2 Assist DEMX by placing at DEMX's disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.
- 3.1.3 Assist DEMX in obtaining access to property reasonably necessary for DEMX to perform its services under this Agreement.
- 3.1.4 Examine all studies, reports, sketches, cost opinions, proposals, and other documents presented by DEMX and render in writing decisions pertaining thereto.
- 3.1.5 The Park Planning Superintendent is the CITY OF FAYETTEVILLE's project representative with respect to the services to be performed under this Agreement. The Park Planning Superintendent shall have complete authority to transmit instructions, receive information, interpret and define CITY OF FAYETTEVILLE's policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.
- 3.1.6 CITY OF FAYETTEVILLE and/or its representative will review all documents and provide written comments to DEMX in a timely manner.

### **SECTION 4 - PERIOD OF SERVICE**

- 4.1 Time is of the essence in this agreement and 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. DEMX 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. This project may bid in two phases. The schedule for this project is to have the work for both phases ready to bid by the city by the end of March 2020.

### **SECTION 5 - PAYMENTS TO DEMX**

- 5.1 The maximum not-to-exceed amount authorized for this Agreement is **\$52,000.00** plus approved expenses not to exceed \$10,000.00. The CITY OF FAYETTEVILLE shall compensate DEMX based on the percent of work completed as described in Attachment 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 DEMX’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 DEMX 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 DEMX’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 DEMX 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, DEMX 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 DEMX 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 DEMX 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, DEMX 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

DEMEX 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 DEMEX 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 DEMX's services.

## 6.2      Professional Responsibility

6.2.1            DEMX will exercise reasonable skill, care, and diligence in the performance of DEMX's services and will carry out its responsibilities in accordance with customarily accepted professional architectural practices. CITY OF FAYETTEVILLE will promptly report to DEMX any defects or suspected defects in DEMX's services of which CITY OF FAYETTEVILLE becomes aware, so that DEMX 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 DEMX.

## 6.3      Cost Opinions and Projections

6.3.1            Cost opinions and projections prepared by DEMX relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on DEMX's staff experience, qualifications, and judgment as a design professional. Since DEMX 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, DEMX does not guarantee that actual rates, costs, performance, schedules, and related items will not vary from cost opinions and projections prepared by DEMX.

## 6.4      Changes

6.4.1            CITY OF FAYETTEVILLE shall have the right to make changes within the general scope of DEMX'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 DEMX.

## 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 DEMX 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 DEMX at the time of termination may be adjusted to cover any additional costs to CITY OF FAYETTEVILLE because of DEMX's default.
- 6.5.4 If termination for default is effected by DEMX, 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 DEMX for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by DEMX 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, DEMX 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 DEMX 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 DEMX to fulfill contractual obligations, it is determined that DEMX 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 DEMX are suspended or delayed by CITY OF FAYETTEVILLE or by other events beyond DEMX's reasonable control, DEMX shall be entitled to additional compensation and time for reasonable costs incurred by DEMX in temporarily closing down or delaying the Project.



## 6.7 Rights and Benefits

- 6.7.1 DEMX'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 DEMX 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 DEMX 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 DEMX 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 DEMX 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 DEMX 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 DEMX for services rendered by DEMX.

## 6.10 Publications

- 6.10.1 Recognizing the importance of professional development on the part of DEMX's employees and the importance of DEMX's public relations, DEMX may prepare publications, such as technical papers, articles for periodicals, and press releases, pertaining to DEMX'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 DEMX. 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 DEMX's activities pertaining to any such publication shall be for DEMX'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 DEMX 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. DEMX 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 DEMX as part of the Services shall become the property of CITY OF FAYETTEVILLE when DEMX has been compensated for all Services rendered, provided, however, that DEMX shall have the unrestricted right to their use. DEMX 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 DEMX. DEMX shall provide cad files of survey and layout work. The city shall hold DEMX harmless from any use of those cad files by the city for work not associated with DEMX.

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. DEMX 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

DEMEX's address:  
DEMEX Architecture  
104 N. East Ave.  
Fayetteville, AR 72701

6.14 Successor and Assigns

- 6.14.1 CITY OF FAYETTEVILLE and DEMX 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 DEMX 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 within Washington County without regard to any conflicts of law provisions.
- 6.16 Entire Agreement
- 6.16.1 This Agreement represents the entire Agreement between DEMX 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 DEMX a purchase order, no preprinted terms thereon shall become a part of this Agreement. Said purchase order document, whether or not signed by DEMX, 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 DEMX
- 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 DEMX 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 DEMX shall be and shall remain liable, in accordance with applicable law, for all damages to CITY OF FAYETTEVILLE caused by DEMX'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 DEMX's obligations under this clause are in addition to DEMX'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 DEMX 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 DEMX 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 DEMX 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. DEMX shall also maintain the financial information and data used by DEMX 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. DEMX 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 sub-agreement or purchase order awarded after effective price competition, except:

7.3.3.3.1 With respect to record pertaining directly to sub-agreement performance, excluding any financial records of DEMX;

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 sub-agreement is terminated for default or for convenience.

7.4 Covenant Against Contingent Fees

7.4.1 DEMX 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 DEMX 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 DEMX or any of DEMX'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 DEMX 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 DEMX as it could pursue in the event of a breach of the Agreement by DEMX. 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 DEMX incurs in providing any such gratuities to any such officer or employee.

7.6 Arkansas Freedom of Information Act

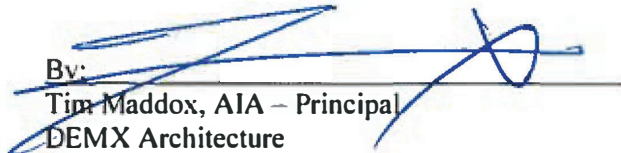
7.6.1 City contracts and documents, including internal documents and documents of subcontractors and sub-consultants, prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act (FOIA). If a Freedom of Information Act request is presented to the CITY OF FAYETTEVILLE, DEMX 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 DEM X, by its authorized officer have made and executed this Agreement as of the day and year first above written.

CITY OF FAYETTEVILLE, ARKANSAS

DEM X

By: \_\_\_\_\_  
Mayor, Lioneld Jordan

By:   
Tim Maddox, AIA – Principal  
DEM X Architecture

ATTEST:

By: \_\_\_\_\_  
Sondra E. Smith, City Clerk

Title: \_\_\_\_\_

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES